

CITY OF WEST DES MOINES

COUNCIL AGENDA

date: Tuesday, January 18, 2022

time: 5:30 P.M.

MAYOR RUSS TRIMBLE
COUNCILMEMBER AT LARGE RENEE HARDMAN
COUNCILMEMBER AT LARGE MATTHEW MCKINNEY
COUNCILMEMBER 1ST WARD KEVIN L. TREVILLYAN
COUNCILMEMBER 2ND WARD GREG HUDSON
COUNCILMEMBER 3RD WARD DOUG LOOTS

CITY MANAGER.....TOM HADDEN
CITY ATTORNEY.....RICHARD SCIESZINSKI
CITY CLERK.....RYAN JACOBSON

West Des Moines City Hall - City Council Chambers 4200 Mills Civic Parkway

*Members of the public wishing to participate telephonically, may do so by calling:
515-207-8241, Enter Conference ID: 789 861 657#*

1. **Call to Order/Pledge of Allegiance/Roll Call/Approval of Agenda**
2. **Citizen Forum** (Pursuant to City Council Procedural Rules citizen remarks are limited to five minutes under this agenda category - if additional time is desired the Mayor/Council may allow continuation as part of the Other Matters portion of the agenda)
3. **Mayor/Council/Manager Report/Other Entities Update**
 - a. MidAmerican Energy Company - Presentation of Check for New Construction Efficiency Program for the MidAmerican Energy Company RecPlex
4. **Consent Agenda**
 - a. Motion - Approval of Minutes of January 3, 2022 Meeting
 - b. Motion - Approval of Bill Lists
 - c. Motion - Approval of Liquor Licenses:
 1. DB2P, LLC d/b/a Allcool Liquors, 5904 Ashworth Road - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - Renewal
 2. HOA Hotels, LLC d/b/a Johnny's Italian Steakhouse, 6075 Mills Civic Parkway - Class LB Liquor License with Carryout Wine, Sunday Sales, Outdoor Service, and Catering Privileges - Renewal
 3. Waterfront Seafood Market, Inc. d/b/a Waterfront Seafood Market, 2900 University Avenue - Class LC Liquor License with Sunday Sales and Catering Privileges - Renewal
 - d. Motion - Acceptance of 2022 Emergency Solutions Grant - Iowa Finance Authority
 - e. Motion - Approval of Agreement to Purchase Artwork - 2021 Art on the Campus - "Iowa Barn"

- f. Resolution - Order Construction:
 - 1. 2021 Stormwater Intake Repair Program
 - 2. 2022 Street Reconstruction Program
 - 3. Stagecoach Drive, South Jordan Creek Parkway to South 78th Street
 - 4. 2022 Playground Replacement Project
- g. Resolution - Accept Work - SE 1st Street and SE Willow Creek Drive Watermain
- h. Resolution - Establish Just Compensation and Approve Acquisition of Property:
 - 1. South 51st Street, Mills Civic Parkway to Fieldstone Drive
 - 2. Stagecoach Drive, South Jordan Creek Parkway to South 78th Street
- i. Resolution - Establish Consultation Meeting and Public Hearing - South 81st Street Urban Renewal Area
- j. Resolution - Approval and Acceptance of Property Interests from Dallas County - Fox Ridge Townhomes Plat 1
- k. Resolution - Approval of Settlement and Release Agreement - MCC Iowa, LLC d/b/a Mediacom
- l. Proclamation - Approval of Proclamations:
 - 1. Martin Luther King Jr. Day - January 17, 2022
 - 2. West Des Moines Day of Kindness - January 28, 2022
- m. Resolution - Approval of Plat Approval and Repayment Agreement - Chayse Holdings, LLC

5. Old Business

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

- a. Jordan Creek Tower, 575 and 595 South 60th Street - Adopt the Jordan Creek Tower Area Development Plan, Amend the Comprehensive Plan Land Use Map to Designate Support Commercial Land Use, and Establish the Specific Plan Ordinance Regulating Development of a Mixed-Use Building - Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005
 - 1. Resolution - Approval of Area Development Plan
 - 2. Resolution - Approval of Comprehensive Plan Amendment
 - 3. Ordinance - Approval of First Reading
- b. Amendment No. 2 to Conduit Network License Agreement - Google Fiber, Inc.
 - 1. Resolution - Approval of Amendment No. 2 to the Agreement
- c. Conduit Network License Agreement - MCC Iowa, LLC d/b/a Mediacom
 - 1. Resolution - Approval of Agreement
- d. Conduit Network License Agreement - Mi-Fiber, LLC
 - 1. Resolution - Approval of Agreement

- e. Agreement for Private Development - Project Ginger East - Microsoft Corporation (Continued from January 3, 2022)
 - 1. Resolution - Approval of Agreement
- f. Agreement for Private Development - Jordan Creek Associates, LLC
 - 1. Resolution - Approval of Agreement
- g. Grand Avenue West Segment 3 Sewer Extension - City Initiated
 - 1. Resolution - Approval of Plans and Specifications
 - 2. Motion - Receive and File Report of Bids
 - 3. Resolution - Award Contract

7. New Business

- a. Manchester Village Townhomes Plat 1, 9076 Lindas Lane - Approval of Final Plat to Create 37 Footprint Lots for Townhome Development, Three Outlots and One Street Lot - Stanbros Development, LLC
 - 1. Resolution - Approval and Release of Final Plat
- b. South Branch Business Park, southwest corner of SE 42nd Street and former SE Army Post Road - Approval of a Preliminary Plat to Create One Lot for General Industrial Development, One Outlot for Future Development and One Outlot for Site Access - SBBP JV21, LLC
 - 1. Resolution - Approval of Preliminary Plat
- c. Microsoft DSM 40, 11100 Booneville Road - Approval of Major Modification to Site Plan for a Revised Site Logistics Plan - Microsoft Corporation
 - 1. Resolution - Approval of Major Modification

8. Receive, File and/or Refer

9. Other Matters

- a. Legislative Updates

CITY COUNCIL WORKSHOP

(immediately follows Council meeting)

1. 2022-23 FY Operating and Capital Budget - Preliminary Background
2. Other Matters

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

January 3, 2022

West Des Moines City Council Proceedings
Monday, January 3, 2022

Mayor Russ Trimble opened the regularly scheduled meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of the West Des Moines City Hall on Monday, January 3, 2022 at 5:30 PM. Council members present were: R. Hardman, G. Hudson, D. Loots, M. McKinney, and K. Trevillyan.

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

Vote 22-001: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes
Motion carried.

Mayor Trimble stated a letter was received earlier today from Mediacom objecting to Item 4(e).

On Item 2. Public Forum:

Amy Buehrer, 8415 Mills Civic Parkway, expressed concerns about EMF radiation that she believes is emitted from the Sammons Financial Group building near her home. She also expressed concern about challenges she has experienced while trying to sell her property.

Kathy Beck, 3856 SE Orilla Road, expressed concerns that future roadway construction projects near her home could require her to convey portions of her property to the City for right-of-way. She stated she is opposed to doing that, as she would prefer to retain her property in its entirety.

M.J. Hoag, 413 2nd Street, expressed concerns about the American Legion Park Parking Lot Project, as he would prefer to see on-street angle parking stalls constructed around the perimeter of the park as opposed to a parking lot that would take away open space within the park.

On Item 3. Council/Manager/Other Entities Reports:

David Nelson, President/CEO of West Bank, and Brad Winterbottom, Executive Vice President of West Bank presented a check to the City for \$250,000 to support the Historic West Des Moines Pilot Housing Programs.

Bret Hodne, Public Services Director, provided a presentation on the City's growth and its budget implications.

Council member Loots stated he is excited to serve on the City Council and to represent the citizens of Ward 3.

January 3, 2022

Council member Hardman expressed appreciation to the Public Services Department for their snow removal efforts following the recent winter weather. She also spoke in support of wearing face coverings as a means to prevent transmission of COVID-19, as the number of hospitalizations related to COVID-19 are currently very high.

Council member McKinney congratulated City staff for their efforts in making 2021 the highest year ever for building permit valuation.

Council member Hudson congratulated Mayor Trimble and Council members Hardman, Trevillyan, and Loots as they all begin new terms.

Mayor Trimble stated it is a great honor to serve as the Mayor of West Des Moines, and he shared about some of the priorities he will focus on as Mayor: cutting the property tax levy rate, game-changing quality of life projects, economic development incentives, revitalizing Valley Junction, revitalizing the Valley West Mall area, promoting affordable housing, maintaining decorum in the council chambers, and ensuring all voices are heard.

On Item 4. Consent Agenda.

Council members pulled Item 4(e) for discussion. It was moved by Hudson, second by Hardman to approve the consent agenda as amended.

- a. Approval of Minutes of December 20, 2021 Meeting
- b. Approval of Bill Lists
- c. Approval of Liquor Licenses:
 1. Bravo Brio Restaurants, LLC d/b/a Bravo!, 120 South Jordan Creek Parkway - Class LC Liquor License with Sunday Sales and Outdoor Service Privileges - Renewal
 2. Cyd's Catering, LLC d/b/a Cyd's Catering, 4000 Turnberry Drive - Class LC Liquor License with Catering Privileges - Renewal
 3. First Fleet Concerts, LLC d/b/a First Fleet Concerts, 301 Ashworth Road (Val Air Ballroom) - Class LC Liquor License with Sunday Sales - New
 4. Lakes Venture, LLC d/b/a Fresh Thyme Farmers Market, 2900 University Avenue, Suite E - Class BC Permit with Carryout Wine and Sunday Sales - Renewal
 5. Flatin Rusty Taco Des Moines, LLC d/b/a Rusty Taco, 9500 University Avenue, Unit 2108 - Class LC Liquor License with Sunday Sales, Outdoor Service, and Catering Privileges - Renewal
 6. MAHAJAN 2, LLC d/b/a Superquick Liquor Wine, 2704 Vine Street - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - New
 7. Thompson Hospitality, LLC d/b/a Urban Cellar, 640 South 50th Street - Class LC Liquor License with Sunday Sales, Outdoor Service, and Catering Privileges - Renewal

January 3, 2022

- d. Approval of Appointments - City Clerk and Deputy City Clerk
- f. Approval of Contract - Waste Collection and Disposal Services
- g. Accepting Public Improvements - The Preserve Estates Plat 2
- h. Approval and Acceptance of Property Interests - Ginger West
- i. Authorize Application for Transportation Alternatives Program Grant Funding - Des Moines Metropolitan Planning Organization

Vote 22-002: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes
Motion carried.

On Item 4(e) Approval of Change Order #1 - Digital Enterprise Conduit Deployment Segment 4, Phase 1

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

It was moved by Hardman second by Trevillyan to approve Item 4(e) Approval of Change Order #1 - Digital Enterprise Conduit Deployment Segment 4, Phase 1.

Vote 22-003: Hardman, Hudson, Loots, Trevillyan ... 4 yes
McKinney ... 1 abstain due to potential conflict of interest
Motion carried.

On Item 5 - Old Business: no items

On Item 6(a) Agreement for Private Development - Project Ginger East, initiated by Microsoft Corporation

It was moved by Trevillyan, second by Hudson to adopt Motion - Continue Public Hearing to January 18, 2022.

Vote 22-004: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes
Motion carried.

On Item 7(a) Fox Ridge Plat 1, south of Veterans Parkway and west of the Fox Valley Development - Subdivide Property into 33 Lots for Single-Family Development, One Outlot and Three Street Lots, initiated by Forestar (USA) Real Estate Group, Inc.

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

January 3, 2022

Vote 22-005: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes
Motion carried.

On Item 7(b) Fox Ridge Townhomes Plat 1, south of Veterans Parkway and west of the Fox Valley Development - Subdivide Property into 48 Footprint Lots for Multi-Family Development and Two Outlots, initiated by Forestar (USA) Real Estate Group, Inc.

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

Vote 22-006: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes
Motion carried.

On Item 7(c) Grand Valley Townhomes, Grand Avenue east of South 35th Street - Subdivide Property into 113 Lots for Attached Townhome Development and One Lot for Private Streets and Common Area, initiated by Grand Valley Townhomes, LLC.

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

Vote 22-007: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes
Motion carried.

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

On Item 9 - Other Matters: none

The meeting was adjourned at 6:32 p.m.

Council member McKinney indicated he will recuse himself from the Executive Session due to a potential conflict of interest.

It was moved by Hardman, second by Trevillyan to go into Executive Session per Chapter 21 of the Iowa Code, to discuss pending/threatened litigation.

Vote 22-008: Hardman, Hudson, Loots, Trevillyan...4 yes
Motion carried.

Entered Executive Session at 6:36 p.m. with the following persons present in the Council Chambers of City Hall: Mayor Trimble, Council members Hardman, Hudson, Loots, and

January 3, 2022

Trevillyan; City Manager, Deputy City Manager, City Attorney, City Clerk, City Engineer, and retained legal counsel Nathan Overberg of Ahlers & Cooney, P.C.

Council member Hudson left the Executive Session at 6:49 p.m.

It was moved by Hardman, second by Trevillyan to adjourn from Executive Session.

Vote 22-009: Hardman, Loots, Trevillyan...3 yes
Motion carried.

Executive Session was adjourned at 8:04 p.m.

Respectfully submitted,

Ryan T. Jacobson, CMC
City Clerk

ATTEST:

Russ Trimble, Mayor

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

ITEM: Motion – Approval of Bill Lists

DATE: January 18, 2022

FINANCIAL IMPACT: Section 1-10-3(b) of the West Des Moines City Code provides that no disbursement shall be made from a fund unless such disbursement is authorized by law, ordinance or resolution, was properly budgeted, and supported by a claim approved by the City Council. The following list(s) of municipal expenditures, all of which have been reviewed and authorized by the respective departments as being justified and properly due and the listing of which have been prepared by Finance staff, are, with this agenda item, being submitted to the City Council for approval:

Regular Bi-Weekly Claims	01/18/2022	\$ 3,110,916.37
EFT Claims	01/18/2022	\$ 2,233,603.97
Control Pay	01/18/2022	\$ 257,393.30
Microsoft Escrow Checks	01/18/2022	\$ 0.00
Microsoft Escrow EFT	01/18/2022	\$ 0.00
End of Month & Off-Cycle	12/21/2021 to 02/06/2022	\$ 703,681.62

RECOMMENDATION: Move to approve Bill Lists as presented.

Lead Staff Member: Tim Stiles, Finance Director

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	<i>TS</i>

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	
Date Reviewed	
Recommendation	

City of West Des Moines, IA
City Council Report
 Bank Account: WB VENDOR DISB - WB Vendor Disbursement
 Batch Date: 01/18/2022

Type	Date	Number	Source	Payee Name	Transaction Amount
Bank Account: WB VENDOR DISB - WB Vendor Disbursement					
Check	01/18/2022	323526	Accounts Payable	ABSOLUTE CONCRETE CONSTRUCTION INC	77,147.54
Check	01/18/2022	323527	Accounts Payable	ABSOLUTE SERVING & INVESTIGATIONS	300.00
Check	01/18/2022	323528	Accounts Payable	ADP SCREENING & SELECTION SVCS	302.51
Check	01/18/2022	323529	Accounts Payable	AIR-CON MECHANICAL CORPORATION	8,466.10
Check	01/18/2022	323530	Accounts Payable	ALCOPRO INC	2,278.28
Check	01/18/2022	323531	Accounts Payable	ALWAN , MAYADA	50.00
Check	01/18/2022	323532	Accounts Payable	AMERICAN SECURITY LLC	1,383.42
Check	01/18/2022	323533	Accounts Payable	AMERIGROUP	489.49
Check	01/18/2022	323534	Accounts Payable	ASSOCIATED INTEGRATED SUPPLY CHAIN SOLUTIONS	16,510.39
Check	01/18/2022	323535	Accounts Payable	BONNIE'S BARRICADES	333.00
Check	01/18/2022	323536	Accounts Payable	BOUND TREE MEDICAL LLC	5,407.51
Check	01/18/2022	323537	Accounts Payable	BOWLSBY , KAYA DANIEL	168.00
Check	01/18/2022	323538	Accounts Payable	CAPPEL'S ACE HARDWARE	9.99
Check	01/18/2022	323539	Accounts Payable	CENTER FOR PUBLIC SAFETY EXCELLENCE INC	780.00
Check	01/18/2022	323540	Accounts Payable	CGM LLC	5,000.00
Check	01/18/2022	323541	Accounts Payable	CHIAFOS , BRAD	168.00
Check	01/18/2022	323542	Accounts Payable	CINTAS CORP FIRST AID & SAFETY	814.59
Check	01/18/2022	323543	Accounts Payable	CITY OF DES MOINES	554,190.80
Check	01/18/2022	323544	Accounts Payable	CONSTRUCTION & AGGREGATE PRODUCTS INC	124.00
Check	01/18/2022	323545	Accounts Payable	CORELL CONTRACTOR INC	155.88
Check	01/18/2022	323546	Accounts Payable	CORY , TARRY	112.00
Check	01/18/2022	323547	Accounts Payable	DE LAGE LANDEN	2,795.00
Check	01/18/2022	323548	Accounts Payable	DMACC	2,750.00
Check	01/18/2022	323549	Accounts Payable	DOLL DISTRIBUTING LLC	846.45
Check	01/18/2022	323550	Accounts Payable	EARL MAY SEED AND NURSERY	512.73
Check	01/18/2022	323551	Accounts Payable	EDGE COMMERCIAL LLC	93,290.11
Check	01/18/2022	323552	Accounts Payable	ELECTRICAL ENGINEERING & EQUIPMENT CO	223.00
Check	01/18/2022	323553	Accounts Payable	EMERGENCY SERVICES MARKETING	305.00
Check	01/18/2022	323554	Accounts Payable	EMSLRC	15.00

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Type	Date	Number	Source	Payee Name	Transaction Amount
Check	01/18/2022	323555	Accounts Payable	EXCELL MARKETING LC	630.00
Check	01/18/2022	323556	Accounts Payable	FACTORY MOTOR PARTS COMPANY	901.77
Check	01/18/2022	323557	Accounts Payable	FAIR-PLAY SCOREBOARDS	9,979.54
Check	01/18/2022	323558	Accounts Payable	FARRIS , DAMIAN	21.25
Check	01/18/2022	323559	Accounts Payable	FEDEX	68.76
Check	01/18/2022	323560	Accounts Payable	FERGUSON , JULIE	120.00
Check	01/18/2022	323561	Accounts Payable	FILTA	120.00
Check	01/18/2022	323562	Accounts Payable	FORKLIFTS OF DES MOINES	1,016.01
Check	01/18/2022	323563	Accounts Payable	FURRY FRIENDS REFUGE	7,550.00
Check	01/18/2022	323564	Accounts Payable	GEMT- IOWA DEPARTMENT OF HUMAN SERVICES	19,904.64
Check	01/18/2022	323565	Accounts Payable	GRAINGER INC	77.24
Check	01/18/2022	323566	Accounts Payable	GRAYBAR ELECTRIC CO INC	126.60
Check	01/18/2022	323567	Accounts Payable	GREAT OUTDOORS FOUNDATION	6,250.00
Check	01/18/2022	323568	Accounts Payable	GRIFFIN , STEVEN	97.17
Check	01/18/2022	323569	Accounts Payable	HANDY HITCH MANUFACTURING	1,590.64
Check	01/18/2022	323570	Accounts Payable	HAWKEYE TRUCK EQUIPMENT	1,102.57
Check	01/18/2022	323571	Accounts Payable	HAYNES , JERRON	18.75
Check	01/18/2022	323572	Accounts Payable	HDR ENGINEERING INC	25,161.13
Check	01/18/2022	323573	Accounts Payable	HI TOUCH BUSINESS SERVICES LLC	687.92
Check	01/18/2022	323574	Accounts Payable	HILLYARD- DES MOINES	272.14
Check	01/18/2022	323575	Accounts Payable	HOUSING FUND FOR LINN COUNTY	450.00
Check	01/18/2022	323576	Accounts Payable	HY VEE INC	23.11
Check	01/18/2022	323577	Accounts Payable	IMSA - PUBLIC SAFETY	40.00
Check	01/18/2022	323578	Accounts Payable	INTERSTATE ALL BATTERY CENTER	480.74
Check	01/18/2022	323579	Accounts Payable	IOWA BRIDGE & CULVERT LC	133,601.67
Check	01/18/2022	323580	Accounts Payable	IOWA DEPARTMENT OF TRANSPORTATION	265.14
Check	01/18/2022	323581	Accounts Payable	IOWA ONE CALL	1,684.80
Check	01/18/2022	323582	Accounts Payable	IOWA SAFE SCHOOLS	600.00
Check	01/18/2022	323583	Accounts Payable	IOWA SIGNAL INC	105.00
Check	01/18/2022	323584	Accounts Payable	IOWA TOTAL CARE	397.71
Check	01/18/2022	323585	Accounts Payable	ISOLVED BENEFIT SERVICES- WDM	1,159.20
Check	01/18/2022	323586	Accounts Payable	J LAURENZO SPECIALTY PRODUCTS	35.00
Check	01/18/2022	323587	Accounts Payable	JOHNSON BROTHERS OF IOWA INC	753.60
Check	01/18/2022	323588	Accounts Payable	JOHNSON CONTROLS FIRE	2,712.41

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Check	01/18/2022	323589	Accounts Payable	PROTECTION LP-IL	10,322.06
Check	01/18/2022	323590	Accounts Payable	KALDENBERG'S PBS LANDSCAPING	993.00
Check	01/18/2022	323591	Accounts Payable	KAZLOW FIELDS	356.62
Check	01/18/2022	323592	Accounts Payable	KLOCKE'S EMERGENCY VEHICLES	1,197,095.04
Check	01/18/2022	323593	Accounts Payable	KRAMER WELL DRILLING LLC	1,075.94
Check	01/18/2022	323594	Accounts Payable	LANGUAGE LINE SERVICES	193.71
Check	01/18/2022	323595	Accounts Payable	LEES, KATHY	5,829.05
Check	01/18/2022	323596	Accounts Payable	LEXIPOL LLC	5,788.47
Check	01/18/2022	323597	Accounts Payable	LINDE GAS & EQUIPMENT INC	525.00
Check	01/18/2022	323598	Accounts Payable	LINDEMAN, DEAN	381.10
Check	01/18/2022	323599	Accounts Payable	LOGOED APPAREL & PROMOTIONS	1,983.58
Check	01/18/2022	323600	Accounts Payable	LOWE'S HOME CENTER INC	42.50
Check	01/18/2022	323601	Accounts Payable	MADIT, ABUK	30.00
Check	01/18/2022	323602	Accounts Payable	MCLAUGHLIN, JORDAN	136.90
Check	01/18/2022	323603	Accounts Payable	MEDIACOM	10.82
Check	01/18/2022	323604	Accounts Payable	MEDIACOM	6.25
Check	01/18/2022	323605	Accounts Payable	MENARDS- CLIVE	1,081.51
Check	01/18/2022	323606	Accounts Payable	MERCY WEST PHARMACY	875.00
Check	01/18/2022	323607	Accounts Payable	METRE LLC	315.00
Check	01/18/2022	323608	Accounts Payable	MID IOWA OCCUPATIONAL TESTING	364.00
Check	01/18/2022	323609	Accounts Payable	MOATS, WILLIAM	90,059.00
Check	01/18/2022	323610	Accounts Payable	MOTOROLA	165.00
Check	01/18/2022	323611	Accounts Payable	MUNCH, ELIJAH	211.06
Check	01/18/2022	323612	Accounts Payable	MUNICIPAL COLLECTIONS OF AMERICA INC	215.00
Check	01/18/2022	323613	Accounts Payable	NATIONAL PUBLIC EMPLOYER LABOR RELATIONS ASSOC	2,094.32
Check	01/18/2022	323614	Accounts Payable	NEBRASKA GENERATOR SERVICE LLC	119.50
Check	01/18/2022	323615	Accounts Payable	NELLIES VENDING	149.98
Check	01/18/2022	323616	Accounts Payable	NORTHERN TOOL & EQUIPMENT	9,000.00
Check	01/18/2022	323617	Accounts Payable	NORTHWESTERN UNIVERSITY	28,768.66
Check	01/18/2022	323618	Accounts Payable	OLSSON INC	1,500.00
Check	01/18/2022	323619	Accounts Payable	ONE IOWA	1,350.00
Check	01/18/2022	323620	Accounts Payable	OTOCAST LLC	350.00
Check	01/18/2022	323621	Accounts Payable	PATTON, CHRIS	18,088.85
Check	01/18/2022	323621	Accounts Payable	PCC- PHYSICIANS CLAIMS COMPANY	

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Check	01/18/2022	323622	Accounts Payable	INC	
Check	01/18/2022	323623	Accounts Payable	PEPSI BEVERAGES COMPANY	754.38
Check	01/18/2022	323624	Accounts Payable	POLK COUNTY AUDITOR	6,868.92
Check	01/18/2022	323625	Accounts Payable	POLK COUNTY RECORDER	94.00
Check	01/18/2022	323626	Accounts Payable	POLK COUNTY TREASURER	150.00
Check	01/18/2022	323627	Accounts Payable	POLK COUNTY TREASURER	150.00
Check	01/18/2022	323628	Accounts Payable	POLK COUNTY TREASURER	150.00
Check	01/18/2022	323629	Accounts Payable	RAY O'HERRON CO INC	140.75
Check	01/18/2022	323630	Accounts Payable	RDG PLANNING & DESIGN	1,270.00
Check	01/18/2022	323631	Accounts Payable	RESOURCE CONSULTING ENGINEERS	910.00
Check	01/18/2022	323632	Accounts Payable	ROBERT HALF TECHNOLOGY	10,003.06
Check	01/18/2022	323633	Accounts Payable	SHEELS ALL SPORTS INC	140.00
Check	01/18/2022	323634	Accounts Payable	SCHILDBERG CONSTRUCTION CO	10,025.24
Check	01/18/2022	323635	Accounts Payable	SESAC INC	1,669.00
Check	01/18/2022	323636	Accounts Payable	SKOLD DOOR & FLOOR CO	8,181.77
Check	01/18/2022	323637	Accounts Payable	SPEEDPRO IMAGING	610.04
Check	01/18/2022	323638	Accounts Payable	SPONG , JULIE	175.00
Check	01/18/2022	323639	Accounts Payable	STATE OF IOWA- ELEVATOR SAFETY	175.00
Check	01/18/2022	323640	Accounts Payable	STONE CROSS LAWN & LANDSCAPE	200.00
Check	01/18/2022	323641	Accounts Payable	STONY CREEK LANDSCAPES INC	10,000.00
Check	01/18/2022	323642	Accounts Payable	STRYKER SALES CORPORATION	72.75
Check	01/18/2022	323643	Accounts Payable	STUDIO MELEE	1,753.75
Check	01/18/2022	323644	Accounts Payable	SYSTEMS MANAGEMENT AND BALANCING INC	3,000.00
Check	01/18/2022	323645	Accounts Payable	TANNATT , KAY	218.75
Check	01/18/2022	323646	Accounts Payable	TD&CABLE MAINTENANCE INC	310,700.47
Check	01/18/2022	323647	Accounts Payable	TEKSYSTEMS INC	2,862.00
Check	01/18/2022	323648	Accounts Payable	TERRACON CONSULTANTS INC	3,551.25
Check	01/18/2022	323649	Accounts Payable	TESKA ASSOCIATES INC	35,248.83
Check	01/18/2022	323650	Accounts Payable	THE GRAVEDIGGER LLC	800.00
Check	01/18/2022	323651	Accounts Payable	THOMPSON , CLINTON	280.00
Check	01/18/2022	323652	Accounts Payable	TOMETICH ENGINEERING INC	1,881.00
Check	01/18/2022	323653	Accounts Payable	TRAFFIC CONTROL CORP	9,800.00
Check	01/18/2022	323654	Accounts Payable	TRIZETTO PROVIDER SOLUTIONS	233.42
Check	01/18/2022	323655	Accounts Payable	TRUE VALUE & V&S VARIETY STORE	80.71

City of West Des Moines, IA
City Council Report
 Bank Account: WB VENDOR DISB - WB Vendor Disbursement
 Batch Date: 01/18/2022

Type	Date	Number	Source	Payee Name	Transaction Amount
Check	01/18/2022	323655	Accounts Payable	UNITYPOINT CLINIC- OCCUPATIONAL MEDICINE	42.00
Check	01/18/2022	323656	Accounts Payable	UNITYPOINT HEALTH	283.00
Check	01/18/2022	323657	Accounts Payable	VAN WALL EQUIPMENT	605.49
Check	01/18/2022	323658	Accounts Payable	VERIZON WIRELESS	989.58
Check	01/18/2022	323659	Accounts Payable	VISION SERVICE PLAN	674.85
Check	01/18/2022	323660	Accounts Payable	VOIANCE LANGUAGE SERVICES LLC	25.00
Check	01/18/2022	323661	Accounts Payable	WALNUT VALLEY TURF LLC	11,928.50
Check	01/18/2022	323662	Accounts Payable	WATER'S EDGE AQUATIC DESIGN LLC	3,200.00
Check	01/18/2022	323663	Accounts Payable	WELLS , PHILLIP C	84.00
Check	01/18/2022	323664	Accounts Payable	WEX BANK	5,783.29
Check	01/18/2022	323665	Accounts Payable	WILLIAMS , RYAN	189.00
Check	01/18/2022	323666	Accounts Payable	ZETA KAPPA LAMPDA EDUCATION FOUNDATION INC	1,000.00
Check	01/18/2022	323667	Accounts Payable	ZOLL MEDICAL- NY	3,449.24
Check	01/18/2022	323668	Accounts Payable	ZOSS , BEN	56.00
Check	01/18/2022	323669	Accounts Payable	BOWEN , GARY	20,765.00
Check	01/18/2022	323670	Accounts Payable	POLK COUNTY RECORDER	2.00
Check	01/18/2022	323671	Accounts Payable	SUFFOLK COUNTY SHERIFF- CIVIL PROCESS DIVISION	100.00
Check	01/18/2022	323672	Accounts Payable	BROADWATER , KEVEON WAUNEZ	911.25
Check	01/18/2022	323673	Accounts Payable	NAVAL SURFACE WARFARE CENTER- CRANE DIVISION	4,500.00
Check	01/18/2022	323674	Accounts Payable	AT&T MOBILITY	82.54
Check	01/18/2022	323675	Accounts Payable	AT&T MOBILITY	9,000.88
Check	01/18/2022	323676	Accounts Payable	CENTURYLINK	4,052.26
Check	01/18/2022	323677	Accounts Payable	CENTURYLINK	6,210.99
Check	01/18/2022	323678	Accounts Payable	CENTURYLINK	4,096.30
Check	01/18/2022	323679	Accounts Payable	CENTURYLINK	300.10
Check	01/18/2022	323680	Accounts Payable	GRANITE TELECOMMUNICATIONS LLC	3,746.38
Check	01/18/2022	323681	Accounts Payable	MIDAMERICAN ENERGY	3,507.95
Check	01/18/2022	323682	Accounts Payable	MIDAMERICAN ENERGY	63,011.77
Check	01/18/2022	323683	Accounts Payable	MIDAMERICAN ENERGY	58,587.16
Check	01/18/2022	323684	Accounts Payable	MIDAMERICAN ENERGY	3,560.67
Check	01/18/2022	323685	Accounts Payable	MIDAMERICAN ENERGY	423.74
Check	01/18/2022	323686	Accounts Payable	MIDAMERICAN ENERGY	12.32

City of West Des Moines, IA
City Council Report
 Bank Account: WB VENDOR DISB - WB Vendor Disbursement
 Batch Date: 01/18/2022

Type	Date	Number	Source	Payee Name	Transaction Amount
Check	01/18/2022	323687	Accounts Payable	MIDAMERICAN ENERGY	1,296.35
Check	01/18/2022	323688	Accounts Payable	MIDAMERICAN ENERGY - PROJECTS	24,204.47
Check	01/18/2022	323689	Accounts Payable	MIDAMERICAN ENERGY - PROJECTS	29,009.87
Check	01/18/2022	323690	Accounts Payable	MIDAMERICAN ENERGY - PROJECTS	29,840.01
Check	01/18/2022	323691	Accounts Payable	MIDAMERICAN ENERGY - PROJECTS	5,241.36
Check	01/18/2022	323692	Accounts Payable	MIDAMERICAN ENERGY - PROJECTS	6,877.11
Check	01/18/2022	323693	Accounts Payable	MIDAMERICAN- DM-WDM TL	37.00
Check	01/18/2022	323694	Accounts Payable	MIDAMERICAN-CLIVE-WDM TL	1,331.96
Check	01/18/2022	323695	Accounts Payable	MIDAMERICAN-WDM-WAUKEE TL	164.42
Check	01/18/2022	323696	Accounts Payable	CHRISTOPHER THOMAS- CENTRAL IOWA SLOWPITCH	1,659.00
Check	01/18/2022	323697	Accounts Payable	POWER DMS INC	5,513.25
EFT	01/18/2022	7551	Accounts Payable	A TEAM APPAREL	6,728.82
EFT	01/18/2022	7552	Accounts Payable	ABC ELECTRICAL SERVICES LLC	10,012.51
EFT	01/18/2022	7553	Accounts Payable	ACCUJET LLC	1,236.52
EFT	01/18/2022	7554	Accounts Payable	AHLERS & COONEY PC	1,195.50
EFT	01/18/2022	7555	Accounts Payable	ALLIANCE CONSTRUCTION GROUP LLC	11,258.45
EFT	01/18/2022	7556	Accounts Payable	ARNOLD MOTOR SUPPLY LLP	1,716.99
EFT	01/18/2022	7557	Accounts Payable	AUREON NETWORK SERVICES	5,465.06
EFT	01/18/2022	7558	Accounts Payable	BAUER BUILT	5,480.00
EFT	01/18/2022	7559	Accounts Payable	BOLTON & MENK INC	14,149.50
EFT	01/18/2022	7560	Accounts Payable	BOOT BARN INC	527.41
EFT	01/18/2022	7561	Accounts Payable	BREWICK , MARK	92.40
EFT	01/18/2022	7562	Accounts Payable	CDW GOVERNMENT INC	398.00
EFT	01/18/2022	7563	Accounts Payable	CENTRAL IOWA TOWING- ROY'S TOWING	200.00
EFT	01/18/2022	7564	Accounts Payable	COLE , LEE	800.00
EFT	01/18/2022	7565	Accounts Payable	COMMUNICATION DATA LINK LLC	159,609.50
EFT	01/18/2022	7566	Accounts Payable	CONFLUENCE INC	16,726.54
EFT	01/18/2022	7567	Accounts Payable	CONVERGENT TECHNOLOGIES LLC	25,038.00
EFT	01/18/2022	7568	Accounts Payable	DELATI ITS LLC	7,704.94
EFT	01/18/2022	7569	Accounts Payable	DILLARD , CARLOS	294.00
EFT	01/18/2022	7570	Accounts Payable	DOLAN , MATT	179.95
EFT	01/18/2022	7571	Accounts Payable	DOWLING , CONNIE	600.00
EFT	01/18/2022	7572	Accounts Payable	ELDER CORPORATION	178,074.21
EFT	01/18/2022	7573	Accounts Payable	EMC RISK SERVICES	26,636.89

City of West Des Moines, IA
City Council Report
 Bank Account: WB VENDOR DISB - WB Vendor Disbursement
 Batch Date: 01/18/2022

Type	Date	Number	Source	Payee Name	Transaction Amount
EFT	01/18/2022	7574	Accounts Payable	EXCEL MECHANICAL INC	17,637.80
EFT	01/18/2022	7575	Accounts Payable	FERGUSON , LEVI	49.95
EFT	01/18/2022	7576	Accounts Payable	FIT OUTDOOR SERVICES LLC	7,955.00
EFT	01/18/2022	7577	Accounts Payable	FORCE SCIENCE INSTITUTE LTD	495.00
EFT	01/18/2022	7578	Accounts Payable	FOTH INFRASTRUCTURE & ENVIRONMENT LLC	2,534.00
EFT	01/18/2022	7579	Accounts Payable	FRIES , ZACHERY	144.41
EFT	01/18/2022	7580	Accounts Payable	GTG CONSTRUCTION LLC	20,761.85
EFT	01/18/2022	7581	Accounts Payable	H2I GROUP INC	22,800.00
EFT	01/18/2022	7582	Accounts Payable	HEADLEY , NATHAN	500.00
EFT	01/18/2022	7583	Accounts Payable	HEINTZ , JASON	71.39
EFT	01/18/2022	7584	Accounts Payable	HENNING , CLAUDIA	500.00
EFT	01/18/2022	7585	Accounts Payable	HR GREEN CO	5,631.25
EFT	01/18/2022	7586	Accounts Payable	HYDAKER-WHEATLAKE COMPANY	387,117.00
EFT	01/18/2022	7587	Accounts Payable	HYDRO KLEAN LLC	30,692.84
EFT	01/18/2022	7588	Accounts Payable	IOWA BEVERAGE SYSTEMS INC	1,041.50
EFT	01/18/2022	7589	Accounts Payable	IOWA COMMUNITIES ASSURANCE POOL- ICAP	1,705.89
EFT	01/18/2022	7590	Accounts Payable	KIESLER POLICE SUPPLY INC	3,920.40
EFT	01/18/2022	7591	Accounts Payable	LAMPE , MARK	147.50
EFT	01/18/2022	7592	Accounts Payable	MAHASKA BOTTLING COMPANY	643.08
EFT	01/18/2022	7593	Accounts Payable	MARTIN BROTHERS	4,482.21
EFT	01/18/2022	7594	Accounts Payable	MCANINCH CORPORATION	494,717.70
EFT	01/18/2022	7595	Accounts Payable	MCCLURE ENGINEERING COMPANY	49,992.50
EFT	01/18/2022	7596	Accounts Payable	MCCUBBIN , COURTNEY	72.00
EFT	01/18/2022	7597	Accounts Payable	MCKESSON MEDICAL SURGICAL GOVERNMENT SOLUTIONS LLC	1,024.68
EFT	01/18/2022	7598	Accounts Payable	MICHELS , KEVIN	49.95
EFT	01/18/2022	7599	Accounts Payable	MIDWEST WHEEL	2,734.98
EFT	01/18/2022	7600	Accounts Payable	NESTINGEN INC	11,340.00
EFT	01/18/2022	7601	Accounts Payable	NEWCOM TECHNOLOGIES INC	193,799.44
EFT	01/18/2022	7602	Accounts Payable	NINTH BRAIN SUITE LLC	433.00
EFT	01/18/2022	7603	Accounts Payable	NORTHLAND PRODUCTS- NORSOLV SYSTEMS	49.50
EFT	01/18/2022	7604	Accounts Payable	O'HALLORAN INTERNATIONAL INC	102.47
EFT	01/18/2022	7605	Accounts Payable	OMNISITE	3,588.00

City of West Des Moines, IA
City Council Report
 Bank Account: WB VENDOR DISB - WB Vendor Disbursement
 Batch Date: 01/18/2022

Type	Date	Number	Source	Payee Name	Transaction Amount
EFT	01/18/2022	7606	Accounts Payable	ONECK IT SOLUTIONS LLC	26,705.48
EFT	01/18/2022	7607	Accounts Payable	OPN ARCHITECTS	300.00
EFT	01/18/2022	7608	Accounts Payable	OUTDOOR RECREATION PRODUCTS	4,124.72
EFT	01/18/2022	7609	Accounts Payable	PARKER, SATONIUS	196.00
EFT	01/18/2022	7610	Accounts Payable	PILLAR INC	35,995.00
EFT	01/18/2022	7611	Accounts Payable	RENEWABLE ENERGY GROUP INC	44,970.60
EFT	01/18/2022	7612	Accounts Payable	ROUNDED MINDS INC	1,504.00
EFT	01/18/2022	7613	Accounts Payable	SHIVE-HATTERY INC	1,676.50
EFT	01/18/2022	7614	Accounts Payable	SPODEN, JESSICA	76.86
EFT	01/18/2022	7615	Accounts Payable	SPS VAR LLC	75.00
EFT	01/18/2022	7616	Accounts Payable	STAR EQUIPMENT LTD	74.50
EFT	01/18/2022	7617	Accounts Payable	STERLING CODIFIERS-AMERICAN LEGAL PUBLISHING CORP	4,666.00
EFT	01/18/2022	7618	Accounts Payable	STERNQUIST CONSTRUCTION	187,340.73
EFT	01/18/2022	7619	Accounts Payable	STICKEL, JOE	51.52
EFT	01/18/2022	7620	Accounts Payable	STIVERS FORD	29,966.30
EFT	01/18/2022	7621	Accounts Payable	SWEETALLA, SCOTT	3.92
EFT	01/18/2022	7622	Accounts Payable	SWINTON, ASHLEE	1,154.75
EFT	01/18/2022	7623	Accounts Payable	TELLO ITS LLC	10,857.00
EFT	01/18/2022	7624	Accounts Payable	TSCHUDIN, JODI	180.00
EFT	01/18/2022	7625	Accounts Payable	UKG-KRONOS	8,673.41
EFT	01/18/2022	7626	Accounts Payable	UPS STORE	82.78
EFT	01/18/2022	7627	Accounts Payable	WEST DES MOINES WATER WORKS	60,792.62
EFT	01/18/2022	7628	Accounts Payable	WHITSELL, MICHAEL	137.50
EFT	01/18/2022	7629	Accounts Payable	WHKS & CO	27,236.00
EFT	01/18/2022	7630	Accounts Payable	YEAGER ENTERPRISES LLC	1,194.35
EFT	01/18/2022	7631	Accounts Payable	ZIEGLER INC	43,760.45
EFT	01/18/2022	7632	Accounts Payable	SANDBULTE, LARAMIE	147.50
EFT	01/18/2022	7633	Accounts Payable	ARMOR UP AMERICA	810.00
WB VENDOR DISB WB Vendor Disbursement Totals:					\$5,344,520.34

Transactions: 255
 Checks: 172 \$3,110,916.37
 EFTs: 83 \$2,233,603.97

City of West Des Moines, IA
City Council Report
 Bank Account: WB CONTROLPAY - WB ControlPay
 Batch Date: 01/18/2022

Type	Date	Number	Source	Payee Name	Transaction Amount
Bank Account: WB CONTROLPAY - WB ControlPay					
EFT	01/18/2022	6883	Accounts Payable	ADVENTURE LIGHTING	76.40
EFT	01/18/2022	6884	Accounts Payable	ARAMARK UNIFORM SERVICES	2,966.83
EFT	01/18/2022	6885	Accounts Payable	ARROWHEAD FORENSICS	514.47
EFT	01/18/2022	6886	Accounts Payable	BOMGAARS SUPPLY INC	218.98
EFT	01/18/2022	6887	Accounts Payable	CAPITAL SANITARY SUPPLY CO INC	7,669.61
EFT	01/18/2022	6888	Accounts Payable	CORE AND MAIN LP	34.50
EFT	01/18/2022	6889	Accounts Payable	CORN STATES METAL FABRICATORS INC	380.00
EFT	01/18/2022	6890	Accounts Payable	DES MOINES STAMP MFG CO	139.00
EFT	01/18/2022	6891	Accounts Payable	ELECTRONIC ENGINEERING	50.00
EFT	01/18/2022	6892	Accounts Payable	FELD FIRE	21,280.66
EFT	01/18/2022	6893	Accounts Payable	FISHER & PAYKEL HEALTHCARE INC	1,161.28
EFT	01/18/2022	6894	Accounts Payable	GALLS LLC	1,402.18
EFT	01/18/2022	6895	Accounts Payable	GOLDEN VALLEY HARDSCAPES	1,873.60
EFT	01/18/2022	6896	Accounts Payable	HEALTH CARE LOGISTICS INC	108.01
EFT	01/18/2022	6897	Accounts Payable	HOTSY CLEANING SYSTEMS INC	1,691.16
EFT	01/18/2022	6898	Accounts Payable	INTERSTATE POWER SYSTEMS	20,361.76
EFT	01/18/2022	6899	Accounts Payable	KOCH OFFICE GROUP	170.00
EFT	01/18/2022	6900	Accounts Payable	LEXISNEXIS RISK SOLUTIONS	150.00
EFT	01/18/2022	6901	Accounts Payable	LIGHTEDGE SOLUTIONS INC	1,868.00
EFT	01/18/2022	6902	Accounts Payable	LOGAN CONTRACTORS SUPPLY INC	1,769.28
EFT	01/18/2022	6903	Accounts Payable	METRO WASTE AUTHORITY	138,009.51
EFT	01/18/2022	6904	Accounts Payable	O'REILLY AUTOMOTIVE INC	25.98
EFT	01/18/2022	6905	Accounts Payable	PREFERRED PEST CONTROL	300.00
EFT	01/18/2022	6906	Accounts Payable	PRIORITY DISPATCH	21,600.00
EFT	01/18/2022	6907	Accounts Payable	SIGNARAMA URBANDALE	970.40
EFT	01/18/2022	6908	Accounts Payable	SNYDER & ASSOCIATES	20,993.49
EFT	01/18/2022	6909	Accounts Payable	SPINDUSTRY SYSTEMS INC	555.00
EFT	01/18/2022	6910	Accounts Payable	TEAM SERVICES	279.38
EFT	01/18/2022	6911	Accounts Payable	THOMSON REUTERS-WEST PAYMENT	335.98
EFT	01/18/2022	6912	Accounts Payable	THOMSON REUTERS-WEST PAYMENT	496.99
EFT	01/18/2022	6913	Accounts Payable	TOMPKINS INDUSTRIES INC	460.95
EFT	01/18/2022	6914	Accounts Payable	ULINE INC	3,991.81
EFT	01/18/2022	6915	Accounts Payable	UPHDM OCCUPATIONAL MEDICINE	2,357.00

City of West Des Moines, IA

City Council Report

Bank Account: WB CONTROLPAY - WB ControlPay

Batch Date: 01/18/2022

Type	Date	Number	Source	Payee Name	Transaction Amount
EFT	01/18/2022	6916	Accounts Payable	VAISALA INC	1,000.00
EFT	01/18/2022	6917	Accounts Payable	ZOLL DATA- CO	2,131.09
WB CONTROLPAY WB ControlPay Totals:					<u>\$257,393.30</u>

EFTs: 35 \$257,393.30

Payment Register

From Payment Date: 12/21/2021 - To Payment Date: 02/06/2022

Number	Date	Payee Name	Transaction Amount
246	01/04/2022	AUTHORIZE.NET	41.30
287	12/31/2021	ISOLVED BENEFIT SERVICES- WDM	11,788.91
288	12/31/2021	ISOLVED BENEFIT SERVICES- WDM	11,718.36
289	12/31/2021	ISOLVED BENEFIT SERVICES- WDM	3,329.71
7364	12/21/2021	UMB BANK NA	250.00
7365	12/21/2021	UMB BANK NA	250.00
7366	12/21/2021	UMB BANK NA	250.00
7367	12/21/2021	UMB BANK NA	250.00
7368	12/21/2021	UMB BANK NA	250.00
7369	12/21/2021	UMB BANK NA	250.00
7370	12/21/2021	UMB BANK NA	250.00
7371	12/21/2021	UMB BANK NA	250.00
7372	12/21/2021	UMB BANK NA	250.00
7373	12/21/2021	UMB BANK NA	250.00
7374	12/21/2021	UMB BANK NA	250.00
7375	12/21/2021	UMB BANK NA	250.00
7376	12/21/2021	UMB BANK NA	250.00
7377	12/21/2021	UMB BANK NA	300.00
7378	12/21/2021	UMB BANK NA	300.00
7379	12/21/2021	UMB BANK NA	300.00
7380	12/21/2021	UMB BANK NA	300.00
7381	12/21/2021	UMB BANK NA	300.00
7539	01/05/2022	BRAVO GREATER DES MOINES	375,729.52
7543	01/25/2022	UMB BANK NA	600.00
7544	12/31/2021	DELTA DENTAL OF IOWA	6,129.31
7545	12/31/2021	DELTA DENTAL OF IOWA	8,473.41
7546	12/31/2021	DELTA DENTAL OF IOWA	6,611.48
7548	12/31/2021	WELLMARK BLUE CROSS	133,689.48
7549	12/31/2021	WELLMARK BLUE CROSS	132,743.14
200387	12/30/2021	WDM BOULDER RIDGE OWNER LLC	500.00
200388	01/03/2022	1201 E BELL AVE LLC, TED	958.00
200389	01/03/2022	DOUGLAS WOODS APARTMENTS	840.00
200390	01/03/2022	JPJ INVESTMENTS LLC	625.00
200391	01/03/2022	MARK GERALD NELSON LP	580.00

Payment Register

From Payment Date: 12/21/2021 - To Payment Date: 02/06/2022

200392	01/03/2022	NORWALK VILLAGE COOPERATIVE HOUSING ASSOCIATION	375.00
200393	01/03/2022	WILLOW BEND APARTMENTS I	747.00
200394	01/05/2022	CHAPEL RIDGE WEST I	500.00
200395	01/05/2022	FORGET PROPERTIES 3 LLC	458.00
200396	01/05/2022	FORGET PROPERTIES 3 LLC	500.00
200397	01/05/2022	MIDWEST RESIDENTIAL FUND LLC - HAMLETT APARTMENTS	500.00
200398	01/05/2022	WHISPER RIDGE APARTMENTS	486.00
200399	01/12/2022	FLATS AT VALLEY LLC	500.00
200400	01/12/2022	MARK GERALD NELSON LLC	508.00
			<hr/>
			703,681.62

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

ITEM: Approval of Liquor Licenses

DATE: January 18, 2022

FINANCIAL IMPACT: None

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

1. DB2P, LLC d/b/a Allcool Liquors, 5904 Ashworth Road - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - Renewal
2. HOA Hotels, LLC d/b/a Johnny's Italian Steakhouse, 6075 Mills Civic Parkway - Class LB Liquor License with Carryout Wine, Sunday Sales, Outdoor Service, and Catering Privileges - Renewal
3. Waterfront Seafood Market, Inc. d/b/a Waterfront Seafood Market, 2900 University Avenue - Class LC Liquor License with Sunday Sales and Catering Privileges - Renewal

OUTSTANDING ISSUES (if any): None

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

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

STAFF REVIEWS

Department Director	Ryan T. Jacobson, City Clerk
Appropriations/Finance	
Legal	
Agenda Acceptance	<i>RTJ</i>

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: January 18, 2022

ITEM:

Acceptance of the 2022 Emergency Solutions Grant through Iowa Finance Authority to WDM Human Services Housing Solutions Program

FINANCIAL IMPACT:

Revenue to the WDM Human Services is \$67,247.
City to provide 75% of grant amount in matching funds (\$50,435.25). Program Outreach Assistant salaries will be used to provide matching funds.

BACKGROUND:

This Emergency Solutions grant award will provide financial resources for homeless households referred to the Rapid Re-Housing Program to pay for barriers to procuring housing, rents and deposits and to partially support the cost of an employee to administer the program.

OUTSTANDING ISSUES (if any):

None

RECOMMENDATION:

City Council accept this contract.

Lead Staff Member: Althea Holcomb, Director of Human Services

STAFF REVIEWS

Department Director	
Appropriations/Finance	TS
Legal	
Agenda Acceptance	AP

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

EMERGENCY SOLUTIONS GRANT (ESG)

SUB-GRANT AGREEMENT BETWEEN THE IOWA FINANCE AUTHORITY AND West Des Moines Human Services

AWARD NO.: ESG-77029-22
AWARD AMOUNT: \$67,247
TERM OF AGREEMENT: January 1, 2022 – December 31, 2022

THIS Sub-Grant Agreement (“Sub-Grant Agreement”) is between the Iowa Finance Authority and West Des Moines Human Services to provide assistance through the Emergency Solutions Grant Program (“ESG”), as of the 1st day of January 2022 (“Effective Date”), if executed by the Subrecipient and received by the Authority BEFORE January 31, 2022.

SUBAWARD IDENTIFICATION

SUBRECIPIENT NAME:	West Des Moines Human Services
SUBRECIPIENT ADDRESS:	139 6th Street
CITY, STATE, ZIP:	West Des Moines, Iowa, 50265
SUBRECIPIENT DUNS NUMBER:	618734032
FEDERAL AWARD IDENTIFICATION NUMBER:	E-21-DC-19-0001
FEDERAL AWARD DATE:	July 30, 2021
SUBAWARD PERFORMANCE START DATE:	January 1, 2022
SUBAWARD PERFORMANCE END DATE:	December 31, 2022
AMOUNT OF FEDERAL FUNDS OBLIGATED:	\$67,247
TOTAL AMOUNT OF FEDERAL AWARD:	\$2,793,509
FEDERAL AWARD PROJECT DESCRIPTION:	Emergency Solutions Grant
NAME OF FEDERAL AWARING AGENCY:	Department of Housing and Urban Development
NAME OF PASS-THROUGH ENTITY:	Iowa Finance Authority
ADDRESS OF PASS-THROUGH ENTITY:	1963 Bell Ave, Ste. 200, Des Moines, Iowa 50315
AWARING OFFICIAL CONTACT INFORMATION:	Homeless Programs Manager, (800) 432-7230
CFDA NUMBER AND NAME:	14.231, Emergency Solutions Grant
AWARD R&D OR NOT:	No
INDIRECT COST RATE FOR FEDERAL AWARD:	10% or per indirect cost rate agreement

ARTICLE 1 - FUNDING

1.1 FUNDING SOURCE

The source of funding for the Sub-Grant shall be ESG funds made available by the U.S. Department of Housing and Urban Development (“HUD”) to the Authority for the State of Iowa and passed through to the Subrecipient as a subaward.

1.2 MAXIMUM PAYMENTS

It is expressly understood and agreed that the maximum amount to be paid to the Subrecipient by the Authority under this Sub-Grant Agreement shall not exceed the Award Amount specified

in the above caption, in the aggregate, unless modified in writing and fully executed by the Parties hereto.

1.3 FAILURE TO RECEIVE GRANT FUNDS

The Authority shall be obligated to provide said funds to the Subrecipient only on the condition that grant funds shall be available from HUD. Failure of the Authority to receive grant funds shall cause this Sub-Grant Agreement to be terminated.

ARTICLE 2 - TERMS OF SUB-GRANT AGREEMENT

2.1 EXECUTION OF SUB-GRANT AGREEMENT

This Sub-Grant Agreement must be executed by the Subrecipient and received by the Authority BEFORE the deadline in the first paragraph of the first page of this Sub-Grant Agreement. If the executed Sub-Grant Agreement is not timely returned to the Authority, the Authority may deem the Sub-Grant Agreement null and void.

2.2 SUB-GRANT AGREEMENT ADMINISTRATION

The Sub-Grant Agreement shall be administered by the Authority.

ARTICLE 3 - USE OF FUNDS

3.1 GENERAL

The Subrecipient shall perform in a satisfactory and proper manner, as determined by the Authority, the work activities and services as written and described in the Subrecipient's 2022-2023 Iowa ESG and SAF Combined Application ("Application"), with adjustments as necessary based on the difference between the amount requested and the Award Amount, and with any amendments approved for budget and scope of activities. The use of funds shall be in accordance with all applicable rules and regulations as described in this Sub-Grant Agreement.

3.2 BUDGET

The Subrecipient shall submit a revised budget to the Authority based on the Award Amount. The revised budget is subject to Authority review and approval. Once approved, subsequent changes from the approved budget must be requested by the Subrecipient and may be authorized by the Authority. The Authority may require such requests to be made in advance of expenditure.

3.3 APPLICABLE RULES AND REGULATIONS

All grant-funded activities shall be performed in accordance with the federal ESG rules and regulations at 24 CFR Part 576, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, and in accordance with all applicable State of Iowa Administrative Rules, including any rules adopted to implement the federal ESG rules and regulations, and the HUD-approved Annual Action Plan for Iowa, as it may be amended. The Subrecipient is also required to comply with all provisions outlined in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

3.4 PARTICIPATION IN MANDATORY GRANT SESSIONS

The Subrecipient will ensure that at least one qualified representative from the Subrecipient will participate in required Iowa Statewide Emergency Solutions Grant program trainings, meetings, and conference calls, and will be responsible for acquiring and implementing information presented verbally or in writing during such sessions. Failure to participate in required sessions may impact the Subrecipient's eligibility and scoring in future grant competitions for the Iowa Statewide Emergency Solutions Grant program and/or the Iowa Shelter Assistance Fund.

3.5 REQUIREMENTS FOR ALL ELIGIBLE ACTIVITIES

For all program activities, the Subrecipient shall adhere to the following:

3.5.1 *Documentation of Homelessness.* The Subrecipient shall maintain in client files adequate documentation of homelessness or at risk of homelessness status to determine the eligibility of persons served, according to the most current definition of homelessness and at risk of homelessness from HUD at 24 CFR 91.5 and 576.2 and the eligibility standards set forth in 24 CFR 576.401.

3.5.2 *Data and Reporting Requirements.* The Subrecipient shall submit the minimum client demographic information to Iowa's designated Homeless Management Information System ("HMIS") or other means subject to agreement with the Authority, and in compliance with HUD's HMIS Data and Technical Standards and as described in program rules. If the Subrecipient qualifies as a domestic violence service provider (a provider primarily or exclusively serving clients who are homeless due to domestic violence), the Subrecipient shall submit information to Iowa's designated comparable database, utilizing the approved software for this purpose ("Iowa DVIMS") or other means subject to agreement with the Authority, in compliance with HUD's HMIS Data and Technical Standards and as described in program rules.

The Subrecipient shall submit required documents to the approved HMIS lead agency or comparable database lead agency, which may include, but is not limited to, the following: a User Confidentiality and Responsibility Certification for each system user; a Minimum Required Data Set agreement for each system user; a Memorandum of Understanding between the Subrecipient and the approved HMIS lead agency or comparable database lead agency; and/or other documents as the Authority determines necessary.

If the Subrecipient is part of any HMIS data sharing group, the Subrecipient will coordinate with the HMIS lead agency to submit any additional documentation required to support this arrangement.

The Subrecipient shall submit reports generated from these systems to the Authority with each reimbursement request submitted, and annually or more frequently as needed by the Authority to complete HUD reporting requirements for ESG.

The Subrecipient shall participate in the annual Housing Inventory Count ("HIC") and Point-in-Time ("PIT") Count in Iowa, submitting all required information to the HMIS lead agency, currently the Institute for Community Alliances.

3.5.3 *Termination of Assistance.* The Subrecipient shall establish and implement a formal notification and appeals process for the termination of assistance to individuals or

families who violate program requirements, in accordance with the minimum standards of 24 CFR 576.402, the federal ESG Rules and Regulations.

- 3.5.4 *Coordination with Other Homeless Services.* The Subrecipient shall coordinate and integrate, to the maximum extent practicable, grant-funded activities with other homeless service programs in the community.
- 3.5.5 *Access to Mainstream Services and Resources.* The Subrecipient shall ensure that all program participants are assisted, to the maximum extent practicable, in obtaining mainstream services and financial assistance, including housing, health, social services, employment, education, and youth programs for which participants may be eligible.
- 3.5.6 *Accessibility.* The Subrecipient shall ensure that their grant-funded program or activity is readily accessible to and usable by individuals with disabilities, including providing reasonable accommodations so that individuals with disabilities have an equal opportunity to participate.
- 3.5.7 *Requirements for Religious Organizations.* The Subrecipient is prohibited from engaging in religious proselytizing or counseling, utilizing funds related to this agreement, or requiring attendance at religious services as a requirement or condition to receive services, or limiting services or giving preference to persons on the basis of religion.
- 3.5.8 *Coordinated Entry.* The Subrecipient is required to participate in the coordinated entry system approved by the Continuum of Care that oversees the Subrecipient's geographic area. Such a system must include provisions to meet the separate requirements of Subrecipients that are victim service providers.
- 3.5.9 *Written Standards for Providing Assistance.* The Subrecipient is required to establish and consistently apply written standards for providing ESG assistance, as set forth in 24 CFR 576.400(e)(2).
- 3.5.10 *Eligibility Conditions for Youth.* The Subrecipient is required to comply with the following:
 - 3.5.10.1 Youth aged 24 and under seeking assistance shall not be required to provide third party documentation to establish their eligibility or to receive services.
 - 3.5.10.2 Unaccompanied youth aged 24 and under or families headed by youth aged 24 and under who are living in unsafe situations may be served by youth-serving providers.

3.6 REQUIREMENTS FOR SPECIFIC ELIGIBLE ACTIVITIES

The Subrecipient shall adhere to the full federal requirements found at 24 CFR 576.100 for each eligible activity. Funded activities may include Street Outreach, Shelter, Homelessness Prevention, Rapid Rehousing, HMIS and Administration. A summary of these eligible activities, and corresponding requirements, is as follows:

- 3.6.1 *Street Outreach.* If awarded funds in this category, ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. The eligible costs and requirements for Street Outreach consist of: engagement; case management;

emergency health services (only when other appropriate services are unavailable in the community); emergency mental health services (only when other appropriate services are unavailable in the community); transportation (including travel for eligible outreach, and to transport unsheltered people to shelters or service facilities); and services for special populations.

3.6.2 *Shelter.* If awarded funds in this category, ESG funds may be used for costs of providing essential services to homeless families and individuals in shelters and for the cost of operating shelters. The eligible costs and requirements for Shelter consist of: essential services (including case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abused treatment, transportation, and services for special populations); and shelter operations. If providing shelter assistance, the Subrecipient agrees to the following:

3.6.2.1 *Prohibition Against Involuntary Family Separation.* The age or gender of a child under age 18 must not be used as a basis for denying any family's admission to a shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

3.6.2.2 *Lead-Based Paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

3.6.2.3 *Habitability Standards.* The Subrecipient shall ensure shelter and housing facilities funded through ESG adhere to minimum habitability standards for being safe, sanitary, and adequately maintained, according to the full regulations at CFR 576.403. Standards include considerations for the following: structure and materials; access; space and security; interior air quality; water supply; sanitary facilities; thermal environment; illumination and electricity; food preparation; sanitary conditions; and fire safety.

3.6.2.4 *Violence Against Women Act (VAWA) Protections.* No individual or family may be denied admission to or removed from shelter as a result of being a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual or family otherwise qualifies for admission.

3.6.3 *Homelessness Prevention.* If awarded funds in this category, ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the "homeless" definition in 24 CFR 91.5.

Short- and/or medium-term rental assistance include: short-term rental assistance (up to three months); medium-term rental assistance (between three and 24 months); rental arrears (one-time payment of up to six months, including late fees); rental assistance that is tenant-based or project-based; and costs to break a lease if a family qualifies under the VAWA Emergency Transfer Plan described in section 3.6.3.13 of this Sub-Grant Agreement.

Housing relocation and stabilization services include: financial assistance costs; and services costs.

Financial assistance costs include: rental application fees; security deposits; last month's rent; utility deposits; utility payments; and moving costs.

Services costs include: housing search and placement; housing stability case management; mediation; legal services; and credit repair.

If providing Homelessness Prevention assistance of any kind, the Subrecipient agrees to the following:

3.6.3.1 *Income Limits.* Homelessness Prevention assistance shall only be provided to individuals and families who have an annual income below 30 percent of median family income for the area, as determined by HUD.

3.6.3.2 *Case Management Assistance.* The Subrecipient shall ensure that each client meets at least monthly with a case manager (except where prohibited by the Violence Against Women Act and the Family Violence Prevention and Services Act), and the Subrecipient must develop an individualized plan to help the client regain long-term housing stability.

3.6.3.3 *Lead-Based Paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

3.6.3.4 *Habitability Standards.* The Subrecipient shall ensure that permanent housing assistance funded through ESG adhere to minimum habitability standards for being safe, sanitary, and adequately maintained, according to the full regulations at CFR 576.403. Standards include considerations for the following: structure and materials; space and security; interior air quality; water supply; sanitary facilities; thermal environment; illumination and electricity; food preparation; sanitary conditions; and fire safety, including a system that meets the needs of hearing-impaired residents. An exception to this requirement is that Iowa Legal Aid may provide legal services without first conducting a habitability inspection, according to a partial waiver request granted by HUD.

3.6.3.5 *Period of Assistance.* Except for housing stability case management, the total period for which any program participant may receive services under this section may not exceed 24 months during any three year period.

3.6.3.6 *Use with Other Subsidies.* Homeless Prevention assistance under this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources for the same period of time.

If providing Homelessness Prevention Rental Assistance, the Subrecipient agrees to the following additional requirements:

3.6.3.7 *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a

housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments

3.6.3.8 *Fair Market Rent and Rent Reasonableness.* The Subrecipient shall ensure that rental assistance is provided for units only in accordance with HUD's restrictions for Fair Market Rent at 24 CFR Part 888 and Rent Reasonableness standards at 24 CFR 982.507.

3.6.3.9 *Rental Assistance Agreements.* The Subrecipient may only make rental assistance payments to a landlord with whom the Subrecipient has entered into a rental assistance agreement, which sets forth the terms of assistance and requires the landlord to provide a copy to the Subrecipient of any eviction notice or complaint used to begin an eviction action.

3.6.3.10 *Late Payments.* If the Subrecipient is late on any payments to landlords agreed to in the rental assistance agreement, the Subrecipient must pay any late fees out of non-ESG funds.

3.6.3.12 *Lease.* Each program participant receiving rental assistance (unless solely for arrears) must have a legal written lease with the landlord. Each lease must include a lease provision or incorporate a lease addendum of all requirements that apply to tenants, the owner or lease under 24 CFR Part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), as supplemented by 24 CFR 576.509; and the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c).

3.6.3.13 *Violence Against Women Act (VAWA) Protections.* The Subrecipient must follow HUD's Final Rule Implementing VAWA Reauthorization Act of 2013, to ensure survivors are not denied assistance as an applicant, or evicted or have assistance terminated as a tenant, because the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault or stalking.

3.6.3.12 *VAWA Notice and Certification.* The Subrecipient must provide the notice and certification form described under 24 CFR 5.2005(a)(1) to each applicant for ESG Rental Assistance and each program participant receiving ESG Rental Assistance at the following times: when an applicant is denied ESG Rental Assistance; when an applicant begins receiving ESG Rental Assistance; when a program participant is notified of termination of ESG Rental Assistance; and when a program participant received notification of eviction.

3.6.3.14 *VAWA Emergency Transfer Plan.* The Subrecipient must develop and implement an emergency transfer plan according to 24 CFR 5.2005€ which allows a survivor to move to another safe and available unit if such survivor is in fear of imminent harm from further violence if remaining in current unit. The plan must specify what will happen in case of a family separation, implementing an emergency transfer, and must provide for bifurcation of a lease with continued assistance for the family member(s) who are not evicted or removed.

3.6.3.15 If providing tenant-based rental assistance:

- 3.6.3.15.1 may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.
- 3.6.3.15.2 may require that all program participants live within a particular area for the period in which the rental assistance is provided.
- 3.6.3.15.3 The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:
 - 3.6.3.15.3.1 The program participant moves out of the housing unit for which the program participant has a lease;
 - 3.6.3.15.3.2 The lease terminates and is not renewed; or
 - 3.6.3.15.3.3 The program participant becomes ineligible to receive ESG rental assistance

3.6.3.16 If providing project-based rental assistance:

- 3.6.3.16.1 The rental assistance agreement may cover one or more permanent housing units in the same building. Each unit covered by the rental assistance agreement ("assisted unit") may only be occupied by program participants, except as provided under paragraph 3.6.3.16.4 of this section.
- 3.6.3.16.2 The subrecipient may pay up to 100 percent of the first month's rent, provided that a program participant signs a lease and moves into the unit before the end of the month for which the first month's rent is paid. The rent paid before a program participant moves into the unit must not exceed the rent to be charged under the program participant's lease and must be included when determining that program participant's total rental assistance.
- 3.6.3.16.3 The subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.*, the first month's rent for a new program participant, as provided in paragraph 3.6.3.16.1 of this section.

3.6.3.16.4 The program participant's lease must not condition the term of occupancy to the provision of rental assistance payments. If the program participant is determined ineligible or reaches the maximum number of months over which rental assistance can be provided, the recipient or subrecipient must suspend or terminate the rental assistance payments for the unit. If the payments are suspended, the individual or family may remain in the assisted unit as permitted under the lease, and the recipient or subrecipient may resume payments if the individual or family again becomes eligible and needs further rental assistance. If the payments are terminated, the rental assistance may be transferred to another available unit in the same building, provided that the other unit meets all ESG requirements.

3.6.3.16.4 The rental assistance agreement must have an initial term of one year. When a new program participant moves into an assisted unit, the term of the rental assistance agreement may be extended to cover the initial term of the program participant's lease. If the program participant's lease is renewed, the rental assistance agreement may be renewed or extended, as needed, up to the maximum number of months for which the program participant remains eligible. However, under no circumstances may the recipient or subrecipient commit ESG funds to be expended beyond the expenditure deadline in § 576.203 or commit funds for a future ESG grant before the grant is awarded.

3.6.4 *Rapid Rehousing.* If awarded funds in this category, ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. If providing Rapid Rehousing assistance, the Subrecipient agrees to follow the same requirements described above under subsection 3.6.3, Homelessness Prevention. An exception is made to the Income Limits for Rapid Rehousing assistance. For Rapid Rehousing, an income assessment is not required at initial evaluation. However, at annual re-evaluation, income must be less than or equal to 30 percent of area median income.

3.6.5 *HMIS.* If ESG funds are awarded in this category, the funds may be used to pay the costs of contributing data to Iowa's HMIS. If the Subrecipient is a victim services provider or legal services provider, it may use ESG funds for the costs of contributing data to Iowa's designated comparable database. No more than five percent of an award may be used for HMIS-related costs.

3.6.6 *Administration.* If ESG funds are awarded in this category, the funds may be used to pay administrative costs related to the planning and execution of ESG activities. This does not include staff and overhead costs directly related to carrying out activities eligible in other funding categories, because those costs are eligible as part of those categories. Eligible administrative costs include the costs of overall program management, coordination,

monitoring and evaluation as more particularly set forth in 24 CFR 576.108(1). No more than two percent of an award may be used for Administration costs.

3.7 MATCH REQUIREMENTS

The Subrecipient is required to make matching contributions to supplement the Subrecipient's ESG program in an amount that at least equals 75% of the amount of ESG funds received, in accordance with the regulations at 24 CFR 576.201. An exception may be made, in part or in whole, if a waiver is granted to the Subrecipient for matching contributions. The Subrecipient is encouraged to make matching contributions that exceed the minimum requirement; as such contributions may be used to provide such a waiver option for Subrecipients that seek it. Matching contributions may be obtained from any source, including any federal source other than the ESG program, as well as state, local, and private sources, providing that the laws governing the matching funds allow it, and that ESG funds are not also used as match for the same federal program used as ESG match. Contributions used to match a previous ESG grant may not be used to match this grant. The following are eligible matching funds:

- 3.7.1 Cash contributions, expended for allowable costs of the Subrecipient for the ESG program.
- 3.7.2 Noncash contributions, or the value of any real property, equipment, goods, or services contributed to the Subrecipient's ESG program, provided that if the Subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions must be calculated using the following:
 - 3.7.2.1 To determine the value of any donated material or building, or of any lease, the Subrecipient must use a reasonable method to establish a fair market value.
 - 3.7.2.2 Services provided by individuals should be valued at rates consistent with those ordinarily paid for similar work in the Subrecipient's organization, or ordinarily paid by other employers for similar work in the same labor market.

3.8 WAIVERS

The Subrecipient may make use of any applicable waivers HUD has granted for annual ESG funds and that the Authority has approved in writing.

ARTICLE 4 – CONDITIONS TO DISBURSEMENT OF FUNDS

Unless and until the following conditions have been satisfied, the Authority shall be under no obligation to disburse to the Subrecipient any amounts under the Sub-Grant Agreement:

4.1 SUB-GRANT AGREEMENT EXECUTED

The Sub-Grant Agreement shall have been properly executed and, where required, acknowledged.

4.2 DOCUMENTATION REQUIRED FOR REIMBURSEMENT

Funds cannot be paid in advance of expenditure. The Subrecipient shall expend monies only on eligible costs and shall submit reimbursement (draw) requests for payment to the Authority,

either through the United States postal mail at the address listed on page 1, or by e-mail to an appropriate staff person. The following shall accompany all draw requests:

- 4.2.1 A Draw Request Reimbursement Form (form prescribed by the Authority). This form must show category totals in whole dollar amounts. The Subrecipient shall round down for any expenses not in a whole dollar amount.
- 4.2.2 A Draw Request Itemization Form (form prescribed by the Authority) that lists all expenditures submitted for reimbursement.
- 4.2.3 Only when requested: Documentation for all expenditures (copies of cancelled checks, invoices, receipts, signed timesheets, payrolls, etc.). Documentation must be organized in the same order as the itemized listing of expenditures. For draw requests which include staff expenses, time sheets explicitly stating the hours charged to activities assisted under this Sub-grant Agreement must be provided.
- 4.2.4 Documentation that the Subrecipient has satisfied the match requirement, which may require both the source of matching contributions and the use of matching contributions. The Authority at its discretion may not disburse funds until the 75% match requirement for both the source and use of those funds has been documented.
 - 4.2.4.1 Only when requested: Examples of documentation for source of match contributions include signed grant agreements or letters of commitment from other funders, the fair market calculated value of any donated material, an assessment report for a building's value, a report listing individual donations, and documentation of volunteer hours.
- 4.2.5 Only when requested: Data completion or similar reports generated from the approved HMIS or DVIMS system.

4.3 REIMBURSEMENT DEADLINES

The Subrecipient must draw funds on a monthly basis, unless an exception has been granted by the Authority in writing that allows the Subrecipient to draw funds on an alternative basis. Unless approved to draw on a quarterly basis, draw requests for each month must be received by the end of the following month. For example, expenses for January must be received by the Authority by the last day in February.

If the Subrecipient fails to make a draw request within the deadline, the Authority at its discretion may refuse to reimburse such expenses submitted late.

4.4 DISBURSEMENT OF LESS THAN THE TOTAL AWARD AMOUNT

The total Award Amount must be requested by the Subrecipient by the final reimbursement deadline of January 31, 2023.

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF SUBRECIPIENT

The Subrecipient represents, covenants, and warrants that:

5.1 AUTHORITY

The Subrecipient is a city government, county government, Local Public Housing Agency, or private nonprofit organization duly authorized and empowered to execute and deliver the Sub-Grant Agreement. All required actions on the Subrecipient's part, such as appropriate resolution of its governing board for the execution and delivery of the Sub-Grant Agreement, have been effectively taken.

5.2 FINANCIAL INFORMATION

All financial statements and related materials concerning the Subgrant provided to the Authority are true and correct in all material respects and completely and accurately represent the subject matter thereof as of the date of the statements and related materials, and no material adverse change has occurred since that date.

5.3 APPLICATION

The contents of the Application were a complete and accurate representation of the Subgrant as of the date of submission, and there has been no material adverse change in the organization, operation, or key personnel of the Subrecipient since the date the Subrecipient submitted its Application.

5.4 CLAIMS AND PROCEEDINGS

There are no actions, lawsuits or proceedings pending or, to the knowledge of the Subrecipient, threatened against the Subrecipient affecting in any manner whatsoever their rights to execute the Sub-Grant Agreement, or to otherwise comply with the obligations of the Sub-Grant Agreement. There are no actions, lawsuits or proceedings at law or in equity, or before any governmental or administrative authority pending or, to the knowledge of the Subrecipient, threatened against or affecting the Subrecipient or any property involved in the Subgrant.

5.5 PRIOR AGREEMENTS

The Subrecipient has not entered into any verbal or written Sub-Grant Agreements, agreements or arrangements of any kind which are inconsistent with the Sub-Grant Agreement.

5.6 TERM OF AGREEMENT

The covenants, warranties and representations of this Article are true and binding as of the date of execution of this Sub-Grant Agreement by the Subrecipient. Further, the covenants, warranties and representations of this Article shall be deemed to be renewed and restated by the Subrecipient as of the Effective Date of this Sub-Grant Agreement and at the time of each advance or request for disbursement of funds.

ARTICLE 6 – AFFIRMATIVE COVENANTS OF THE SUBRECIPIENT

For the duration of the Sub-Grant Agreement, the Subrecipient covenants with the Authority that:

6.1 SUBGRANT WORK AND SERVICES

The Subrecipient shall perform work and services as approved in the Application and budget, and according to this Sub-Grant Agreement.

6.2 RECORDS

The Subrecipient shall maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues received under this Sub-Grant Agreement in sufficient detail to reflect all costs, direct and indirect, of labor, materials, equipment, supplies, services and other costs and expenses of whatever nature, for which payment is claimed under this Sub-Grant Agreement. The Subrecipient shall maintain books, records and documents in sufficient detail to demonstrate compliance with the Sub-Grant Agreement and shall maintain these materials for a period of five years beyond the end date of the Sub-Grant Agreement. Records for non-expendable property acquired under this Sub-Grant Agreement shall be retained for a five year period after the final disposition of property. Records shall be retained beyond the prescribed period if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records shall be retained until the litigation, audit or claim has been finally resolved.

6.3 ACCESS TO RECORDS/INSPECTIONS

The Subrecipient shall, without prior notice, and at any time, permit and allow the Authority, its representatives, representatives of HUD, and/or Iowa's Auditor of State to access and examine, audit and/or copy the following, wherever located: any plans and work details pertaining to the Subgrant; all of the Subrecipient's books, records, policies, client files, and account records; all other documentation or materials related to this Sub-Grant Agreement; and any facility used to carry out the Subgrant. The Subrecipient shall provide proper facilities for making such examination and/or inspection of the above mentioned records and documentation. The Subrecipient shall not impose a charge for audit or examination of the Subrecipient's information and facilities.

The Subrecipient shall maintain records as specified above on emergency transfers requested under 24 CFR 576.409, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, which shall include data on the outcome of such requests.

6.4 USE OF GRANT FUNDS

The Subrecipient shall expend funds received under the Sub-Grant Agreement only for the purposes and activities described in its Application, this Sub-Grant Agreement and as otherwise approved by the Authority.

6.5 NOTICE OF PROCEEDINGS

The Subrecipient shall notify the Authority within 30 days of the initiation of any claims, lawsuits or proceedings brought against the Subrecipient.

6.6 NOTICES TO THE AUTHORITY

In the event the Subrecipient becomes aware of any material alteration in the Subgrant, initiation of any investigation or proceeding involving the Subgrant, or any other similar occurrence, the Subrecipient shall promptly notify the Authority.

6.7 CONFLICT OF INTEREST

- 6.7.1 *Conflict of Interest Policies.* The Subrecipient shall have and follow written conflict of interest policies, which conform to 2 CFR 200.112 and 200.318. Written policies must be established that govern conflicts of interest and for federal awards and any potential conflicts of interest must be disclosed in writing to the Authority.
- 6.7.2 *Organizational Conflicts of Interest.* Program requirements found at 24 CFR 576.404 stipulate that the provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the Subrecipient, or a parent or subsidiary of the Subrecipient. No *Subrecipient* may, with respect to individuals or families occupying housing owned by the Subrecipient, or any parent or subsidiary of the Subrecipient, carry out the initial evaluation required under 24 CFR 576.401 or administer homelessness prevention assistance under 24 CFR 576.103.
- 6.7.3 *Individual Conflicts of Interest.* For the procurement of goods and services, the Subrecipient and its contractors must comply with the codes of conduct and conflict of interest requirements under Iowa Public Officials Act under Chapter 68B of the Iowa Code (for governments), and 2 CFR Part 200 (for private nonprofit organizations). For all transactions and activities, the following restrictions apply:
- 6.7.3.1 *Conflicts Prohibited.* No person who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.
- 6.7.3.2 *Persons Covered.* The conflict-of interest provisions of 3.7.3.1 of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the Subrecipient.

6.8 CERTIFICATION REGARDING GOVERNMENT-WIDE RESTRICTION ON LOBBYING

The Subrecipient certifies, to the best of their knowledge and belief, that:

- 6.8.1 No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal sub-grant agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal sub-grant agreement, grant, loan, or cooperative agreement.
- 6.8.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee, or an employee of a Member of Congress in connection with this Sub-Grant Agreement, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit to the Authority, "Disclosure of Lobbying Activities" form as approved by the Office of Management and Budget.

- 6.8.3 The Subrecipient shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and sub-grant agreements under grants, loans, and cooperative agreements) and that all sub-Subrecipients shall certify and disclose accordingly.
- 6.8.4 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6.9 PROGRAM CERTIFICATIONS

The Subrecipient certifies and assures that the Subgrant will be conducted and administered in compliance with all applicable federal and state laws, rules, ordinances, regulations and orders. The Subrecipient certifies and assures compliance with the applicable orders, laws and implementing regulations, including but not limited to, the following:

- 6.9.1 *Confidentiality.* The Subrecipient will implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

In connection with the above certification, the Subrecipient shall develop and implement written procedures to ensure that all records containing "personally identifiable information" of any individual or family, who applies for and/or receives ESG assistance, will be kept secure and confidential.

- 6.9.2 *Period of Assistance.* If ESG funds are used for shelter operations or essential services related to street outreach or emergency shelter, the Subrecipient will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the applicant serves the same type of persons (e.g., families with children, unaccompanied youth, veterans, disabled individuals, or victims of domestic violence) or persons in the same geographic area.
- 6.9.3 *Involvement of Homeless Individuals.* To the maximum extent possible, the Subrecipient will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with ESG funds, in providing services assisted with ESG funds, and in providing services for occupants of facilities assisted with ESG funds.
- 6.9.4 *Consolidated Plan.* The Subrecipient will ensure that all activities undertaken with ESG funds are consistent with the State of Iowa's current HUD-approved Consolidated Plan and accompanying Annual Action Plans.

- 6.9.5 *Participation in Fair Housing Practices.* The Subrecipient will follow fair housing practices that conform to Iowa Code 216.8, Unfair or Discriminatory Practices – Housing.
- 6.9.6 *Contractor Eligibility.* The Subrecipient certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction by any Federal department or agency. The Excluded Parties List System can be found at <https://www.sam.gov/>.
- 6.9.7 *Subrecipient Integrity and Performance Matters.* The Subrecipient shall comply with the requirements in Appendix XII to 2 CFR Part 200 – Award Term and Condition for Subrecipient Integrity and Performance Matters. This pertains to information and reporting in the federal System for Award Management (SAM) for agencies with more than \$10,000,000 in currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies.

6.10 OTHER FEDERAL REQUIREMENTS

The Subrecipient assures compliance with the following additional federal requirements for ESG:

- 6.10.1 *General.* The requirements in 24 CFR Part 5, Subpart A, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105 and equal access in accordance with an individual's gender identity in community planning and development programs at 24 CFR 5.106. Section 3 of the HUD Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR Part 135 applies, except homeless individuals have priority over other Section 3 residents in accordance with Section 576.405(c).
- 6.10.2 *Nondiscrimination and Equal Opportunity.* The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act, and the nondiscrimination and equal opportunity requirements under 24 CFR 576.407(a).
- 6.10.3 *Fair Housing Requirements.* The applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101–12213) and implementing regulations at 28 CFR Part 35 and Part 36 (public accommodations and requirements for certain types of short-term housing assistance).
- 6.10.4 *Nondiscrimination by Age.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07).
- 6.10.5 *Affirmative Action.* Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138, which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.
- 6.10.6 *Affirmative Outreach.* A Subrecipient must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, sexual orientation, gender identity, familial status, or disability, know of the availability of the ESG services and assistance, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures. Consistent with Title VI and Executive Order 13166, the Subrecipient must also take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency persons.

- 6.10.7 *Job Training and Employment for Low-income Residents.* Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR Part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).
- 6.10.8 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance.* The requirements of 2 CFR Part 200, if the Subrecipient is a non-profit organization or governmental entity.
- 6.10.9 *Solid Waste Disposal Act.* Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, regarding the disposal of hazardous materials.
- 6.10.10 *Drug-Free Workplace.* The Subrecipient shall comply with the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR Part 24.
- 6.10.11 *Contracting.* The Subrecipient shall avoid using federally disbarred, suspended, or ineligible contractors for expenses related to this Agreement, according to 24 CFR Part 24.
- 6.10.12 *Lead-Based Paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.
- 6.10.13 *Environmental Review Responsibility.* Certain activities are subject to environmental review pursuant to HUD under 24 CFR Part 50.
- 6.10.14 *VAWA.* Certain activities are subject to the Violence Against Women Reauthorization Act of 2013, and HUD's final rule, Implementation in HUD Housing Programs.
- 6.10.15 *Equal Access.* HUD Equal Access to Housing Final Rule of 2012 and HUD Equal Access to Housing Final Rule of 2016, regarding equal access in accordance with an individual's sexual orientation, gender, identity, and marital status, shall apply to all shelters assisted under ESG program and all housing occupied by program participants.

ARTICLE 7 – NEGATIVE COVENANTS OF THE SUBRECIPIENT

During the Sub-Grant Agreement term the Subrecipient covenants with the Authority that it shall not, without the prior written disclosure to and prior written consent of the Authority, directly or indirectly:

7.1 ASSIGNMENT

Assign its rights and responsibilities under this Sub-Grant Agreement.

7.2 ADMINISTRATION

Discontinue administration activities under the Sub-Grant Agreement.

ARTICLE 8 – DEFAULT AND REMEDIES

8.1 EVENTS OF DEFAULT

The following shall constitute Events of Default under this Sub-Grant Agreement:

- 8.1.1 *Material Misrepresentation.* If at any time any representation, warranty or statement made or furnished to the Authority by, or on behalf of the Subrecipient in connection with this Sub-Grant Agreement or to induce the Authority to make a grant to the Subrecipient shall be determined by the Authority to be incorrect, false, misleading or erroneous in any material respect when made or furnished and shall not have been remedied to the Authority's satisfaction within 30 days after written notice by the Authority is given to the Subrecipient.
- 8.1.2 *Noncompliance.* If there is a failure by the Subrecipient to comply with any of the covenants, terms or conditions contained in this Sub-Grant Agreement.
- 8.1.3 *Misspending.* If the Subrecipient expends grant proceeds for purposes not described in the Application, this Sub-Grant Agreement, or as authorized by the Authority.
- 8.1.4 *Lack of Capacity.* If the Subrecipient demonstrates a lack of capacity to carry out the approved activities and services in a timely manner and with the funds granted, at the sole discretion of the Authority.
- 8.1.5 *Abandonment.* If the Subrecipient abandons any activities or services assisted under this Sub-Grant Agreement.
- 8.1.6 *Failure to Comply with Laws.* If the Subrecipient has failed to ensure compliance with any state or federal laws, rules or regulations.

8.2 NOTICE OF DEFAULT

The Authority shall issue a written notice of default providing therein a 15 day period in which the Subrecipient shall have an opportunity to cure, provided that cure is possible and feasible.

8.3 REMEDIES UPON DEFAULT

If, after opportunity to cure, the default remains, the Authority shall have the right, in addition to any rights and remedies available in sections 9.3, 9.4, 9.5.1, 9.6 and 9.7 of this Sub-Grant Agreement or by law, to do one or more of the following:

- 8.3.1 Reduce the level of funds the Subrecipient would otherwise be entitled to receive under this Sub-Grant Agreement;
- 8.3.2 Require immediate repayment of up to the full amount of funds disbursed to the Subrecipient under this Sub-Grant Agreement; and
- 8.3.3 Refuse or condition a future award upon conditions specified in writing by the Authority.

ARTICLE 9 – GENERAL PROVISIONS

9.1 AMENDMENT

- 9.1.1 *Writing Required.* The Sub-Grant Agreement may only be amended by means of a writing properly executed by the Parties. Examples of situations where amendments are required include extensions for completion of Subgrant activities, changes to the Subgrant including, but not limited to, alteration of existing approved activities or inclusion of new activities.
- 9.1.2 *Unilateral Modification.* Notwithstanding subsection 9.1.1 above, the Authority may unilaterally modify this Sub-Grant Agreement at will in order to accommodate any change in any applicable federal, state or local laws, regulations, rules or policies. A copy of such unilateral modification will be given to the Subrecipient as an amendment to this Sub-Grant Agreement.
- 9.1.3 *The Authority Review.* The Authority will consider whether an amendment request is so substantial as to necessitate reevaluating the original funding decision on the Subgrant.

9.2 AUDIT REQUIREMENTS AND CLOSEOUT OF AWARD

The Subrecipient shall adhere to the following audit requirements:

- 9.2.1 *Single Audit Not Required Form.* A “Single Audit Not Required” form must be submitted to the Authority for each Subrecipient fiscal year that the Subrecipient expends less than \$750,000 in federal funds.
- 9.2.2 *Single Audit.* An audit must be submitted to the Authority for each Subrecipient fiscal year that the Subrecipient expends \$750,000 or more in federal funds, including ESG funds. If the Subrecipient, in accordance with 2 CFR Part 200, is required to complete a Single Audit, the Subrecipient shall ensure that the audit is performed in accordance with 2 CFR Part 200, as applicable. The completed audit must be submitted to the Federal Audit Clearinghouse within the earlier of 30 days after the receipt of the auditor’s report, or nine months after the end of the organization’s fiscal year.
- 9.2.3 *Additional Audit.* As a condition of the grant to the Subrecipient, the Authority reserves the right to require the Subrecipient to submit to a post Subgrant completion audit and review in addition to the audit required above.
- 9.2.4 *Closeout.* The Subrecipient agrees to provide all reports and documents as requested to the Authority. If an audit is required per 9.2.2 above, the Subrecipient shall submit a copy of the completed audit to the Authority within the same time frame it is submitted to the Federal Audit Clearinghouse.

9.3 UNALLOWABLE COSTS

If the Authority determines at any time, whether through monitoring, audit, closeout procedures or by other means or process that the Subrecipient has expended funds which are unallowable, which are disallowed by this Sub-Grant Agreement, by the State of Iowa pursuant to the rules of the ESG program or by HUD under the rules of 24 CFR Part 576, the Subrecipient will be notified of the questioned costs and given an opportunity to justify questioned costs prior to the Authority's final determination of the disallowance of costs. Appeals of any determinations will be handled in accordance with the provisions of Chapter 17A, Iowa Code. If it is the Authority's final determination that costs previously paid under the Sub-Grant Agreement are unallowable, the expenditures will be disallowed and the Subrecipient shall repay to the Authority any and all disallowed costs.

9.4 SUSPENSION

When the Subrecipient has failed to comply with the Sub-Grant Agreement, the Authority may, on reasonable notice to the Subrecipient, suspend the Sub-Grant Agreement and withhold future payments. Suspension may continue until the Subrecipient completes the corrective action as required by the Authority.

9.5 TERMINATION

9.5.1 *For Cause.* The Authority may terminate the Sub-Grant Agreement in whole, or in part, whenever the Authority determines that the Subrecipient has failed to comply with the terms and conditions of the Sub-Grant Agreement.

9.5.2 *For Convenience.* The Authority may terminate the Sub-Grant Agreement in whole, or in part, when the Parties agree that the continuation of the Subgrant would not produce beneficial results commensurate with the future disbursement of funds.

9.5.3 *Due to Reduction or Termination of Funding.* At the discretion of the Authority, the Sub-Grant Agreement may be terminated in whole, or in part, if there is a reduction or termination of funds provided to the Authority by HUD.

9.6 PROCEDURES UPON TERMINATION

9.6.1 *Notice.* The Authority shall provide written notice to the Subrecipient of the decision to terminate, the reason(s) for the termination, and the effective date of the termination. If there is a partial termination due to a reduction in funding, the notice will set forth the change in funding and the changes in the approved budget. The Subrecipient shall not incur new obligations beyond the effective date and shall cancel as many outstanding obligations as possible. The Authority's share of non-cancellable obligations which the Authority determines were properly incurred prior to notice of cancellation will be allowable costs.

9.6.2 *Rights in Products.* All finished and unfinished documents, data, reports or other material prepared by the Subrecipient under the Sub-Grant Agreement shall, at the Authority's option, become the property of the Authority.

9.6.3 *Return of Funds.* Any costs previously paid by the Authority which are subsequently determined to be unallowable through audit, monitoring, or closeout procedures shall be returned to the Authority within 30 days of the disallowance.

9.7 ENFORCEMENT EXPENSES

The Subrecipient shall pay upon demand any and all reasonable fees and expenses of the Authority, including the fees and expenses of the Authority's attorneys, experts and agents, in connection with the exercise or enforcement of any of the rights of the Authority under this Sub-Grant Agreement.

9.8 INDEMNIFICATION

The Subrecipient shall indemnify and hold harmless the Authority and its officers and employees from and against any and all losses, accruing or resulting from any and all claims subcontractors, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Sub-Grant Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Subrecipient in the performance of this Sub-Grant Agreement.

ARTICLE 10 – MISCELLANEOUS

10.1 BINDING EFFECT

This Sub-Grant Agreement shall be binding upon and shall inure to the benefit of the Authority and Subrecipient and their respective successors, legal representatives and assigns. The obligations, covenants, warranties, acknowledgments, waivers, agreements, terms, provisions and conditions of this Sub-Grant Agreement shall be jointly and severally enforceable against the Parties to this Sub-Grant Agreement.

10.2 SURVIVAL OF SUB-GRANT AGREEMENT

If any portion of this Sub-Grant Agreement is held to be invalid or unenforceable, the remainder shall be valid and enforceable. The provisions of this Sub-Grant Agreement shall survive the execution of all instruments herein mentioned and shall continue in full force until the Subgrant is completed as determined by the Authority.

10.3 GOVERNING LAW

This Sub-Grant Agreement shall be interpreted in accordance with the laws of the State of Iowa, and any action relating to the Sub-Grant Agreement shall only be commenced in the Iowa District Court for Polk County or the United States District Court for the Southern District of Iowa.

10.4 WAIVERS

No waiver by the Authority of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the Authority in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by the Authority shall preclude future exercise thereof or the exercise of any other right or remedy.

10.5 LIMITATION

It is agreed by the Subrecipient that the Authority shall not, under any circumstances, be obligated financially under this Sub-Grant Agreement except to disburse funds according to the terms of the Sub-Grant Agreement.

10.6 HEADINGS

The headings in this Sub-Grant Agreement are intended solely for convenience of reference and shall be given no effect in the construction and interpretation of this Sub-Grant Agreement.

10.7 INTEGRATION

This Sub-Grant Agreement contains the entire understanding between the Subrecipient and the Authority and any representations that may have been made before or after the signing of this Sub-Grant Agreement, which are not contained herein, are nonbinding, void and of no effect. None of the Parties have relied on any such prior representation in entering into this Sub-Grant Agreement.

10.8 COUNTERPARTS

This Sub-Grant Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

10.9 DOCUMENTATION

The Authority reserves the right to request at any time, additional reports or documentation not specifically articulated in this contract.

IN WITNESS WHEREOF, the Parties have executed this Sub-Grant Agreement on the dates specified below.

SUBRECIPIENT: West Des Moines Human Services

BY: _____
Signature of Authorized Official

Print Name

Title

DATE: _____

NOTE: THIS SUB-GRANT AGREEMENT MUST BE EXECUTED BY THE SUBRECIPIENT AND RECEIVED BY THE AUTHORITY BEFORE JANUARY 31, 2022.

IOWA FINANCE AUTHORITY

BY: _____
Brian Sullivan, Chief Programs Officer

DATE: _____

4(e)

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

DATE: January 18, 2022

ITEM: Motion – Approval of Agreement – 2021 Art on the Campus Artwork Purchase – “Iowa Barn”

FINANCIAL IMPACT: Expense of \$6,500 from the FY21-22 Public Art Fund budget for the artwork. An additional amount of approximately \$1,800 will be spent on installation. There is \$10,000 budgeted for this project.

BACKGROUND: Public Arts Advisory Commission Exhibition Committee members Rita Luther and Jeff Phillips met with staff members Allison Ullestad and Sally Ortgies on August 26, 2021, to review and discuss a possible purchase from the works of art in the 2021 Art on the Campus exhibit. A walking tour was held to review the works of art and it was determined that “Iowa Barn” should be considered for purchase. Iowa Barn was also the 2021 Art on the Campus People’s Choice Award winner. The Committee directed staff to identify possible locations for the artwork. The Committee met again on October 12, 2021, to discuss locations. Staff and the Committee recommend that the artwork be placed at the front entrance to the new WDM Public Services Facility located at 8850 Grand Avenue. Director of Public Services, Brett Hodne, has given consent for “Iowa Barn” to be placed at the facility.

The Public Arts Advisory Commission approved the recommendation to purchase “Iowa Barn” at their meeting held on December 9, 2021.

The artist’s biography, artwork description, and photo of the artwork are attached. If approved by Council, the footing will be installed as soon as weather allows in the spring, and the artwork will be moved immediately following. This will occur prior to opening of the 2022 Art on the Campus exhibit.

OUTSTANDING ISSUES: None.

RECOMMENDATION: That the Council approve the recommendation from the Public Arts Advisory Commission to purchase the work of art “Iowa Barn” from Clint Hansen of Urbandale, Iowa, to be installed at the front entrance to the WDM Public Services Facility located at 8850 Grand Avenue.

Lead Staff Member: Allison Ullestad, Arts, Culture, and Enrichment Supervisor

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	N/A
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed	PAAC 12/9/21		
Recommendation	Yes	No	Split

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
AGREEMENT BY AND BETWEEN
CITY OF WEST DES MOINES AND CLINT HANSEN

This Agreement, made this 22 day of December, 2021, by and between the City of West Des Moines, an Iowa municipal corporation, (hereinafter referred to as the "City") and Clint Hansen, an individual person (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to purchase a certain work of art titled Iowa Barn (the "Art Work"), identified on the attached "Exhibit A", which has been conceived and designed by the Artist and is presently on display as a part of the 2021 Art on the Campus Program, as an addition to the City's public art collection; and

WHEREAS, the Artist desires to enter into this transaction, and upon installation by City at a location designated by the City (the "Site"), City desires to purchase the Work from the Artist according to the terms of this Agreement.

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist waives all claims to any issues with the existing construction at the Site where the Art Work has been installed.
- b) The Artist shall meet with the City as deemed necessary to coordinate any repairs at the Site where the Art Work is to be installed.

1.2 Delivery and Installation

- a) The City shall be responsible for preparing the Site.
- b) The City shall relocate and install the Art Work at the Site.
- c) The City shall be responsible for all expenses, labor, and equipment necessary for the installation of the Art Work at the Site.

1.3 Post Installation

- a) The Artist represents and warrants that the Art Work, as fabricated and installed at the Site, will be free from any defects in materials and workmanship, and that the Art Work is free and clear of any liens or encumbrances from any source and of any kind or nature whatsoever.
- b) The Artist shall provide a completed Conservation Record following installation at the Site before final payment is to be released by the City to the Artist.

1.4 Risk of Loss

- a) After the complete installation of the Art Work at the Site, the risk of loss or damage to the Art Work shall be borne by the City.

1.5 Indemnity

- a) Upon installation of the Art Work at the Site, the City shall, to the extent permitted by law, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site, which claims or liabilities arise from and after the date of final acceptance of the Art Work.

- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

1.6 Title

- a) Title of the Art Work shall pass to the City upon installation at the Site.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a fixed fee of six thousand five hundred dollars (\$6,500) which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fixed fee shall be paid in full following compliance with sections 1.2 and 1.3 of this Agreement.

2.2 City Credit

- a) The City receives a credit in the amount of two thousand dollars (\$2,000) which has already been paid to the Artist as a stipend for their participation in the 2021 Art on the Campus. (Purchase price is \$8,500 minus the \$2,000 credit equals contract purchase price of \$6,500.)

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

- 4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing and pursuant to Article 1, that:
 - 1) The execution and fabrication of the Art Work has been performed in a workmanlike manner;
 - 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Art Work; and
 - 3) Reasonable maintenance recommendations will be submitted by the Artist to the City hereunder.
- b) The warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabricating the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of their employees or of any person other than their employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work except ownership and possession, and except as such rights are limited by the terms of this Agreement.
- b) In view of the intention that the Art Work in its final dimension shall be unique, the Artist shall not make any additional duplicate reproductions of the final Art Work, nor shall the Artist grant permission to others to do so except with the written permission of the City. The Artist grants to the City and its assignees a royalty-free, irrevocable license to make two or three dimensional reproductions of the Art Work for purposes including, but not limited to, reproductions used in advertising, calendars, posters, brochures, media, publicity, catalogues, city, educational and development projects, or other similar publications, provided that these rights are exercised in a professional manner.

6.2 Notice

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

6.3 Credit to Owner

- a) The Artist shall use best efforts to give a credit reading substantially, "An original art work owned by City of West Des Moines Public Art Program, West Des Moines, Iowa" in any public showing under the Artist's control of reproductions of the Art Work.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

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

7.2 Maintenance

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The City shall reasonably assure that the Art Work is properly maintained and protected, taking into account the instructions of the Artist provided in accordance with Section 1.3 (b).

7.3 Alteration of the Work or of the Site

- a) Except as provided under subsection 7.3(b), below, the City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.
- b) The City reserves the right to alter the location of the Art Work or relocate the Art Work to another site at the City's expense. The following provisions shall apply to relocation or removal:
 - 1) While the City shall attempt to remove Art Work in such a way as to not affect the Art Work, it is the parties' understanding that such removal may result in damage, alternation, modification, destruction, distortion, or other change in the Art Work. The Artist acknowledges that this provision shall qualify under 17 U.S.C. Section 113, (d) so as to waive rights under 17 U.S.C. Section 106A.
 - 2) If, at the time of removal, it is determined that the Art Work may be removed without damage, alteration, modification, destruction, distortion, or other change, the City shall give notice as required by 17 U.S.C. Section 113 (d) (2) and (3). On completion of the Art Work, the Artist agrees to file the records, including Artist's identity and address, with the Register of Copyrights as provided under 17 U.S.C. Section 113 (d) (3). The Artist further agrees to update information with the Register of Copyrights so as to permit notification of intent to remove the Art Work.

7.4 Permanent Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist. Any such transfer shall be null and void and shall be cause to annul this Agreement.

9.2 Subcontracting by Artist

- a) The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not negatively affect the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor. If the City does not approve the hiring of any subcontractor, another subcontractor must be submitted for approval by the City.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: ENTIRE AGREEMENT

- a) This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 13: MODIFICATION

- a) No alteration, change, or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

ARTICLE 14: NOTICES

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

- 1) **If to the City, to:**
City of West Des Moines
Allison Ullestad, Arts, Culture & Enrichment Supervisor
P.O. Box 65320
West Des Moines, IA 50265

- 2) **If to the Artist, to:**
Clint Hansen
14301 Plum Drive
Urbandale, IA 50323

ARTICLE 15: ADDITIONAL AGREEMENTS

a) The Artist shall recognize the City or designee as its duly authorized representative of the City.

This Agreement has been executed on the day and year first written above.

ARTIST

Clint Hansen

Clint Hansen

CITY OF WEST DES MOINES, IOWA

Russ Trimble, Mayor

Attest:

Ryan Jacobson City Clerk

ART ON THE CAMPUS 2021

Artist Name: Clint Hansen

Artist Address: Urbandale, IA

Artist Bio:

Clint Hansen is a fifth generation artist designing and hand-crafting one-of-a-kind creations for gallery, commercial and government settings. His award-winning art is represented in private, public and corporate collections.

- BFA (Cum Laude) Iowa State University, 1987
- 35 years freelance artist
- Portrait hanging in U.S. Capitol, Permanent Collection

<http://rfq.clinthansen.com>

Artwork Title: Iowa Barn

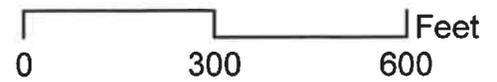
Height: 7' Length: 3' Width: 3'
Weight: 100 lbs Price: \$8500 Year: 2021

This art celebrates the rapidly disappearing barns that are a part of our Iowa heritage. Created to look like stained glass, some panels use the textures of printed seed corn and agricultural related ads and images.





VICINITY MAP



PROJECT:	ART ON THE CAMPUS ARTWORK PURCHASE		
LOCATION:	PUBLIC SERVICES BUILDING (8850 GRAND AVE)		
DRAWN BY:	MAA	DATE:	1/12/2022
PROJECT NO.:		SHT.	1 of 1

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

DATE: January 18, 2022

ITEM:

Resolution - Ordering Construction
2021 Stormwater Intake Repair Program

FINANCIAL IMPACT:

The Engineering Estimate of Construction Cost for the 2021 Stormwater Intake Repair Program is \$220,500.00. Payments will be made from account no. 660.000.000.5250.490 with the ultimate funding intended to come from Stormwater Revenue.

BACKGROUND:

A Bid Letting should be scheduled for 2:00 p.m. on Wednesday, February 16, 2022 and a Public Hearing on the project should be scheduled for 5:35 p.m. on Monday, February 21, 2022. The contract would be awarded on Monday, February 21, 2022 and work will begin shortly thereafter.

This project is part of the ongoing maintenance program to rehabilitate stormwater intakes at various locations throughout the City of West Des Moines. The project is anticipated to be completed by June 30, 2022.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Resolution Ordering Construction of the 2021 Stormwater Intake Repair Program.
- Fixing 2:00 p.m. on Wednesday, February 16, 2022 as the time and date for project Bid Letting.
- Ordering the City Clerk to publish notice of Letting and Public Hearing.

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
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

**RESOLUTION ORDERING CONSTRUCTION AND NOTICE OF PUBLIC HEARING ON
PLANS, SPECIFICATIONS, FORM OF CONTRACT, ESTIMATE OF COST, AND
DIRECTING ADVERTISEMENT FOR BIDS**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES,
IOWA**, that the following described public improvement:

**2021 Stormwater Intake Repair Program
Project No. 0510-039-2021**

is hereby ordered to be constructed according to the Plans and Specifications prepared by I+S Group, Inc. of Des Moines, Iowa and now on file in the office of the City Clerk.

BE IT FURTHER RESOLVED, that the detailed Plans and Specifications, Form of Contract, Bid Security, and Notice to Bidders are hereby approved, subject to hearing thereon, and that the same are now on file in the office of the City Clerk for public inspection.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish notice of hearing on the Plans and Specifications, Form of Contract, Bid Security and Estimate of Costs for said project to be held at 5:35 p.m. on Monday, February 21, 2022, with said notice published not less than four (4) days nor more than twenty (20) days prior to the date heretofore fixed.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish Notice to Bidders for said project with publication not less than thirteen (13) days nor more than forty-five (45) days prior to the date for receiving bids. Said bids are to be filed prior to 2:00 p.m. on Wednesday, February 16, 2022.

BE IT FURTHER RESOLVED, that the bids received for construction of said improvements will be opened, publicly read and tabulated by the City Clerk, Deputy City Clerk, or City Clerk designee at 2:00 p.m. on Wednesday, February 16, 2022 and the results of said bids shall be considered at a meeting of this Council on Monday, February 21, 2022 at 5:35 p.m. and acted upon at said time, or such time as may then be fixed.

PASSED AND APPROVED on this **18th** day of **January, 2022**.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

2021 STORMWATER INTAKE REPAIR PROGRAM

Client Name: CITY WEST DES MOINES
 Location: WEST DES MOINES, IOWA
 WDM Project Number: 0510-039-2021
 ISG Project Number: 21-25673
 Date: January 10, 2022



2021 STORMWATER INTAKE REPAIR PROGRAM - ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

Item No.	Item	Unit	Estimated Quantity	Unit Price	Total Amount
1	INTAKE, SW-501	EA	8	\$5,000.00	\$40,000.00
2	INTAKE, SW-503	EA	5	\$6,250.00	\$31,250.00
3	INTAKE, SW-505	EA	6	\$6,750.00	\$40,500.00
4	INTAKE, SW-507	EA	6	\$6,500.00	\$39,000.00
5	REMOVE INTAKE STRUCTURE	EA	25	\$1,250.00	\$31,250.00
6	REMOVE INTAKE BASE	EA	5	\$500.00	\$2,500.00
7	FULL DEPTH PATCHES, PCC	SY	100	\$160.00	\$16,000.00
8	TEMPORARY TRAFFIC CONTROL	LS	1	\$20,000.00	\$20,000.00

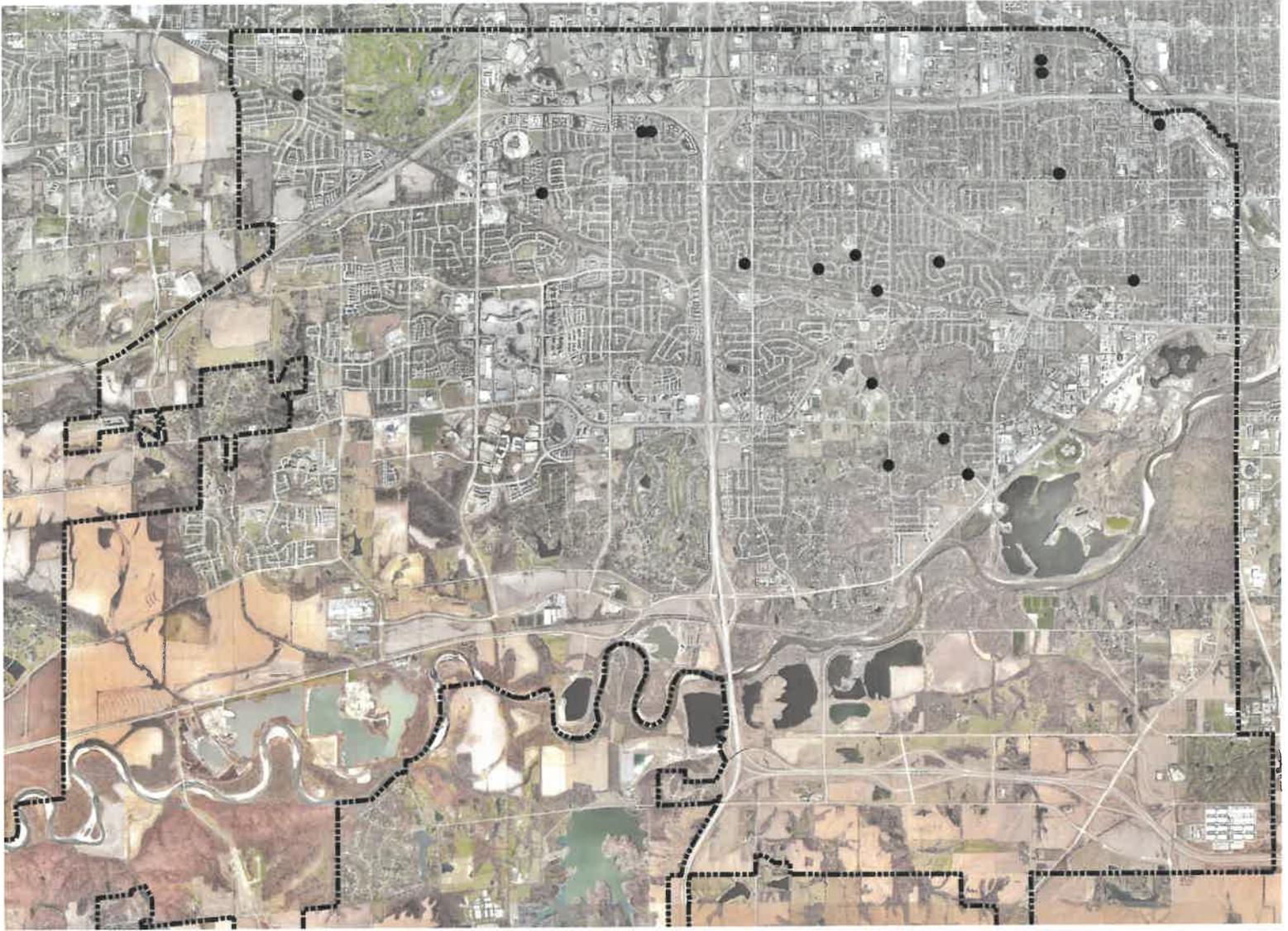
OPINION OF PROBABLE CONSTRUCTION COST: \$220,500.00

I HEREBY CERTIFY THAT THIS IS A TRUE AND ACCURATE ACCOUNT OF ESTIMATED COSTS

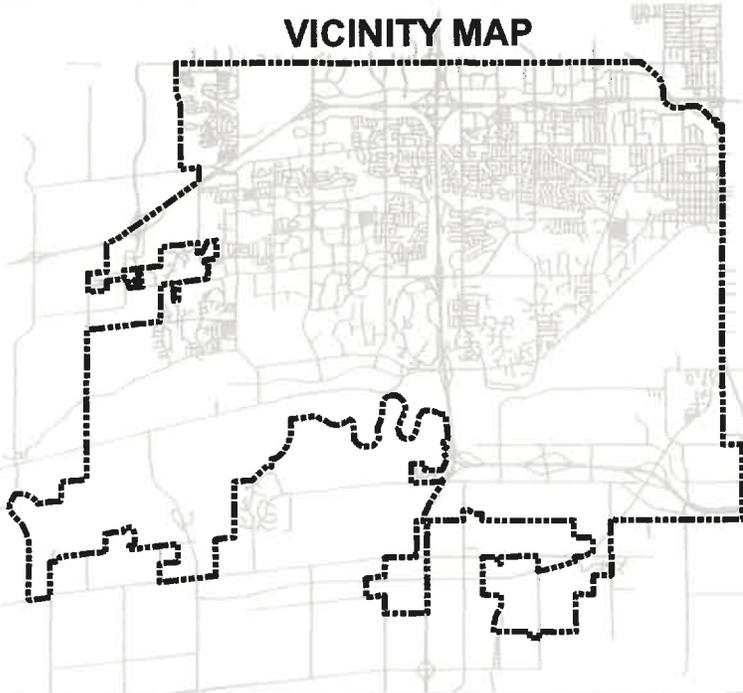
Justin Heim

Date: **1/10/2022** License Number: 26800





VICINITY MAP



LEGEND

STORM INTAKE ●



PROJECT:	2021 Stormwater Intake Replacement Program		
LOCATION:	Exhibit "A"		
DRAWN BY: JPM	DATE: 1/11/2022	PROJECT NUMBER/NAME: 0510-039-2021	SHT. 1 of 1

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

DATE: January 18, 2022

ITEM:

Resolution - Ordering Construction
2022 Street Reconstruction Program

FINANCIAL IMPACT:

The Engineering Estimate of Construction Cost for the 2022 Street Reconstruction Program is \$1,317,787.45 for Total Base Bid + Alternate 1 (PCC) and \$1,279,369.45 for Total Base Bid + Alternate 2 (HMA). Payments will be made from account no. 500.000.000.5250.490 with the ultimate funding intended to come from Road Use Tax.

BACKGROUND:

A Bid Letting should be scheduled for 2:00 p.m. on Wednesday, February 16, 2022 and a Public Hearing on the project should be scheduled for 5:35 p.m. on Monday, February 21, 2022. The contract would be awarded on Monday, February 21, 2022 and work will begin shortly thereafter.

The project involves complete reconstruction of 8th Street from just south of Maple Street to just south of Vine Street. The existing roadway pavement will be removed and replaced, including portions of the side streets. Roadway pavement replacement is being bid as Portland cement concrete (PCC) Alternate 1 versus hot mixed asphalt (HMA) Alternate 2 and includes subgrade preparation and subbase material. Storm sewer crossings and intakes will be modified, removed/replaced, and relocated. Driveway approaches will be replaced and sidewalks will be upgraded at intersections where necessary to facilitate driveway approach replacement. The sidewalk/trail and roadway surface along the west side of 8th Street at the intersections with Maple Street and Elm Street is the lid of a reinforced concrete box culvert which will be removed and replaced. The project is anticipated to be completed by September 30, 2022.

Public informational letters were mailed to all affected residents on January 7, 2022. The letters directed attention to a project video that was uploaded to the City's website for viewing. City Staff have had more success in recent past compiling a project video and sharing with the general public in lieu of conducting a public meeting, as they are typically not well attended.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution Ordering Construction of the 2022 Street Reconstruction Program.
- Fixing 2:00 p.m. on Wednesday, February 16, 2022 as the time and date for project Bid Letting.
- Ordering the City Clerk to publish notice of Letting and Public Hearing.

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	<i>JS</i>

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

**RESOLUTION ORDERING CONSTRUCTION AND NOTICE OF PUBLIC HEARING ON
PLANS, SPECIFICATIONS, FORM OF CONTRACT, ESTIMATE OF COST, AND
DIRECTING ADVERTISEMENT FOR BIDS**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES,
IOWA**, that the following described public improvement:

**2022 Street Reconstruction Program
Project No. 0510-001-2022**

is hereby ordered to be constructed according to the Plans and Specifications prepared by WHKS & Company of West Des Moines, Iowa and now on file in the office of the City Clerk.

BE IT FURTHER RESOLVED, that the detailed Plans and Specifications, Form of Contract, Bid Security, and Notice to Bidders are hereby approved, subject to hearing thereon, and that the same are now on file in the office of the City Clerk for public inspection.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish notice of hearing on the Plans and Specifications, Form of Contract, Bid Security and Estimate of Costs for said project to be held at 5:35 p.m. on Monday, February 21, 2022, with said notice published not less than four (4) days nor more than twenty (20) days prior to the date heretofore fixed.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish Notice to Bidders for said project with publication not less than thirteen (13) days nor more than forty-five (45) days prior to the date for receiving bids. Said bids are to be filed prior to 2:00 p.m. on Wednesday, February 16, 2022.

BE IT FURTHER RESOLVED, that the bids received for construction of said improvements will be opened, publicly read and tabulated by the City Clerk, Deputy City Clerk, or City Clerk designee at 2:00 p.m. on Wednesday, February 16, 2022 and the results of said bids shall be considered at a meeting of this Council on Monday, February 21, 2022 at 5:35 p.m. and acted upon at said time, or such time as may then be fixed.

PASSED AND APPROVED on this **18th** day of **January, 2022**.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

Project: West Des Moines 2022 Street Reconstruction Program
Project No.: 0510-001-2022
Location: West Des Moines, IA - 8th Street from Maple to Vino
Final Plan Engineer's Opinion of Probable Cost

Item No.	Item Code	Item Description	Unit	Total	Unit Price	Total Cost
DIVISION 2 - EARTHWORK						
2.01	2010-A	CLEARING AND GRUBBING	LS	1.00	\$ 500.00	\$ 500.00
2.02	2010-E	EXCAVATION, CLASS 10, ROADWAY AND BORROW	CY	1,056	\$ 10.00	\$ 10,650.00
2.03	2010-E	EXCAVATION, CORE-OUT	CY	100	\$ 55.00	\$ 5,500.00
2.04	2010-E	EARTH SHOULDER FINISHING	STA	39.57	\$ 180.00	\$ 7,122.60
2.05	2010-G	SUBGRADE PREPARATION	SY	9,556.3	\$ 3.00	\$ 28,668.90
2.06	2010-G	SUBGRADE TREATMENT, CEMENT TREATMENT	SY	1,991.3	\$ 10.00	\$ 19,913.00
2.07	2010-I	MODIFIED SUBBASE	SY	8,926.3	\$ 12.50	\$ 111,578.75
2.08	2010-I	SPECIAL BACKFILL	SY	545.4	\$ 20.00	\$ 10,908.00
DIVISION 3 - TRENCH AND TRENCHLESS CONSTRUCTION						
3.01	3010-D	REPLACEMENT OF UNSUITABLE BACKFILL MATERIAL	CY	20	\$ 90.00	\$ 1,800.00
DIVISION 4 - SEWERS AND DRAINS						
4.01	4020-A-1	STORM SEWER, TRENCHED, 15 IN. RCP 2000D	LF	137	\$ 90.00	\$ 12,330.00
4.02	4020-A-1	STORM SEWER, TRENCHED, 18 IN. RCP 2000D	LF	36	\$ 100.00	\$ 3,600.00
4.03	4020-A-1	STORM SEWER, TRENCHED, 18 IN. RCP 2000D	LF	70	\$ 120.00	\$ 8,400.00
4.04	4020-A-1	STORM SEWER, TRENCHED, 24 IN. RCP 2000D	LF	5	\$ 120.00	\$ 600.00
4.05	4020-D	REMOVAL OF STORM SEWER, 12 IN. RCP	LF	8.8	\$ 35.00	\$ 308.00
4.06	4020-D	REMOVAL OF STORM SEWER, 15 IN. RCP	LF	139.2	\$ 35.00	\$ 4,872.00
4.07	4020-D	REMOVAL OF STORM SEWER, 18 IN. RCP	LF	71.6	\$ 35.00	\$ 2,506.00
4.08	4020-D	REMOVAL OF STORM SEWER, 24 IN. RCP	LF	9.8	\$ 35.00	\$ 343.00
4.09	4040-A	SUBDRAIN, TYPE 1, CASE C, 6 IN.	LF	2,196.3	\$ 20.00	\$ 43,926.00
4.10	4040-C	SUBDRAIN CLEANOUT, TYPE A-1, 6 IN.	EA	1	\$ 800.00	\$ 800.00
4.11	4040-C	SUBDRAIN OUTLETS AND CONNECTIONS, INTO STRUCTURE, 6 IN.	EA	13	\$ 400.00	\$ 5,200.00
DIVISION 5 - WATER MAINS AND APPURTENANCES						
5.01	5010-A-1	WATER MAIN, TRENCHED, DIP, 8 IN.	LF	60	\$ 175.00	\$ 10,500.00
DIVISION 6 - STRUCTURES FOR SANITARY AND STORM SEWERS						
6.01	6010-B	INTAKE, SW-503	EA	1	\$ 6,000.00	\$ 6,000.00
6.02	6010-B	INTAKE, SW-505	EA	3	\$ 6,000.00	\$ 18,000.00
6.03	6010-B	INTAKE, SW-507	EA	2	\$ 6,500.00	\$ 13,000.00
6.04	6010-B	INTAKE, SW-509	EA	7	\$ 7,500.00	\$ 52,500.00
6.05	6010-E	INTAKE ADJUSTMENT, MINOR, SW-501	EA	4	\$ 2,000.00	\$ 8,000.00
6.06	6010-E	INTAKE ADJUSTMENT, MINOR, SW-505	EA	4	\$ 2,000.00	\$ 8,000.00
6.07	6010-E	MANHOLE ADJUSTMENT, MINOR	EA	3	\$ 2,500.00	\$ 7,500.00
6.08	6010-G	CONNECTION TO EXISTING PIPE OR CULVERT	EA	7	\$ 1,000.00	\$ 7,000.00
6.09	6010-H	REMOVE MANHOLE	EA	2	\$ 2,000.00	\$ 4,000.00
6.10	6010-H	REMOVE INTAKE	EA	12	\$ 1,500.00	\$ 18,000.00
DIVISION 7 - STREETS AND RELATED WORK						
7.01	7030-A	REMOVAL OF SIDEWALK	SY	319.3	\$ 10.00	\$ 3,193.00
7.02	7030-A	REMOVAL OF DRIVEWAY	SY	930.3	\$ 10.00	\$ 9,303.00
7.03	7030-E	SIDEWALK, PCC, 4 IN.	SY	163.8	\$ 55.00	\$ 9,009.00
7.04	7030-E	SIDEWALK, PCC, 6 IN.	SY	176.5	\$ 65.00	\$ 11,472.50
7.05	7030-G	DETECTABLE WARNING	SF	324	\$ 50.00	\$ 16,200.00
7.06	7030-H-1	DRIVEWAY, TYPE A, PCC, 6 IN.	SY	1,299.3	\$ 65.00	\$ 84,454.50
7.07	7040-H	PAVEMENT REMOVAL	SY	7,623.5	\$ 10.00	\$ 76,235.00
DIVISION 8 - TRAFFIC CONTROL						
8.01	8030-A	TEMPORARY TRAFFIC CONTROL	LS	1	\$ 18,000.00	\$ 18,000.00
8.02	N/A	REMOVE AND REINSTALL SIGN	EA	2	\$ 250.00	\$ 500.00
DIVISION 9 - SITE WORK AND LANDSCAPING						
9.01	9020-A	SOD	SQ	593.0	\$ 65.00	\$ 38,545.00
9.02	9040-A-1	SWPPP PREPARATION	LS	1.00	\$ 1,200.00	\$ 1,200.00
9.03	9040-A-2	SWPPP MANAGEMENT	LS	1.00	\$ 2,500.00	\$ 2,500.00
9.04	9040-D-1	FILTER SOCK, 9 IN.	LF	641	\$ 2.00	\$ 1,282.00
9.05	9040-D-2	FILTER SOCK, REMOVAL	LF	641	\$ 1.00	\$ 641.00
9.06	9040-Q-2	EROSION CONTROL MULCHING, HYDROMULCHING	AC	1.4	\$ 1,500.00	\$ 2,100.00
9.07	9040-T-1	INLET PROTECTION DEVICE	EA	21	\$ 200.00	\$ 4,200.00
9.08	9040-T-2	INLET PROTECTION DEVICE, MAINTENANCE	EA	21	\$ 50.00	\$ 1,050.00
DIVISION 11 - MISCELLANEOUS						
11.01	11.010-A	CONSTRUCTION SURVEY	LS	1.00	\$ 15,000.00	\$ 15,000.00
11.02	11.030-B	MAINTENANCE OF SOLID WASTE COLLECTION	LS	1.00	\$ 10,000.00	\$ 10,000.00
11.03	11.050-A	CONCRETE WASHOUT	LS	1.00	\$ 5,000.00	\$ 5,000.00
11.04	N/A	REMOVE AND REINSTALL JUNCTION BOX	EA	11	\$ 1,000.00	\$ 11,000.00
11.05	N/A	PROTECT FIBER LINE	EA	11	\$ 500.00	\$ 5,500.00
11.06	N/A	CULVERT REMOVALS	LS	1.00	\$ 10,000.00	\$ 10,000.00
11.07	N/A	STRUCTURAL CONCRETE	CY	36.2	\$ 1,200.00	\$ 43,440.00
11.08	N/A	EPOXY COATED REINFORCING	LB	6,442	\$ 1.10	\$ 7,086.20
11.09	N/A	CONCRETE REPAIR	SF	4	\$ 500.00	\$ 2,000.00
TOTAL BASE BID						\$ 818,947.45
ALTERNATE 1 - 7 IN. REINFORCED PCC PAVEMENT						
20.01	2010-E	EXCAVATION, CLASS 10, WASTE	CY	1,954	\$ 15.00	\$ 29,310.00
20.02	7010-A	PAVEMENT, REINFORCED PCC, 7 IN.	SY	7,825.5	\$ 60.00	\$ 469,530.00
TOTAL ALTERNATE 1						\$ 498,840.00
ALTERNATE 2 - 9.5 IN. HMA PAVEMENT WITH CURB AND GUTTER						
30.01	2010-E	EXCAVATION, CLASS 10, WASTE	CY	2,527	\$ 15.00	\$ 37,905.00
30.02	7010-A	PAVEMENT, REINFORCED PCC, 7 IN.	SY	973.7	\$ 65.00	\$ 63,290.50
30.03	7010-E	CURB AND GUTTER, 2.5 FT., 9.5 IN.	LF	4,635.2	\$ 25.00	\$ 115,880.00
30.04	7020-B	PAVEMENT, 4 IN. HMA HT BASE COURSE, 3/4 IN. MIX, PG58-28H	SY	5,487.7	\$ 20.00	\$ 109,754.00
30.05	7020-B	PAVEMENT, 3.5 IN. HMA HT INTERMEDIATE COURSE, 3/4 IN. MIX, PG58-28H	SY	5,487.7	\$ 15.00	\$ 81,115.50
30.06	7020-B	PAVEMENT, 2 IN. HMA HT SURFACE COURSE, 1/2 IN. MIX, PG58-28H	SY	5,487.7	\$ 10.00	\$ 54,877.00
TOTAL ALTERNATE 2						\$ 460,422.00

TOTAL BASE BID + ALTERNATE 1 \$ 1,317,787.45
TOTAL BASE BID + ALTERNATE 2 \$ 1,279,369.45

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

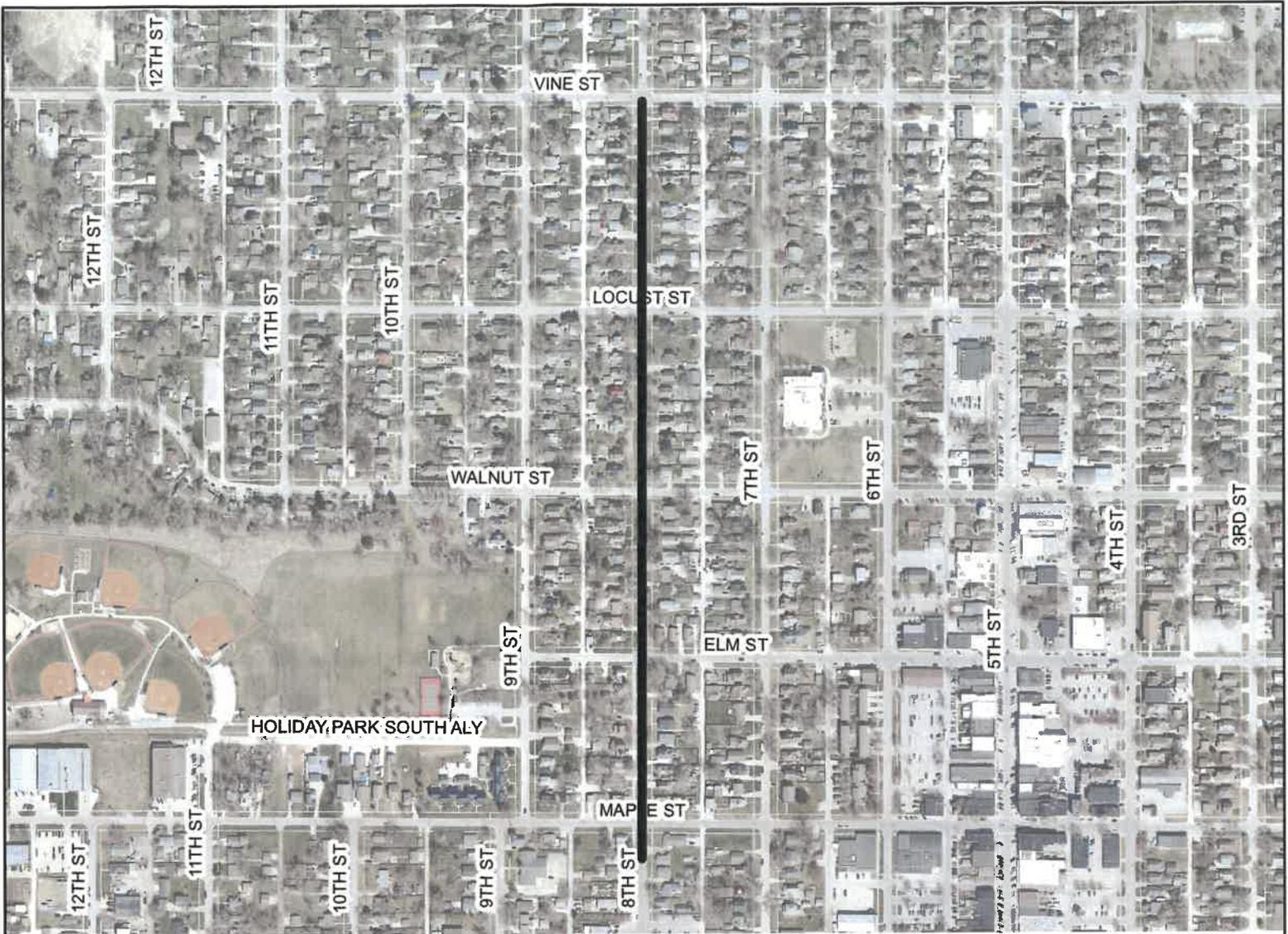
Signature: Lucas D. Folka Date: 1/6/2022

Printed or Typed Name: Lucas D. Folka

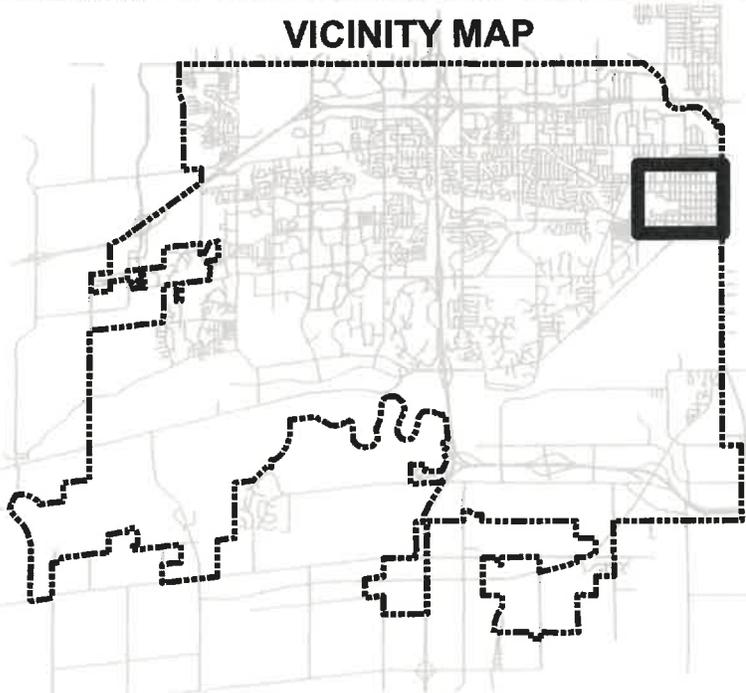
My license renewal date is December 31, 23

Pages or sheets covered by this seal: All





VICINITY MAP



LEGEND

PROJECT LOCATION



PROJECT:

2022 Street Reconstruction Program

LOCATION:

Exhibit "A"

DRAWN BY: JPM

DATE: 1/4/2022

PROJECT NUMBER/NAME: 0510-001-2022

SHT. 1 of 1

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

4(f)3

DATE: January 18, 2022

ITEM:

Resolution - Ordering Construction
Stagecoach Drive – South Jordan Creek Parkway to South 78th Street

FINANCIAL IMPACT:

The Engineering Estimate of Construction Cost for Stagecoach Drive – South Jordan Creek Parkway to South 78th Street is \$5,032,244.30. Payments will be made from account no. 500.000.000.5250.490 with the ultimate funding intended to come from Mills Urban Renewal Area TIF.

BACKGROUND:

A Bid Letting should be scheduled for 2:00 p.m. on Wednesday, February 16, 2022 and a Public Hearing on the project should be scheduled for 5:35 p.m. on Monday, February 21, 2022. The contract would be awarded on Monday, February 21, 2022 and work will begin shortly thereafter.

The project consists of the construction of Stagecoach Drive from South Jordan Creek Parkway to South 78th Street, including tree clearing, grading, storm sewer, watermain, fiber conduit, pavement, shared-use path, and associated work. Stagecoach Drive (minor arterial street classification) will be constructed to full-build dimensions with a median from South Jordan Creek Parkway to near the midpoint between South Jordan Creek Parkway and South 78th Street where there will be a full access intersection serving two (2) major commercial entrances. Only the northern three (3) lanes of an ultimate 5-lane undivided cross section of Stagecoach Drive will be initially constructed from this full access intersection to South 78th Street. Rough grading and some storm sewer will be constructed between South 78th Street and South 81st Street as part of the project as an ample supply of onsite borrow is currently available and settlement of soils prior to future paving is desired in this area. The City will most likely be requested to pave Stagecoach Drive from South 78th Street to South 81st Street in the future should sufficient TIF funds accrue enough to finance construction. The project is anticipated to be completed by November 18, 2022.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution Ordering Construction of Stagecoach Drive – South Jordan Creek Parkway to South 78th Street.
- Fixing 2:00 p.m. on Wednesday, February 16, 2022 as the time and date for project Bid Letting.
- Ordering the City Clerk to publish notice of Letting and Public Hearing.

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	AP

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

**RESOLUTION ORDERING CONSTRUCTION AND NOTICE OF PUBLIC HEARING ON
PLANS, SPECIFICATIONS, FORM OF CONTRACT, ESTIMATE OF COST, AND
DIRECTING ADVERTISEMENT FOR BIDS**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES,
IOWA**, that the following described public improvement:

**Stagecoach Drive – South Jordan Creek Parkway to South 78th Street
Project No. 0510-016-2021**

is hereby ordered to be constructed according to the Plans and Specifications prepared by Foth
Infrastructure and Environment, LLC of Johnston, Iowa and now on file in the office of the City Clerk.

BE IT FURTHER RESOLVED, that the detailed Plans and Specifications, Form of Contract, Bid
Security, and Notice to Bidders are hereby approved, subject to hearing thereon, and that the same are
now on file in the office of the City Clerk for public inspection.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish notice of hearing
on the Plans and Specifications, Form of Contract, Bid Security and Estimate of Costs for said project to
be held at 5:35 p.m. on Monday, February 21, 2022, with said notice published not less than four (4)
days nor more than twenty (20) days prior to the date heretofore fixed.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish Notice to Bidders
for said project with publication not less than thirteen (13) days nor more than forty-five (45) days prior
to the date for receiving bids. Said bids are to be filed prior to 2:00 p.m. on Wednesday, February 16,
2022.

BE IT FURTHER RESOLVED, that the bids received for construction of said improvements will
be opened, publicly read and tabulated by the City Clerk, Deputy City Clerk, or City Clerk designee at
2:00 p.m. on Wednesday, February 16, 2022 and the results of said bids shall be considered at a meeting
of this Council on Monday, February 21, 2022 at 5:35 p.m. and acted upon at said time, or such time as
may then be fixed.

PASSED AND APPROVED on this **18th** day of **January, 2022**.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk



ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST



Stagecoach Drive

South Jordan Creek Parkway to South 78th Street
West Des Moines, Iowa

Sta. 344+00 to Sta. 370+32 - Approximate Length = 2,632 LF

ITEM NO.	ITEM	UNIT	UNIT PRICE	ESTIMATED QUANTITY	EXTENDED PRICE
DIVISION 2 - EARTHWORK					
2.1	CLEARING & GRUBBING	AC	\$ 6,500.00	20	\$ 130,000.00
2.2	TOPSOIL, ON SITE	CY	\$ 6.00	27,497	\$ 164,982.00
2.3	EXCAVATION, CLASS 10, ROADWAY & BORROW	CY	\$ 5.00	329,638	\$ 1,648,190.00
2.4	EXCAVATION, CLASS 10, CHANNEL	CY	\$ 4.00	4,010	\$ 16,040.00
2.5	SUBGRADE PREPARATION, 12 IN.	SY	\$ 3.00	11,293	\$ 33,879.00
DIVISION 3 - TRENCH EXCAVATION AND BACKFILL					
3.1	TRENCH FOUNDATION	TON	\$ 55.00	250	\$ 13,750.00
DIVISION 4 - SEWERS AND DRAINS					
4.1	STORM SEWER, TRENCHED, RCP, CLASS III, 24 IN.	LF	\$ 80.00	28	\$ 2,240.00
4.2	STORM SEWER, TRENCHED, RCP, CLASS III, 30 IN.	LF	\$ 100.00	273	\$ 27,300.00
4.3	STORM SEWER, TRENCHED, RCP, CLASS III, 36 IN.	LF	\$ 120.00	413	\$ 49,560.00
4.4	STORM SEWER, TRENCHED, RCP, CLASS III, 48 IN.	LF	\$ 195.00	65	\$ 12,675.00
4.5	STORM SEWER, TRENCHED, RCP, CLASS V, 15 IN.	LF	\$ 65.00	1,298	\$ 84,370.00
4.6	STORM SEWER, TRENCHED, RCP, CLASS V, 18 IN.	LF	\$ 70.00	156	\$ 10,920.00
4.7	PIPE CULVERT, TRENCHED, RCP, CLASS V, 72 IN.	LF	\$ 675.00	1,277	\$ 861,975.00
4.8	PIPE APRON, CONCRETE, 24 IN.	EA	\$ 1,600.00	1	\$ 1,600.00
4.9	PIPE APRON, CONCRETE, 72 IN.	EA	\$ 8,500.00	6	\$ 51,000.00
4.10	PIPE BEND, STORM SEWER, TRENCHED, RCP, CLASS V, 15 IN.	EA	\$ 350.00	5	\$ 1,750.00
4.11	SUBDRAIN, PVC, CASE A, 6 IN.	LF	\$ 22.00	1,795	\$ 39,490.00
4.12	SUBDRAIN, PVC, BACKSLOPE, 6 IN.	LF	\$ 26.00	500	\$ 13,000.00
4.13	SUBDRAIN CLEANOUT, TYPE A-1	EA	\$ 750.00	3	\$ 2,250.00
4.14	SUBDRAIN, OUTLET, CMP	EA	\$ 250.00	4	\$ 1,000.00
4.15	SUBDRAIN CONNECTION TO STRUCTURE	EA	\$ 400.00	17	\$ 6,800.00
4.16	FIELD TILE REPAIR AND FITTINGS, PVC, UNSPECIFIED DIA.	LF	\$ 35.00	500	\$ 17,500.00
4.17	VIDEO INSPECTION OF STORM SEWER AND CULVERTS	LS	\$ 7,500.00	1	\$ 7,500.00
DIVISION 5 - WATER MAIN AND APPURTENANCES					
5.1	WATER MAIN, TRENCHED, PVC, DR18, 12 IN.	LF	\$ 115.00	1,146	\$ 131,790.00
5.2	WATER MAIN, TRENCHED, RESTRAINED JOINT, PVC, DR18, 8 IN.	LF	\$ 125.00	140	\$ 17,500.00
5.3	WATER MAIN, TRENCHED, RESTRAINED JOINT, PVC, DR18, 12 IN.	LF	\$ 145.00	70	\$ 10,150.00
5.4	WATER MAIN FITTINGS, DIP	LB	\$ 15.00	757	\$ 11,355.00
5.5	VALVE, GATE, 8 IN.	EA	\$ 5,500.00	1	\$ 5,500.00
5.6	VALVE, GATE, 12 IN.	EA	\$ 7,500.00	3	\$ 22,500.00
5.7	FIRE HYDRANT ASSEMBLY	EA	\$ 6,500.00	6	\$ 39,000.00
DIVISION 6 - STRUCTURES FOR SANITARY AND STORM SEWER					
6.1	MANHOLE, STORM SEWER, SW-401, 72 IN.	EA	\$ 11,000.00	1	\$ 11,000.00
6.2	MANHOLE, STORM SEWER, SW-403, 10'x10'	EA	\$ 35,000.00	1	\$ 35,000.00
6.3	MANHOLE, STORM SEWER, SW-405, 72 IN.	EA	\$ 30,000.00	2	\$ 60,000.00
6.4	INTAKE, SINGLE GRATE, SW-501	EA	\$ 3,500.00	3	\$ 10,500.00
6.5	INTAKE, SINGLE GRATE, SW-501 MOD 1	EA	\$ 4,500.00	1	\$ 4,500.00
6.6	INTAKE, SINGLE GRATE WITH MANHOLE, SW-503	EA	\$ 6,500.00	1	\$ 6,500.00
6.7	INTAKE, SINGLE GRATE WITH MANHOLE, SW-503 MOD 1	EA	\$ 8,500.00	2	\$ 17,000.00
6.8	INTAKE, DOUBLE GRATE, SW-505	EA	\$ 4,500.00	2	\$ 9,000.00
6.9	INTAKE, DOUBLE GRATE, SW-505 MOD 1	EA	\$ 5,500.00	4	\$ 22,000.00
6.10	INTAKE, DOUBLE GRATE WITH MANHOLE, SW-506	EA	\$ 9,500.00	3	\$ 28,500.00
6.11	INTAKE, DOUBLE GRATE WITH MANHOLE, SW-506 MOD 1	EA	\$ 11,000.00	1	\$ 11,000.00
6.12	INTAKE, DOUBLE GRATE WITH MANHOLE, SW-506 MOD 2	EA	\$ 11,000.00	2	\$ 22,000.00
6.13	MANHOLE ADJUSTMENT, MINOR, STORM	EA	\$ 1,500.00	1	\$ 1,500.00
6.14	MANHOLE ADJUSTMENT, MAJOR, SANITARY	EA	\$ 6,000.00	2	\$ 12,000.00
DIVISION 7 - STREETS AND RELATED WORK					
7.1	PAVEMENT, REINFORCED PCC, CLASS C, 8 IN.	SY	\$ 70.00	322	\$ 22,540.00
7.2	PAVEMENT, REINFORCED PCC, CLASS C-SUD, 10 IN.	SY	\$ 75.00	9,832	\$ 737,400.00
7.3	CONCRETE MEDIAN, DOWELED	SY	\$ 150.00	335	\$ 50,250.00
7.4	CONCRETE MEDIAN, DOWELED, COLORED & STAMPED	SY	\$ 250.00	80	\$ 20,000.00



ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST



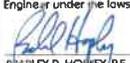
Stagecoach Drive

South Jordan Creek Parkway to South 78th Street
West Des Moines, Iowa

Sta. 344+00 to Sta. 370+32 - Approximate Length = 2,632 LF

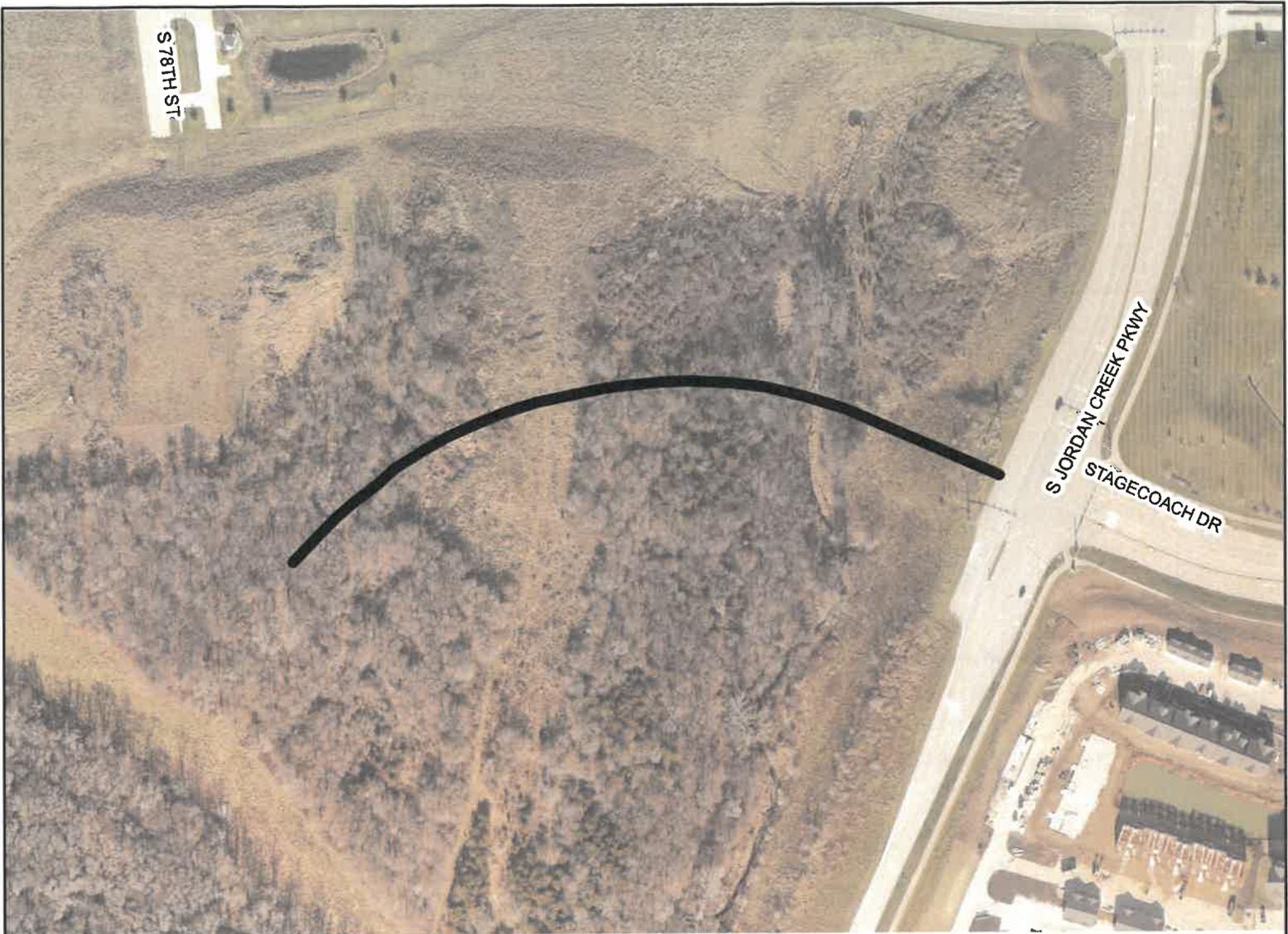
ITEM NO.	ITEM	UNIT	UNIT PRICE	ESTIMATED QUANTITY	EXTENDED PRICE
7.5	SHARED USE PATH, REINFORCED PCC, 6 IN.	SY	\$ 45.00	1,508	\$ 67,860.00
7.6	SIDEWALK, PCC, 6 IN.	SY	\$ 35.00	140	\$ 4,900.00
7.7	DETECTABLE WARNING	SF	\$ 85.00	128	\$ 10,880.00
7.8	DRIVEWAY, PAVED, PCC, 7 IN.	SY	\$ 50.00	820	\$ 41,000.00
7.9	CURB AND GUTTER REMOVAL	LF	\$ 20.00	180	\$ 3,600.00
DIVISION 8 - TRAFFIC CONTROL					
8.1	TRAFFIC SIGNAL MODIFICATION	LS	\$ 35,000.00	1	\$ 35,000.00
8.2	PAINTED PAVEMENT MARKINGS, SOLVENT/WATERBORNE	STA	\$ 100.00	43	\$ 4,291.00
8.3	PAINTED SYMBOLS AND LEGENDS	EA	\$ 200.00	24	\$ 4,800.00
8.5	TEMPORARY TRAFFIC CONTROL	LS	\$ 10,000.00	1	\$ 10,000.00
DIVISION 9 - SITE WORK AND LANDSCAPING					
9.1	HYDRAULIC SEEDING, FERTILIZING & MULCHING, TYPE 1 (PERM LAWN MIX)	AC	\$ 3,500.00	1.7	\$ 5,950.00
9.2	HYDRAULIC SEEDING, FERTILIZING & MULCHING, TYPE 2 (PERM COOL-SEASON MIX)	AC	\$ 3,000.00	19.3	\$ 57,900.00
9.3	HYDRAULIC SEEDING, FERT. & MULCH., TYPE 4 (URBAN TEMP EROS. CONTROL MIX)	AC	\$ 2,500.00	21.0	\$ 52,500.00
9.4	SWPPP PREPARATION & MANAGEMENT	LS	\$ 15,000.00	1	\$ 15,000.00
9.5	FILTER SOCKS, 12 IN.	LF	\$ 2.50	5,319	\$ 13,297.50
9.6	FILTER SOCKS, MAINTENANCE & REMOVAL	LF	\$ 0.50	4,681	\$ 2,340.50
9.7	CHECK DAMS, ROCK	TON	\$ 60.00	1.8	\$ 108.00
9.8	RIP RAP, CLASS E	TON	\$ 65.00	690.7	\$ 44,895.50
9.9	RIP RAP, EROSION STONE	TON	\$ 60.00	108.5	\$ 6,510.00
9.10	SILT FENCE OR SILT FENCE DITCH CHECK	LF	\$ 1.50	18,538	\$ 27,807.00
9.11	SILT FENCE OR SILT FENCE DITCH CHECK, REMOVAL OF SEDIMENT	LF	\$ 0.10	1,483	\$ 148.30
9.12	SILT FENCE OR SILT FENCE DITCH CHECK, REMOVAL OF DEVICE	LF	\$ 0.10	14,830	\$ 1,483.00
9.13	STABILIZED CONSTRUCTION ENTRANCE	TON	\$ 35.00	74	\$ 2,590.00
9.14	EROSION CONTROL MULCHING, CONVENTIONAL	AC	\$ 500.00	42.0	\$ 21,000.00
9.15	INLET PROTECTION DEVICE	EA	\$ 180.00	24	\$ 4,320.00
9.16	MEDIAN LIMESTONE FEATURE BLOCKS	LF	\$ 75.00	210	\$ 15,750.00
DIVISION 11 - MISCELLANEOUS					
11.1	CONSTRUCTION SURVEY	LS	\$ 20,000.00	1	\$ 20,000.00
11.2	CONCRETE WASHOUT	LS	\$ 5,000.00	1	\$ 5,000.00
DIVISION 12 - MISCELLANEOUS					
12.1	CITY-PROVIDED VAULT, INSTALL ONLY, LARGE ROUND (IAP)	EA	\$ 750.00	2	\$ 1,500.00
12.2	CONDUIT, FURNISH & INSTALL, SDR 13.5 HDPE, 1 IN. DIA., BLUE WITH BLACK STRIPE, DUCT BANK, DIRECTIONAL DRILLED	LF	\$ 2.50	2,810	\$ 7,025.00
12.3	CONDUIT PATHWAY, FURNISH & INSTALL, 7-WAY MULTI-DUCT, DUCT BANK, DIRECTIONAL DRILLED	LF	\$ 7.50	1,405	\$ 10,537.50
12.4	CONDUIT, FURNISH & INSTALL, SDR 13.5 HDPE, 1.5 IN. DIA., ORANGE, DUCT BANK, DIRECTIONAL DRILLED	LF	\$ 4.50	1,405	\$ 6,322.50
12.5	CONDUIT, FURNISH & INSTALL, SDR 13.5 HDPE, 1.5 IN. DIA., BLUE, DUCT BANK, DIRECTIONAL DRILLED	LF	\$ 4.50	1,405	\$ 6,322.50
12.6	TEST STATION, BELOW GRADE, FURNISH & INSTALL	EA	\$ 175.00	2	\$ 350.00
12.7	FIBER CONDUIT/STRUCTURES AS-BUILT DOCUMENTATION	LS	\$ 2,500.00	1	\$ 2,500.00
12.8	CONDUIT & TRACER WIRE ACCEPTANCE TESTING	LS	\$ 2,500.00	1	\$ 2,500.00
OPINION OF PROBABLE COSTS (2022)					\$ 5,032,244.30

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

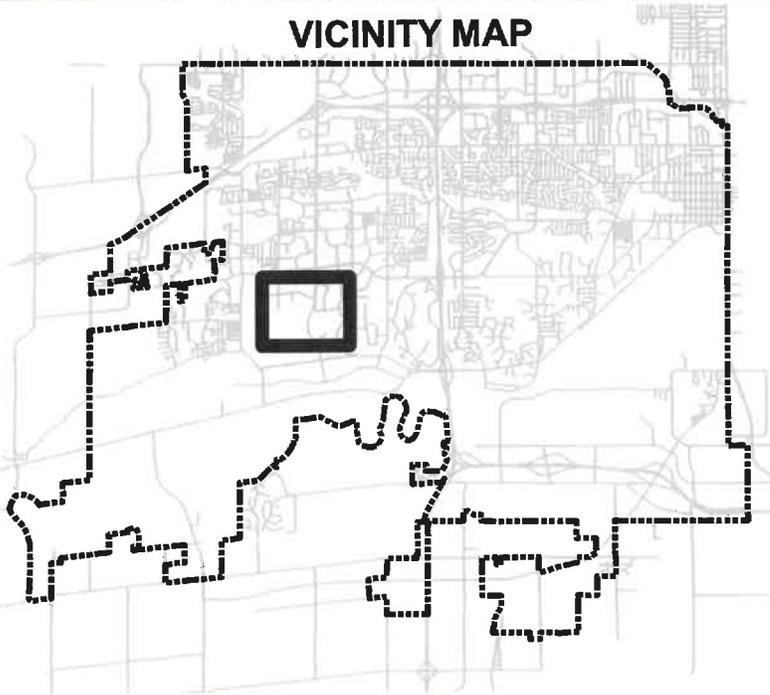
 1/11/2022
DATE

BRADLEY D. HOPKEY/P.E.
License Number: 16305
My license renewal date is DECEMBER 31, 2023
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VICINITY MAP



LEGEND

PROJECT LOCATION



PROJECT:

Stagecoach Drive

LOCATION:

South Jordan Creek Parkway to South 78th Street

DRAWN BY: JDR

DATE: 8/2/2021

PROJECT NUMBER/NAME: 0510-016-2021

SHT. 1 of 1

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

DATE: January 18, 2022

ITEM: Resolution - Order Construction and Notice of Public Hearing on Plans, Specifications, Form of Contract, Estimate of Cost, and Direct Advertisement of Bids – 2022 Playground Replacement Project, Peony, Scenic Valley, & Willow Springs Parks

FINANCIAL IMPACT: None at this time. The preliminary estimated cost for the project is \$1,125,000.00 which is over the current available budget of \$900,000. This higher estimate is in response to the current bidding climate with primary contributors being labor shortage and escalation in material and labor costs beginning in 2021. Expenses to be paid from G/L account 500.000.000.5250.490. Funding will be covered out of FY 21-22 CIP budget of \$900,000 for the Various Parks, Play Equipment Replacement (Project No. 0510 056 2021). An additional \$225,000 is requested in FY 22-23. By approving ordering construction, the Council will also be approving this new budget amount.

BACKGROUND: A Bid Letting should be scheduled for 2:00 p.m. on Wednesday, February 16, 2022, and a Public Hearing on the project scheduled for 5:35 p.m. on Monday, February 21, 2022. The contract would be awarded on Monday, February 21, 2022, and work would begin shortly in the spring. This project is scheduled to be completed in the fall of 2022.

The life cycle goal for play equipment located in the city’s system is 18-20 years, and the existing play equipment at these three parks is now 23 years old. This project will include the replacement of both 2-5 and 5-12 year-old play equipment at all three (3) park locations. Improvements to include demolition of existing equipment, wood mulch surfacing, and portions of pavement & curbing. Proposed improvements include grading, subdrain installation, concrete pavement, furnish & install new play equipment, poured-in-place safety surfacing and other associated work. In addition to a more accessible safety surfacing, the new playgrounds will include inclusive play features to allow for children of all abilities to play together.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the Council approve the Resolution.

Lead Staff Member: David Sadler, Superintendent of Parks 

STAFF REVIEWS

Department Director	Sally Orgies, Director of Parks & 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	N/A		
Date Reviewed			
Recommendation	Yes	No	Split

**Resolution Ordering Construction and
Notice of Public Hearing on Plans, Specifications,
Form of Contract, Estimate of Cost and
Directing Advertisement for Bids**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that the following described public improvement:

2022 Playground Replacement Project

is hereby ordered constructed according to the Plans and Specifications prepared by Studio Melee and now on file in the office of City Clerk.

BE IT FURTHER RESOLVED, that the detailed Plans and Specifications, Form of Contract, Bid Security and Notice to Bidders are hereby approved, subject to hearing thereon, and that the same are now on file in the office of City Clerk for public inspection.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish notice of hearing on the Plans and Specifications, Form of Contract, Bid Security and Estimate of Costs for said project to be held at 5:35 p.m. on **Monday, February 21, 2022** with said notice published not less than four (4) days nor more than twenty (20) days prior to the date heretofore fixed.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to publish Notice to Bidders for said project with publication not less than thirteen (13) days nor more than forty-five (45) days prior to the date for receiving bids. Said bids are to be filed prior to 2:00 o'clock p.m. on **Wednesday, February 16, 2022**.

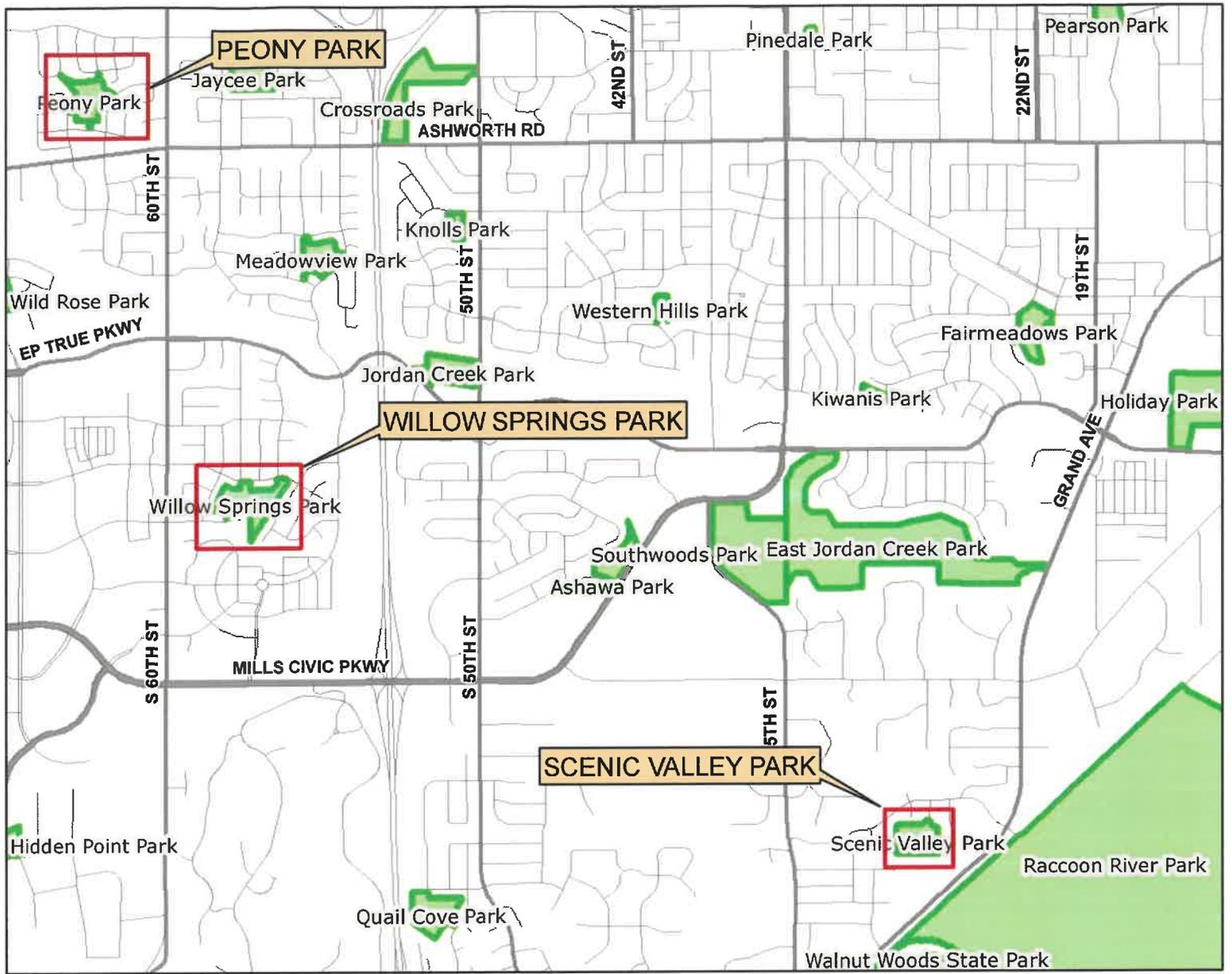
BE IT FURTHER RESOLVED, that bids received for construction of said improvements will be opened, publicly read and tabulated by the City Clerk, Deputy City Clerk, or City Clerk designee at 2:00 o'clock p.m. on **Wednesday, February 16, 2022** and the results of said bids shall be considered at a meeting of this Council on **Monday, February 21, 2022** at 5:35 p.m. and acted upon at said time, or such time as may then be fixed.

PASSED AND APPROVED this 18th day of **January, 2022**.

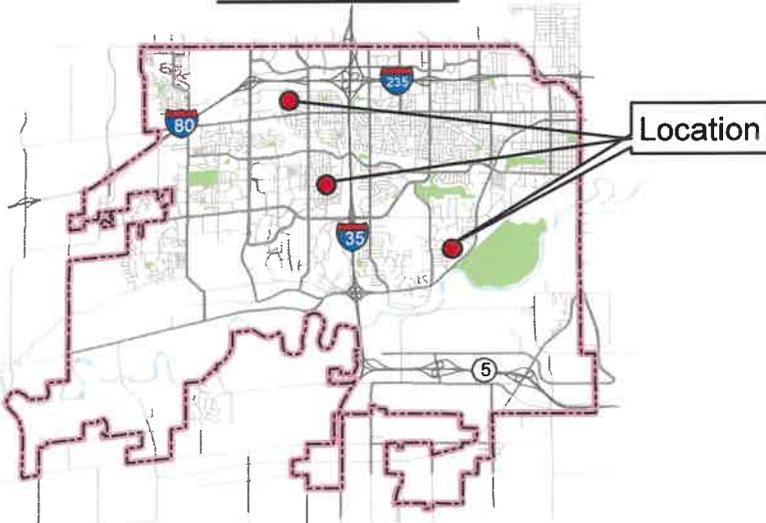
Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

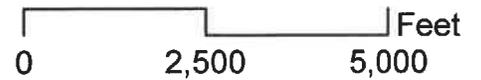


VICINITY MAP



LEGEND

-  Project Location
-  Park Boundary



PROJECT:	2022 PLAYGROUND REPLACEMENT PROJECT		
LOCATION:	PEONY PARK, WILLOW SPRINGS PARK AND SCENIC VALLEY PARK		
DRAWN BY:	MAA	DATE:	1/27/2021
PROJECT NO.:		SHT.	1 of 1

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

DATE: January 18, 2022

ITEM:

Resolution - Accepting Work
SE 1st Street & SE Willow Creek Drive Watermain

FINANCIAL IMPACT:

The total construction cost for the SE 1st Street & SE Willow Creek Drive Watermain was \$306,751.63 which was paid from account no. 500.000.000.5250.490 with ultimate funding intended to come from Alluvion Urban Renewal Area TIF. The original cost of the project was \$324,300.00. There was one (1) Change Order on the project that totaled (\$17,548.37).

BACKGROUND:

Vanderpool Construction, Inc. was working under an agreement dated September 21, 2020 for construction services for the SE 1st Street & SE Willow Creek Drive Watermain. Work on this project included installation of approximately 4,000 linear feet of new 12-inch watermain along SE Willow Creek Drive from SE Soteria Avenue to SE 1st Street and along SE 1st Street from SE Willow Creek Drive to future SE Salix Street to support the Allied Construction Services, Inc. development. The extension of this watermain was a requirement of the City's development agreement with Allied Construction Services, Inc., which was approved by Council on March 16, 2020.

West Des Moines Water Works (WDMWW) will take over ownership and maintenance of this watermain. The City will work with WDMWW to get any defects repaired during the 4-year period.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

This action accepts the public improvements and authorizes staff to pay the retainage no sooner than 30 days.

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Resolution Accepting Work for the SE 1st Street & SE Willow Creek Drive Watermain.

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
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

RESOLUTION ACCEPTING WORK

WHEREAS, on September 21, 2020, the City Council entered into a contract with Vanderpool Construction, Inc. of Indianola, Iowa, for the following described public improvement:

**SE 1st Street & SE Willow Creek Drive Watermain
Project No. 0510-057-2020**

and,

WHEREAS, said contractor has substantially completed the construction of said improvement in accordance with plans and specifications as shown by the report of the City Engineer filed with the City Clerk on January 18, 2022; and,

WHEREAS, the City has retained \$5,000.00 (1.63%) of the construction costs;

therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that said report of the City Engineer is hereby approved and said public improvement is accepted as having been substantially completed in accordance with plans and specifications and the total final construction cost of said improvement is \$306,751.63 as shown in said report, and that the Finance Director is hereby authorized to make payment to the Contractor in the amount of \$5,000.00, which includes retainage for the project, no sooner than 30 days subject to the Contractor satisfying all the conditions of the contract.

PASSED AND APPROVED on this **18th** day of **January, 2022**.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk



ENGINEERING SERVICES
 4200 Mills Civic Parkway, Suite 2E
 PO Box 65320
 West Des Moines, IA 50265-0320
 (515) 222-3475 Fax (515) 273-0602

PAY REQUEST

Contractor: **Vanderpool Construction, Inc.**
 1100 N 14th St.
 Indianola, Iowa 50125

Project Title	SE 1st Street and SE Willow Creek Drive Watermain	
WDM Project File Number	0510-057-2020	
Purchase Order Number	2021-0000252	
Orig. Contract Amount & Date	\$324,300.00	08/21/20
Estimated Completion Date	05/14/21	
Pay Period End Date	1/3/22	
Pay Request Number	Retainage	
Date	2/22/22 2/21/22	

BID ITEMS							
Item No.	Description	Unit	Est Qty	Unit Price	Extended Price	Quantity Completed	Value Completed
1	Construction Survey	LS	1.0	\$ 5,100.00	\$5,100.00	1.0	\$5,100.00
2	Traffic Control	LS	1.0	\$ 9,200.00	\$9,200.00	1.0	\$9,200.00
3	Portable Dynamic Message Board (CO #1)	DAY	10.0	\$ 105.00	\$1,050.00	18.0	\$1,890.00
4	Clearing and Grubbing	LS	1.0	\$ 9,182.90	\$9,182.90	1.0	\$9,182.90
5	Connection to Existing System	EA	1.0	\$ 1,600.00	\$1,600.00	1.0	\$1,600.00
6	Water Main, Trenched, PVC, 12" Unrestrained Joint	LF	3582.0	\$ 32.00	\$114,624.00	3,582.0	\$114,624.00
7	Water Main, Trenched, PVC, 12" Restrained Joint	LF	325.0	\$ 59.00	\$19,175.00	325.0	\$19,175.00
8	Water Main, Trenched, PVC, 8" Restrained Joint	LF	27.0	\$ 53.00	\$1,431.00	27.0	\$1,431.00
9	Fitting, 12" DI MJ 90 Degree Bend	EA	1.0	\$ 1,000.00	\$1,000.00	1.0	\$1,000.00
10	Fitting, 12" DI MJ 45 Degree Bend (CO #1)	EA	5.0	\$ 800.00	\$4,000.00	1.0	\$800.00
11	Fitting, 12" DI MJ 22.5 Degree Bend	EA	3.0	\$ 800.00	\$2,400.00	3.0	\$2,400.00
12	Fitting, 12" DI MJ 11.25 Degree Bend	EA	4.0	\$ 700.00	\$2,800.00	4.0	\$2,800.00
13	Fitting, 12"x12" DI MJ Tee	EA	1.0	\$ 1,300.00	\$1,300.00	1.0	\$1,300.00
14	Fitting, 12"x8" DI MJ Reducing Tee	EA	1.0	\$ 1,200.00	\$1,200.00	1.0	\$1,200.00
15	Fitting, 12" DI MJ Plug	EA	1.0	\$ 550.00	\$550.00	1.0	\$550.00
16	Fitting, 12" DI MJ Short Sleeve (CO #1)	EA	4.0	\$ 750.00	\$3,000.00	1.0	\$750.00
17	Fitting, 8" DI MJ Short Sleeve	EA	1.0	\$ 450.00	\$450.00	1.0	\$450.00
18	Valve, DIMJ Gate, Resilient Wedge with Valve Box, 12"	EA	7.0	\$ 2,600.00	\$18,200.00	7.0	\$18,200.00
19	Valve, DIMJ Gate, Resilient Wedge with Valve Box, 8"	EA	1.0	\$ 1,500.00	\$1,500.00	1.0	\$1,500.00
20	Fire Hydrant Assembly	EA	9.0	\$ 4,400.00	\$39,600.00	9.0	\$39,600.00
21	Fire Hydrant Assembly, 0.5' Extension	EA	2.0	\$ 5,300.00	\$10,600.00	2.0	\$10,600.00
22	Fire Hydrant Assembly, 1.0' Extension	EA	2.0	\$ 5,400.00	\$10,800.00	2.0	\$10,800.00
23	Fire Hydrant Assembly Removal and Reinstallation	EA	1.0	\$ 3,600.00	\$3,600.00	1.0	\$3,600.00
24	Pipe Culvert, Trenched, CMP, 12" (CO #1)	LF	80.0	\$ 45.00	\$3,600.00	80.0	\$3,600.00
25	Pipe Apron, CMP, 12" (CO #1)	EA	4.0	\$ 200.00	\$800.00	4.0	\$800.00
26	Remove and Replace Granular Drive Surfacing (CO #1)	SY	383.0	\$ 24.00	\$9,192.00	225.0	\$5,400.00
27	Granular Shoulder Resurfacing (CO #1)	TON	600.00	\$ 24.00	\$14,400.00	369.52	\$8,868.48
28	Reinforced Full Depth Pavement Patch, PCC (CO #1)	SY	105	\$ 110.00	\$11,550.00	54.0	\$5,940.00
29	Painted Pavement Markings, Solvent/Waterborne (CO #1)	STA	20	\$ 150.00	\$3,000.00	0.0	\$0.00
30	Hydraulic Seeding, Seeding, Fertilizing, Mulching (CO #1)	ACRE	1.70	\$ 4,000.00	\$6,800.00	2.06	\$8,240.00
31	Temporary Rolled Erosion Control Products (CO #1)	SY	850.0	\$ 2.40	\$2,040.00	0.0	\$0.00
32	Erosion Control Mulching (CO #1)	ACRE	1.7	\$ 1,700.00	\$2,890.00	2.063	\$3,507.10
33	SWPPP - Preparation	LS	1.0	\$ 800.00	\$800.00	1.0	\$800.00
34	SWPPP - Management	LS	1.0	\$ 2,400.00	\$2,400.00	1.0	\$2,400.00
35	Silt Fence or Silt Fence Ditch Check (CO #1)	LF	2803.0	\$ 1.60	\$4,484.80	1681.0	\$2,689.60
36	Silt Fence or Silt Fence Ditch Check, Removal of Sediment (CO #1)	LF	2803.0	\$ 0.05	\$140.15	0.0	\$0.00
37	Silt Fence or Silt Fence Ditch Check, Removal of Device (CO #1)	LF	2803.0	\$ 0.05	\$140.15	1681.0	\$84.05
38	Filter Sock (CO #1)	LF	400.0	\$ 3.75	\$1,500.00	340.0	\$1,275.00
39	Filter Sock, Removal of Device (CO #1)	LF	400.0	\$ 1.00	\$400.00	340.0	\$340.00
40	Overseeding						
	Tenacity Application (CO #1)	ACRE	1.7	\$ 350.00	\$595.00	1.7	\$595.00
	Drill Seed Rescue Plus @ 300 LB/ACRE (CO #1)	ACRE	1.7	\$ 1,650.00	\$2,805.00	1.7	\$2,805.00

Broadcast 24-25-4 Fertilizer @ 150 LB/ACRE (CO #1)	ACRE	1.7	\$ 350.00	\$595.00	1.7	\$595.00
Double Seed at Residential Property (CO #1)	LS	1.0	\$ 600.00	\$600.00	1.0	\$600.00
Prime Contractor Markup (10%) (CO #1)	LS	1.0	\$ 459.50	\$459.50	1.0	\$459.50
TOTAL				\$331,554.50		\$306,751.53

MATERIALS STORED SUMMARY			
Description	# of Units	Unit Price	Extended Cost
			\$0.00
			\$0.00
		TOTAL	\$0.00

PAY REQUEST SUMMARY		
	Total Approved	Total Completed
Contract Price	\$324,300.00	\$306,751.63
Approved Change Order 1	(\$17,548.37)	
Revised Contract Price	\$306,751.63	\$306,751.63
	Materials Stored	\$0.00
	Retainage (0%)	\$0.00
	Total Earned Less Retainage	\$306,751.63
Total Previously Approved (list each)	Pay Request 1	\$154,530.99
	Pay Request 2	\$120,203.10
	Pay Request 3	\$885.50
	Pay Request 4	\$1,167.36
	Pay Request 5	\$9,793.31
	Pay Request 6	\$10,083.17
	Pay Request 7	\$5,088.20
	Total Previously Approved	\$301,751.63
	Amount Due This Request	\$5,000.00
	Percent Complete	100%
	Percent of Contract Period Utilized	100%

The amount **\$5,000.00** is recommended for approval for payment in accordance with the terms of the Contract

Contractor:	Recommended By:	Checked By:
Vanderpool Construction, Inc.	HR Green, Inc.	City of West Des Moines
Signature: 	Signature: 	Signature: 
Name: Jamie Crubaugh	Name: Heath Picken	Name: Brian Hemesath
Title: Project Manager	Title: Project Manager	Title: City Engineer
Date: Jan 4, 2022	Date: Jan 3, 2022	Date: Jan 5, 2022

Signature: *Clint Carpenter*

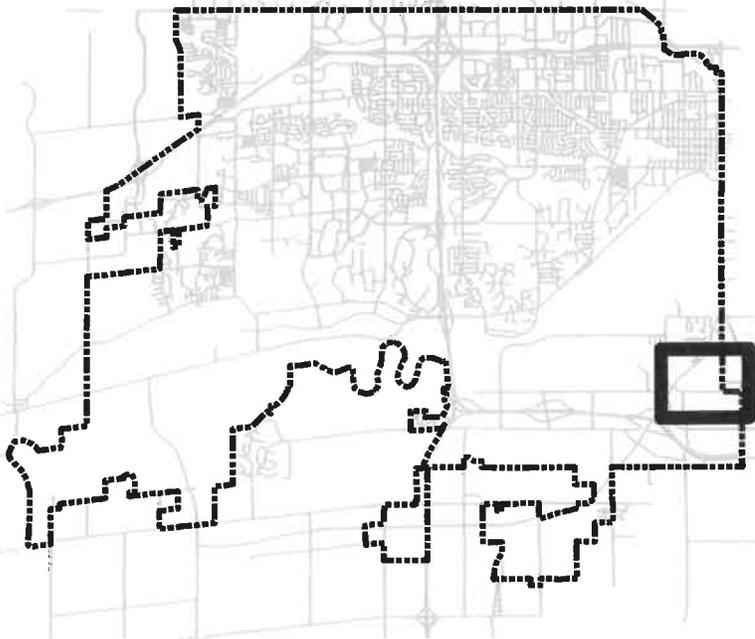
Email: Clint.Carpenter@wdm.iowa.gov

Signature: 
Jason Schlickbernd (Jan 5, 2022 09:03 CST)

Email: jason.schlickbernd@wdm.iowa.gov



VICINITY MAP



LEGEND

PROJECT LOCATION



PROJECT:

SE 1st Street & SE Willow Creek Drive Watermain

LOCATION:

SE 1st Street & SE Willow Creek Drive

DRAWN BY: JDR

DATE: 6/3/2020

PROJECT NUMBER/NAME: 0510-057-2020

SHT. 1 of 1

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

DATE: January 18, 2022

ITEM:

Resolution - Establishing Just Compensation and Approving the Acquisition of Property
South 51st Street - Mills Civic Parkway to Fieldstone Drive

FINANCIAL IMPACT:

None at this time.

BACKGROUND:

Pursuant to state law, the attached Resolution approves the acquisition of property at the fair market value to be established by compensation estimate and/or appraisal; approves hiring of an appraiser; and approves initiation and completion of condemnation proceedings, if necessary.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution Establishing Just Compensation and Approving the Acquisition of Property

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard J. Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

**RESOLUTION ESTABLISHING JUST COMPENSATION AND APPROVING
THE ACQUISITION OF PROPERTY**

WHEREAS, the City of West Des Moines has previously approved funding for the construction of the following Project,

**South 51st Street - Mills Civic Parkway to Fieldstone Drive
Project No. 0510-051-2021**

and

WHEREAS, it is necessary to acquire property and easements from private owners in these areas for the construction of improvements; and

WHEREAS, acquisition of property and easements by the City through purchase, condemnation or gift based upon fair market value of the property is necessary and appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. Pursuant to the property acquisition policy of the City of West Des Moines, acquisition of all property and easements necessary for the construction of the Project is hereby approved except for agricultural properties.
2. City staff is authorized to acquire appraisals or formulate compensation estimates establishing the fair market value of the property necessary for the Project except for agricultural properties.
3. City staff is further authorized to acquire the property and easements through voluntary acquisition or gift based upon the fair market value of each property as determined by the appraisal or compensation estimates, which upon the appraisals/estimates completion are hereby approved (copies of which shall be on file in the Office of the City Clerk) except for agricultural properties.
4. Upon the inability of the City to acquire the property voluntarily or by gift, condemnation of such property is hereby approved. The City Legal Department is authorized to initiate and complete condemnation proceedings except for agricultural properties.
5. Acquisition of property related to the Project shall be done in accordance with all local, state and federal laws and regulations.

PASSED AND ADOPTED on this **18th** day of **January, 2022**.

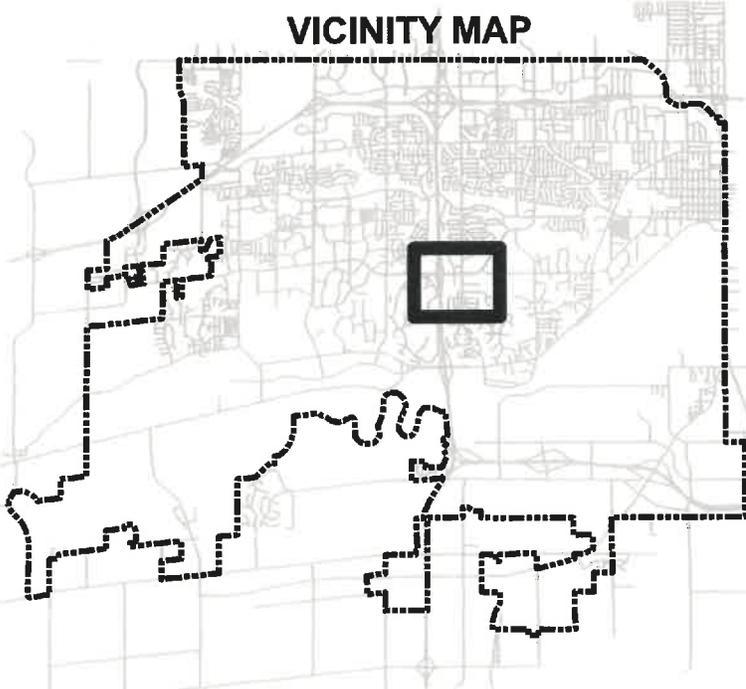
Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk



VICINITY MAP



LEGEND

PROJECT LOCATION



PROJECT:

South 51st Street

LOCATION:

Mills Civic Parkway to Fieldstone Drive

DRAWN BY: JPM

DATE: 1/11/2022

PROJECT NUMBER/NAME: 0510-051-2021

SHT. 1 of 1

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

DATE: January 18, 2022

ITEM:

Resolution - Establishing Just Compensation and Approving the Acquisition of Property
Stagecoach Drive – South Jordan Creek Parkway to South 78th Street

FINANCIAL IMPACT:

None at this time.

BACKGROUND:

Pursuant to state law, the attached Resolution approves the acquisition of property at the fair market value to be established by compensation estimate and/or appraisal; approves hiring of an appraiser; and approves initiation and completion of condemnation proceedings, if necessary.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution Establishing Just Compensation and Approving the Acquisition of Property

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard J. Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

**RESOLUTION ESTABLISHING JUST COMPENSATION AND APPROVING
THE ACQUISITION OF PROPERTY**

WHEREAS, the City of West Des Moines has previously approved funding for the construction of the following Project,

**Stagecoach Drive – South Jordan Creek Parkway to South 78th Street
Project No. 0510-016-2021**

and

WHEREAS, it is necessary to acquire property and easements from private owners in these areas for the construction of improvements; and

WHEREAS, acquisition of property and easements by the City through purchase, condemnation or gift based upon fair market value of the property is necessary and appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

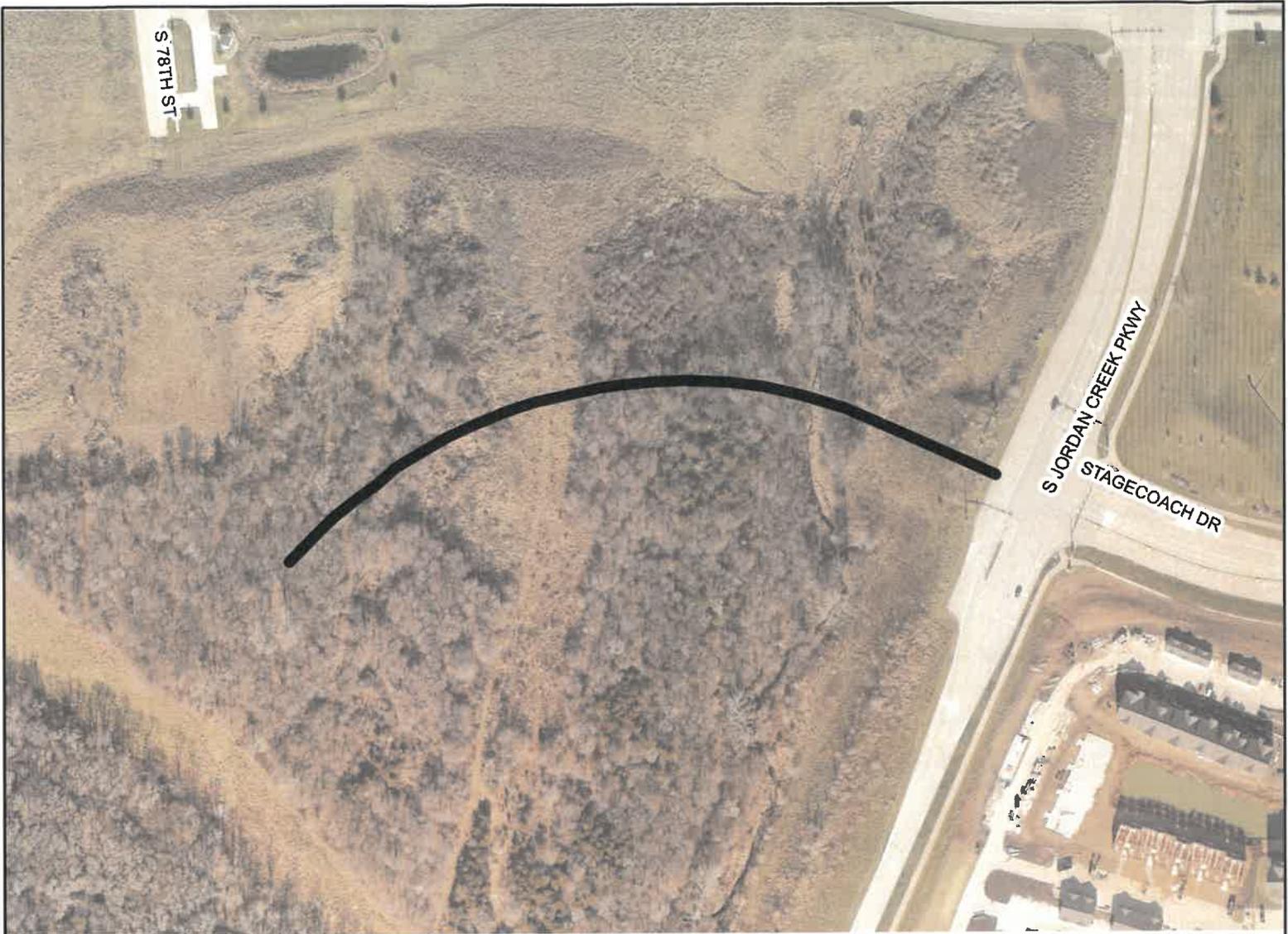
1. Pursuant to the property acquisition policy of the City of West Des Moines, acquisition of all property and easements necessary for the construction of the Project is hereby approved except for agricultural properties.
2. City staff is authorized to acquire appraisals or formulate compensation estimates establishing the fair market value of the property necessary for the Project except for agricultural properties.
3. City staff is further authorized to acquire the property and easements through voluntary acquisition or gift based upon the fair market value of each property as determined by the appraisal or compensation estimates, which upon the appraisals/estimates completion are hereby approved (copies of which shall be on file in the Office of the City Clerk) except for agricultural properties.
4. Upon the inability of the City to acquire the property voluntarily or by gift, condemnation of such property is hereby approved. The City Legal Department is authorized to initiate and complete condemnation proceedings except for agricultural properties.
5. Acquisition of property related to the Project shall be done in accordance with all local, state and federal laws and regulations.

PASSED AND ADOPTED on this **18th** day of **January, 2022**.

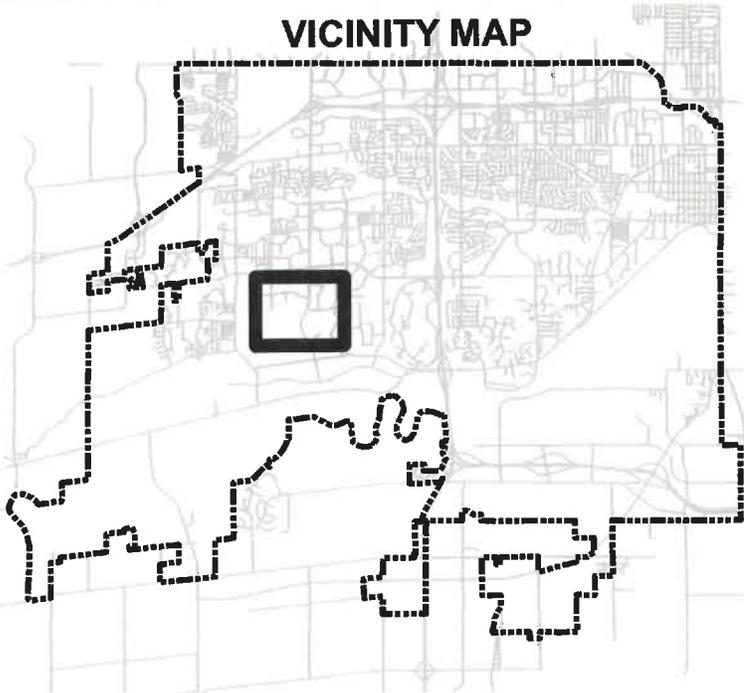
Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk



VICINITY MAP



LEGEND

PROJECT LOCATION



PROJECT:

Stagecoach Drive

LOCATION:

South Jordan Creek Parkway to South 78th Street

DRAWN BY: JDR

DATE: 8/2/2021

PROJECT NUMBER/NAME: 0510-016-2021

SHT. 1 of 1

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

ITEM: Setting Date of Consultation Meeting and Public Hearing **DATE:** January 18, 2022
for Consideration of Establishing the South 81st Street Urban Renewal
Plan – City Initiated

RESOLUTION: Establish Consultation Meeting date and Public Hearing date for establishment of the South 81st Street Urban Renewal Plan

FINANCIAL IMPACT: The City is considering entering into an Infrastructure Development Agreement with Silo 9 Plat 1, LLC whereby the City will be providing an economic development grant for reimbursement of the cost of construction of Stagecoach Drive through their development under the City’s Property Tax Rebate Program. The anticipated reimbursement would be for actual agreed upon expenses not to exceed \$5,000,000.

In addition, the City anticipates expending an additional \$14,200,000 for the construction of various public improvements within the Urban Renewal Plan area.

BACKGROUND: Staff has been approached by several different residential developers about the use of Tax Increment Financing (TIF) to construct various street improvements within the area generally between South 81st Street and South 88th Street, and between just south of Cascade Drive and Booneville Road.

Because the area is going to be developed as predominately a residential area, the City would not be able to create an Economic Development-Urban Renewal Area since much of the area and projects would benefit residential development. Instead, we would have to create the Urban Renewal Area (URA) as a Housing URA.

State law limits the length of TIF District formed under this section of the code to 10 years in length as opposed to an Economic Development created TIF’s which can run for 20-years. Because it would be a Housing TIF, 26.22% of the tax increment would need to go toward affordable housing within the community.

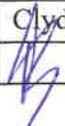
The only other currently operating Housing TIF District is the Woodland Hills TIF District. As required by law, the City will facilitate a consultation meeting with taxing entities regarding this proposed urban renewal plan on January 26, 2022.

OUTSTANDING ISSUES: There are no outstanding issues regarding this proposed amendment.

RECOMMENDATION: Staff recommends that the City Council approve a resolution setting January 26, 2022, as the consultation meeting date and February 21, 2022, as the public hearing date for adoption of South 81st Street Urban Renewal Plan

Lead Staff Member: Clyde E. Evans, AICP

STAFF REVIEWS

Department Director	Clyde E. Evans, Director, Community and Economic Development
Appropriations/Finance	

Legal	
Agenda Acceptance	<i>AP</i>

PUBLICATION(S) (if applicable)

Published In	N/A
Dates(s) Published	N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	F&A	
Date Reviewed	September 22, 2021	
Recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

ATTACHMENTS:

- Exhibit I** Proposed South 81st Street Urban Renewal Plan
- Exhibit II** Resolution
- Exhibit III** Map

**SOUTH 81st STREET URBAN
RENEWAL PLAN**

for the

**SOUTH 81st STREET URBAN
RENEWAL AREA**

CITY OF WEST DES MOINES, IOWA

_____ **2022**

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- A. INTRODUCTION
- B. DESCRIPTION OF THE URBAN RENEWAL AREA
- C. AREA DESIGNATION
- D. BASE VALUE
- E. DEVELOPMENT PLAN
- F. RESIDENTIAL DEVELOPMENT
- G. PLAN OBJECTIVES
- H. TYPES OF RENEWAL ACTIVITIES
- I. ELIGIBLE URBAN RENEWAL PROJECTS
- J. FINANCIAL DATA
- K. URBAN RENEWAL FINANCING
- L. PROPERTY ACQUISITION/DISPOSITION
- M. RELOCATION
- N. PROPERTY WITHIN URBAN REVITALIZATION AREA
- O. AGRICULTURAL LAND
- P. STATE AND LOCAL REQUIREMENTS
- Q. URBAN RENEWAL PLAN AMENDMENTS
- R. EFFECTIVE PERIOD
- S. REPEALER AND SEVERABILITY CLAUSE

EXHIBITS

- A. LEGAL DESCRIPTION OF SOUTH 81st STREET URBAN RENEWAL AREA
- B. MAP OF SOUTH 81st STREET URBAN RENEWAL AREA
- C. AGREEMENTS TO INCLUDE AGRICULTURAL LAND IN SOUTH 81st STREET URBAN RENEWAL AREA

**South 81st Street Urban Renewal Plan
for the
South 81st Street Urban Renewal Area**

(f/k/a South Jordan Creek Parkway Urban Renewal Area)

City of West Des Moines, Iowa

A. INTRODUCTION

This South 81st Street Urban Renewal Plan (“Plan” or “Urban Renewal Plan”) for the South 81st Street Urban Renewal Area (“Area” or “Urban Renewal Area”) has been developed to help local officials promote economic development in the City of West Des Moines, Iowa (“City”). The primary goal of the Plan is to stimulate, through public involvement and commitment, private investment in new housing and residential development as defined in Iowa Code Section 403.17(12).

In order to achieve this objective, the City intends to undertake urban renewal activities pursuant to the powers granted to it under Chapter 403 and Chapter 15A of the *Code of Iowa*, as amended.

B. DESCRIPTION OF THE URBAN RENEWAL AREA

The Urban Renewal Area is described in Exhibit “A” and illustrated in Exhibit “B.” The property included in the Urban Renewal Area has never previously been subject to the division of revenue under Iowa Code Section 403.19 as part of a residential project.

C. AREA DESIGNATION

With the adoption of this Plan, the City will designate this Urban Renewal Area as an economic development area that is appropriate for housing and residential development for low and moderate income families and the provision of public improvements related to housing and residential development.

D. BASE VALUE

If the Urban Renewal Area is legally established, a Tax Increment Financing (TIF) ordinance is adopted to establish a TIF district in the Area, and debt related to the Area is certified prior to December 1, 2022, the taxable valuation as of January 1, 2021, will be considered the frozen “base valuation” for the portion of the Urban Renewal Area identified in the TIF ordinance. If a TIF ordinance is not adopted until a later date, or debt is not first certified prior to December 1, 2022, then the frozen “base value” will be the assessed value of the taxable property within that area covered by the TIF ordinance as of January 1 of the calendar year preceding the calendar year in which the City first certifies the amount of any debt related to the Area, in accordance with Iowa Code Section 403.19. It may be that more than one ordinance will be adopted on separate subareas within the Area. If so, the frozen base values may vary among the subareas.

E. DEVELOPMENT PLAN

West Des Moines has a general plan for the physical development of the City as a whole outlined in the West Des Moines Comprehensive Plan, adopted September 20, 2010. The goals and objectives of this Urban Renewal Plan, including the urban renewal projects, are in conformity with the City's Comprehensive Plan.

This Urban Renewal Plan does not in any way replace or modify the City's current land use planning or zoning regulation process.

The need for improved traffic, public transportation, public utilities, recreational and community facilities, or other public improvements within the Urban Renewal Area is set forth in this Plan. As the Area develops, the need for public infrastructure extensions and upgrades will be evaluated and planned for by the City.

F. RESIDENTIAL DEVELOPMENT

The City's objective for the Urban Renewal Area is to promote new housing and residential development. The City realizes that the availability of housing is an important component of attracting new business and industry, responding to new development, and retaining existing businesses.

In anticipation of expected economic development, the City has taken the position of supporting the creation of new housing opportunities, including increasing the availability of diverse housing options. Providing incentives to developers may ease the cost of extending necessary infrastructure and other factors that can make residential development more risky and less profitable.

When a City utilizes tax increment financing to support residential development, a percentage of the incremental revenues (or other revenues) generated by the project (not to exceed the project costs which are limited to reimbursement of "public improvement" costs as defined by Iowa law) must be used to provide assistance to LMI families. LMI families are those whose incomes do not exceed 80% of the median county income in the county in which the project occurs.

Unless a reduction is approved by the Iowa Economic Development Authority, the percentage of incremental revenues used to provide LMI assistance related to projects in this Urban Renewal Area must be at least equal to the percentage of LMI families living in Dallas County. That percentage is currently 26.22%.

The requirement to provide assistance for LMI housing may be met by one, or a combination, of the following options:

1. Providing that at least 26.22% of the units constructed in the Urban Renewal Area are occupied by residents and/or families whose incomes are at or below 80% of the median county income;

2. Setting aside an amount equal to 26.22% of the project costs for LMI housing activities anywhere in the City; and
3. Ensuring that 26.22% of the houses constructed within the Area are priced at amounts affordable to LMI families.

If funds are set aside, as opposed to constructing a sufficient percentage of LMI housing in the Area, the assistance for low- and moderate-income family housing may be provided anywhere within the City. The type of assistance provided must benefit LMI residents and/or families and may include, but is not limited to:

1. Construction of LMI affordable housing.
2. Owner/renter-occupied housing rehabilitation for LMI residents and/or families.
3. Grants, credits, or other direct assistance for LMI residents and/or families.
4. Homeownership assistance for LMI residents and/or families.
5. Tenant-based rental assistance for LMI residents and/or families.
6. Down payment assistance for LMI residents and/or families.
7. Mortgage interest buy-down assistance for LMI residents and/or families.
8. Under appropriate circumstances, the construction of public improvements that benefit LMI residents and/or families.

G. PLAN OBJECTIVES

Renewal activities are designed to provide opportunities, incentives, and sites for new residential development within the Urban Renewal Area. More specific objectives for the development, redevelopment and rehabilitation within the Urban Renewal Area are as follows:

1. To increase the availability of new housing opportunities, which may in turn make existing housing stock available to new or current residents of the City and stimulate commercial development.
2. To stimulate, through public action and commitment, private investment in new housing and residential development.
3. To plan for and provide sufficient land for residential development in a manner that is efficient from the standpoint of providing municipal services.
4. To help finance the cost of constructing street, water, sanitary sewer, storm water drainage, public utilities, street lighting, and other public improvements in support of new housing development.

5. To provide a more marketable and attractive investment climate.
6. To improve the housing conditions and housing opportunities, particularly for LMI income families and/or individuals.
7. To achieve a diversified, well-balanced economy providing a desirable standard of living, creating job opportunities, and strengthening the tax base.

H. TYPES OF RENEWAL ACTIVITIES

To meet the objectives of this Urban Renewal Plan and to encourage the development of the Area, the City intends to utilize the powers conferred under Chapter 403 and Chapter 15A, *Code of Iowa* including, but not limited to, tax increment financing. Activities may include:

1. To undertake and carry out urban renewal projects through the execution of contracts and other instruments.
2. To arrange for or cause to be provided the construction or repair of public infrastructure including but not limited to streets, curbs and gutters, water infrastructure, sanitary sewer infrastructure, public utilities, or other facilities in connection with urban renewal projects.
3. To finance programs that will directly benefit housing conditions and promote the availability of housing in the community.
4. To make loans, forgivable loans, grants, tax rebate payments, or other types of economic development grants or incentives to private developers or local development organizations to incentivize the development of housing within the Area, on such terms as may be determined by the City Council.
5. To borrow money and to provide security therefor.
6. To acquire or dispose of property.
7. To provide for the construction of specific site improvements such as grading and site preparation activities, access roads and parking, fencing, utility connections, and related activities.
8. To acquire property through a variety of means (purchase, lease, option, etc.) and to hold, clear, or prepare the property for redevelopment.
9. To undertake the demolition and clearance of existing development.
10. To make or have made surveys and plans necessary for the implementation of the Urban Renewal Plan or specific urban renewal projects.

11. To use tax increment financing for a number of objectives, including, but not limited to, achieving a more marketable and competitive land offering price and providing for necessary physical improvements and infrastructure.
12. To use tax increment to provide LMI housing assistance.
13. To use any or all other powers granted by the Urban Renewal Act to develop and provide for improved economic conditions for the City.

Nothing herein shall be construed as a limitation on the power of the City to exercise any lawful power granted to the City under Chapter 15, Chapter 15A, Chapter 403, Chapter 427B, or any other provision of the *Code of Iowa* in furtherance of the objectives of this Urban Renewal Plan.

I. ELIGIBLE URBAN RENEWAL PROJECTS

Although certain project activities may occur over a period of years, the Eligible Urban Renewal Projects under this Urban Renewal Plan include:

1. Public Improvements: The City anticipates completing the following public improvements within the Urban Renewal Area to support residential development within the Area. In particular, the following improvements would provide the necessary infrastructure to accommodate increased traffic and utility demands from new residential development.

Project Description	Estimated Project Timeframe	Estimated Cost to be Paid with Tax Increment
Stagecoach Dr - S 81st St.to S 88th St. Construction of 3-lane urban street including center left-turn lane, multi-use trail, storm sewer, conduit, and streetlights.	2022-2025	\$10,000,000
Stagecoach Dr - S 81st St. to S 88th St. Widening from 3-lane urban street to 5-lane urban street.	2035	\$3,500,000
Traffic signal at intersection of S 81st St & Stagecoach Dr	2040	\$350,000
Traffic signal at intersection of S 85th St & Stagecoach Dr	2040	\$350,000
Traffic signal at intersection of S 78th St/West Athene & Cascade	2040	\$350,000
Traffic signal at intersection of S 81st St & Cascade Ave	2040	\$350,000
Traffic signal at intersection of S 85th St & Cascade Ave	2040	\$350,000
	Total	\$14,200,000

2. Parks and Recreation Public Improvements: The City anticipates completing the following public improvements within the Urban Renewal Area to support residential development within the Area. In particular, the following improvements would increase the availability of recreational amenities within the Area in correlation with the increased residential population expected in the Area from new housing and residential development. Development of parks and greenspaces improve quality of life of the area, enhance property values, and attract and retain a knowledge workforce. Multi-use trails also enhance the multi-modal transportation network and pedestrian connectivity which helps alleviate traffic congestion on street network.

Project Description	Estimated Project Timeframe	Estimated Cost to be Paid with Tax Increment
Neighborhood Park - Construction of neighborhood park. Amenities include playground equipment, restroom building, shelter building, parking lot, backstop, athletic courts, site furniture, and other associated amenities.	2022-2026	\$2,000,000
Booneville Road - S 81st Street to S 88th Street. Construction of approximately .80 miles of paved multi-use trail and related activities including utilities, grading, paving, curb ramps, site restoration and associated trail amenities.	2022-2026	\$450,000
S 81st Street - Approximately 850 LF south of Cascade Ave to Booneville Rd. Construction of approximately .80 miles of paved multi-use trail and related activities including utilities, grading, paving, curb ramps, site restoration and associated trail amenities.	2022-2026	\$900,000
	Total:	\$3,350,000

3. Development Agreements:

A. *Development Agreement with Silo 9 Plat 1, LLC (or a related entity):* The proposed urban renewal project anticipates the City entering into a development agreement with Silo 9 Plat 1, LLC (or a related entity) related to residential development within the Urban Renewal Area and the construction of Stagecoach Drive from South 81st Street to South 85th Street in support of the residential development. The anticipated residential development is expected to have a taxable value of \$175,670,000 upon full build-out in September of 2023. Construction of Stagecoach Drive is expected to be substantially completed by September 1, 2023. The City expects to make annual grants to Silo 9 Plat 1, LLC in the form of rebates of incremental taxes generated by the project, over period of not to exceed ten (10) years. The cost of such grants shall not exceed the lesser of \$5,000,000 or the developer’s actual costs related to construction of Stagecoach Drive, and will be subject to the terms and conditions of a detailed development agreement.

B. *Future Development Agreements*: The City expects to consider requests for development agreements for projects that are consistent with this Plan, as amended, in the County’s sole discretion. Such agreements are unknown at this time, but based on past history, and dependent on development opportunities and climate, the County expects to consider a broad range of incentives as authorized by this Plan, as amended, including, but not limited to, land, loans, grants, tax increment rebates, public infrastructure assistance, and other incentives. The costs of such development agreements will not exceed \$10,000,000.

4. Planning, engineering fees (for urban renewal plans), attorney fees, other related costs to support urban renewal projects and planning:

Project	Date	Estimated cost
Fees and costs	Undetermined	Not to exceed \$50,000

J. FINANCIAL DATA

1.	July 1, 2021 Constitutional Debt Limit	\$468,115,757
2.	Current outstanding general obligation debt	\$255,871,703
3.	Proposed amount of indebtedness to be incurred: A specific amount of debt to be incurred for the Eligible Urban Renewal Projects has not yet been determined. This document is for planning purposes only. The estimated project costs in this Plan are estimates only and will be incurred and spent over a number of years. In no event will the City’s constitutional debt limit be exceeded. The City Council will consider each project proposal on a case-by-case basis to determine if it is in the City’s best interest to participate before approving an urban renewal project or expense. It is further expected that such indebtedness, including interest on the same, may be financed in whole or in part with tax increment revenues from the Urban Renewal Area. Subject to the foregoing, it is estimated that the cost of the Eligible Urban Renewal Projects as described above will be approximately as stated in the next column:	\$32,600,000 plus any LMI set aside. (This amount does not include costs related to financing.)

K. URBAN RENEWAL FINANCING

The City intends to utilize various financing tools such as those described below to successfully undertake the proposed urban renewal actions. The City has the statutory authority to use a variety of tools to finance physical improvements within the Area. These include:

A. Tax Increment Financing.

Under Section 403.19 of the *Code of Iowa*, urban renewal areas may utilize the tax increment financing mechanism to finance the costs of public improvements, economic development incentives, or other urban renewal projects. Upon creation of a tax increment district within the Area, by ordinance, the assessment base is frozen and the

amount of tax revenue available from taxes paid on the difference between the frozen base and the increased value, if any, is segregated into a separate fund for the use by the City to pay costs of the eligible urban renewal projects. Certain increased taxes generated by any new development, above the base value, are distributed to the taxing entities, if not requested by the City, and in any event upon the expiration of the tax increment district.

B. General Obligation Bonds.

Under Division III of Chapter 384 and Chapter 403 of the *Code of Iowa*, the City has the authority to issue and sell general obligation bonds for specified essential and general corporate purposes, including the acquisition and construction of certain public improvements within the Area and for other urban renewal projects or incentives for development consistent with this Plan. Such bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the City. It may be, the City will elect to abate some or all of the debt service on these bonds with incremental taxes from this Area.

The City may also determine to use tax increment financing to provide incentives such as cash grants, loans, tax rebates, or other incentives to developers or private entities in connection with the urban renewal projects identified in this Plan. In addition, the City may determine to issue general obligation bonds, tax increment revenue bonds or such other obligations, or loan agreements for the purpose of making loans or grants of public funds to private businesses located in the Area for urban renewal projects. Alternatively, the City may determine to use available funds for making such loans or grants or other incentives related to urban renewal projects. In any event, the City may determine to use tax increment financing to reimburse the City for any obligations or advances.

Nothing herein shall be construed as a limitation on the power of the City to exercise any lawful power granted to the City under Chapter 15, Chapter 15A, Chapter 403, Chapter 427B, or any other provision of the *Code of Iowa* in furtherance of the objectives of this Urban Renewal Plan.

L. PROPERTY ACQUISITION/DISPOSITION

The City will follow any applicable requirements for the acquisition and disposition of property within the Urban Renewal Area.

M. RELOCATION

The City does not expect there to be any relocation required as part of the eligible urban renewal projects; however, if any relocation is necessary, the City will follow all applicable relocation requirements.

N. PROPERTY WITHIN URBAN REVITALIZATION AREA

The Urban Renewal Area may at some future date be located within an urban revitalization area. No tax abatement incentives in connection with the urban revitalization area will be allowed for

development that occurs in the Urban Renewal Area unless specifically authorized by the City Council.

O. AGRICULTURAL LAND

Because the Urban Renewal Area contains land that is defined as “agricultural land” by Iowa Code Section 403.17(3), the City has requested consent from the owners of the agricultural land proposed to be included in the Urban Renewal Area to the City’s inclusion of their real property meeting the definition of as “agricultural land” in the Urban Renewal Area. Copies of the agreements are attached hereto, as Exhibit “C.” The original signed agreements are on file at the City Clerk’s office. *(Note, the Urban Renewal Area was originally going to be known as the South Jordan Creek Parkway Urban Renewal Area, which is the name referenced in the consent documents).*

P. STATE AND LOCAL REQUIREMENTS

All provisions necessary to conform to state and local laws will be complied with by the City in implementing this Urban Renewal Plan and its supporting documents.

Q. URBAN RENEWAL PLAN AMENDMENTS

This Urban Renewal Plan may be amended from time to time for a variety of reasons, including but not limited to, a change in the area, to add or change land use controls and regulations, to modify goals or types of renewal activities, to add or change urban renewal projects, or to amend property acquisition and disposition provisions. The City Council may amend this Plan in accordance with applicable state law.

R. EFFECTIVE PERIOD

This Urban Renewal Plan will become effective upon its adoption by the City Council and will remain in effect as a Plan until it is repealed by the City Council.

With respect to property included within the Urban Renewal Area, which is also included in an ordinance which designates that property as a tax increment district (TIF district) and is designated based on an economic development finding, to provide or to assist in the provision of public improvements related to housing and residential development, the use of incremental property tax revenues or the “division of revenue,” as those words are used in Chapter 403 of the *Code of Iowa*, is limited to ten (10) years beginning with the second fiscal year following the year in which the City first certifies to the County Auditor the amount of any loans, advances, indebtedness, or bonds which qualify for payment from the incremental property tax revenues attributable to that property within the Urban Renewal Area. It may be that more than one ordinance will be adopted on separate subareas within the Area. If so, the expiration date for the division of revenue may vary among the subareas.

At all times, the use of tax increment financing revenues (including the amount of loans, advances, indebtedness, or bonds which qualify for payment from the division of revenue provided in Section 403.19 of the *Code of Iowa*) by the City for activities carried out under the Urban Renewal Area shall be limited as deemed appropriate by the City Council and consistent with all applicable provisions of law.

S. REPEALER AND SEVERABILITY CLAUSE

If any part of the Plan is determined to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the Plan as a whole, or any part of the Plan not determined to be invalid or unconstitutional.

EXHIBIT A
LEGAL DESCRIPTION OF SOUTH 81ST STREET
URBAN RENEWAL AREA

BEGINNING AT THE CENTER OF SECTION 23, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH P.M., DALLAS COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 23 TO THE NORTHWEST CORNER OF THE EAST 163.62 FEET OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23;

THENCE SOUTH, ALONG THE WEST LINE OF SAID EAST 163.62 FEET OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23 EXTENDED SOUTH TO THE INTERSECTION OF SAID WEST LINE AND THE SOUTH RIGHT-OF-WAY LINE OF BOONEVILLE ROAD;

THENCE WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE EAST RIGHT-OF-WAY LINE OF SOUTH 88TH STREET;

THENCE NORTH, ALONG SAID EAST RIGHT-OF-WAY LINE TO THE EAST LINE OF PARCEL 5 OF PARCEL 'A' AS SHOWN ON THE WARRANTY DEED RECORDED IN BOOK 2016 ON PAGE 8822 IN THE DALLAS COUNTY RECORDER'S OFFICE;

THENCE SOUTH, ALONG SAID EAST LINE TO THE SOUTH CORNER THEREOF;

THENCE NORTHWEST, ALONG THE WESTERLY LINE OF SAID PARCEL 5 TO THE NORTHWEST CORNER THEREOF;

THENCE EAST, ALONG THE NORTH LINE OF SAID PARCEL 5 TO SAID EAST RIGHT-OF-WAY LINE OF SOUTH 88TH STREET;

THENCE NORTH, ALONG SAID EAST RIGHT-OF-WAY LINE TO THE NORTHWEST CORNER OF LOT 7 IN SUNSET RIDGE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID LOT 7 TO THE NORTHEAST CORNER THEREOF, SAID POINT BEING ON THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14;

THENCE SOUTH, ALONG SAID EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14 TO THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 23;

THENCE EAST, ALONG THE NORTH LINE OF SAID NORTHEAST 1/4 OF THE NORTHWEST 1/4 TO THE NORTH 1/4 CORNER OF SAID SECTION 23;

THENCE SOUTH, ALONG THE EAST LINE OF SAID NORTHWEST 1/4 OF SECTION 23 TO THE POINT OF BEGINNING.

**EXHIBIT B
MAP OF SOUTH JORDAN CREEK PARWAKY
URBAN RENEWAL AREA**



EXHIBIT C

**AGREEMENT TO INCLUDE AGRICULTURAL LAND
IN THE SOUTH JORDAN CREEK PARKWAY URBAN RENEWAL AREA**

WHEREAS, the City Council of the City of West Des Moines, Iowa (the "City") has proposed to adopt an Urban Renewal Plan for the South Jordan Creek Parkway (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa in order to undertake activities authorized by that Chapter, including but not limited to the use of tax increment financing as provided in Section 403.19 of the Code of Iowa; and

WHEREAS, it has been proposed that the Urban Renewal Area include certain real property which is described on Exhibit A (the "Property") to the Urban Renewal Area and known as Dallas County Assessor Parcel: 1623400001 and 1623300006; and

WHEREAS, the Property is owned by DB Booneville, LLC (the "Undersigned"); and

WHEREAS, Section 403.17 of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," unless the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that the portion of the Property owned by the Undersigned meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Undersigned as follows:

The Undersigned hereby certifies that it is the owner of a portion of the Property described on Exhibit A hereto.

The Undersigned hereby agrees that the City may include all of the Property owned by the Undersigned in the Urban Renewal Area.

DATED this 7 day of October, 2021

DB Booneville, LLC

By: 

Title: Managing Member

**AGREEMENT TO INCLUDE AGRICULTURAL LAND
IN THE SOUTH JORDAN CREEK PARKWAY URBAN RENEWAL AREA**

WHEREAS, the City Council of the City of West Des Moines, Iowa (the "City") has proposed to adopt an Urban Renewal Plan for the South Jordan Creek Parkway (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa in order to undertake activities authorized by that Chapter, including but not limited to the use of tax increment financing as provided in Section 403.19 of the Code of Iowa; and

WHEREAS, it has been proposed that the Urban Renewal Area include certain real property which is described on Exhibit A (the "Property") to the Urban Renewal Area and known as Dallas County Assessor Parcel: 1623100015; and

WHEREAS, the Property is owned by James C. Miller (the "Undersigned"); and

WHEREAS, Section 403.17 of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," unless the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that the portion of the Property owned by the Undersigned meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Undersigned as follows:

1. The Undersigned hereby certifies that it is the owner of a portion of the Property described on Exhibit A hereto.
2. The Undersigned hereby agrees that the City may include all of the Property owned by the Undersigned in the Urban Renewal Area.

DATED this 27 day of Sept., 2021.

James C. Miller

By:  _____

**AGREEMENT TO INCLUDE AGRICULTURAL LAND
IN THE SOUTH JORDAN CREEK PARKWAY URBAN RENEWAL AREA**

WHEREAS, the City Council of the City of West Des Moines, Iowa (the "City") has proposed to adopt an Urban Renewal Plan for the South Jordan Creek Parkway (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa in order to undertake activities authorized by that Chapter, including but not limited to the use of tax increment financing as provided in Section 403.19 of the Code of Iowa; and

WHEREAS, it has been proposed that the Urban Renewal Area include certain real property which is described on Exhibit A (the "Property") to the Urban Renewal Area and known as Dallas County Assessor Parcel: 1623300011; and

WHEREAS, the Property is owned by James C. and Deborah L. Miller (the "Undersigned"); and

WHEREAS, Section 403.17 of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," unless the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that the portion of the Property owned by the Undersigned meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

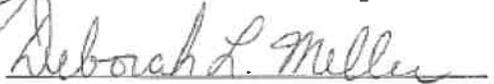
NOW, THEREFORE, it is hereby certified and agreed by the Undersigned as follows:

1. The Undersigned hereby certifies that it is the owner of a portion of the Property described on Exhibit A hereto.
2. The Undersigned hereby agrees that the City may include all of the Property owned by the Undersigned in the Urban Renewal Area.

DATED this 27 day of Sept., 2021.

James C. and Deborah L. Miller

By: 

By: 

**AGREEMENT TO INCLUDE AGRICULTURAL LAND
IN THE SOUTH JORDAN CREEK PARKWAY URBAN RENEWAL AREA**

WHEREAS, the City Council of the City of West Des Moines, Iowa (the "City") has proposed to adopt an Urban Renewal Plan for the South Jordan Creek Parkway (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa in order to undertake activities authorized by that Chapter, including but not limited to the use of tax increment financing as provided in Section 403.19 of the Code of Iowa; and

WHEREAS, it has been proposed that the Urban Renewal Area include certain real property which is described on Exhibit A (the "Property") to the Urban Renewal Area and known as Dallas County Assessor Parcel: 1623100013, and

WHEREAS, the Property is owned by James C. and Deborah Miller (the "Undersigned"); and

WHEREAS, Section 403.17 of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," unless the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that the portion of the Property owned by the Undersigned meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Undersigned as follows:

1. The Undersigned hereby certifies that it is the owner of a portion of the Property described on Exhibit A hereto.
2. The Undersigned hereby agrees that the City may include all of the Property owned by the Undersigned in the Urban Renewal Area.

DATED this 27 day of Sept., 2021

James C. and Deborah Miller

By: James C. Miller

By: Deborah Miller

**AGREEMENT TO INCLUDE AGRICULTURAL LAND
IN THE SOUTH JORDAN CREEK PARKWAY URBAN RENEWAL AREA**

WHEREAS, the City Council of the City of West Des Moines, Iowa (the "City") has proposed to adopt an Urban Renewal Plan for the South Jordan Creek Parkway (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa in order to undertake activities authorized by that Chapter, including but not limited to the use of tax increment financing as provided in Section 403.19 of the Code of Iowa; and

WHEREAS, it has been proposed that the Urban Renewal Area include certain real property which is described on Exhibit A (the "Property") to the Urban Renewal Area and known as Dallas County Assessor Parcel: 1623100008; and

WHEREAS, the Property is owned by Coyote Ridge, LC (the "Undersigned"); and

WHEREAS, Section 403.17 of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," unless the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, It has been determined that the portion of the Property owned by the Undersigned meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

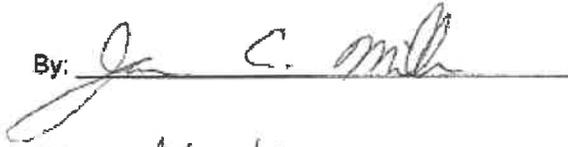
NOW, THEREFORE, it is hereby certified and agreed by the Undersigned as follows:

The Undersigned hereby certifies that it is the owner of a portion of the Property described on Exhibit A hereto.

The Undersigned hereby agrees that the City may include all of the Property owned by the Undersigned in the Urban Renewal Area.

DATED this 27 day of Sept., 2021.

Coyote Ridge, LC

By: 

Title: Member

**AGREEMENT TO INCLUDE AGRICULTURAL LAND
IN THE SOUTH JORDAN CREEK PARKWAY URBAN RENEWAL AREA**

WHEREAS, the City Council of the City of West Des Moines, Iowa (the "City") has proposed to adopt an Urban Renewal Plan for the South Jordan Creek Parkway (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa in order to undertake activities authorized by that Chapter, including but not limited to the use of tax increment financing as provided in Section 403.19 of the Code of Iowa; and

WHEREAS, it has been proposed that the Urban Renewal Area include certain real property which is described on Exhibit A (the "Property") to the Urban Renewal Area and known as Dallas County Assessor Parcel: 1623100009; and

WHEREAS, the Property is owned by Coyote Ridge, LC (the "Undersigned"); and

WHEREAS, Section 403.17 of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," unless the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that the portion of the Property owned by the Undersigned meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Undersigned as follows:

The Undersigned hereby certifies that it is the owner of a portion of the Property described on Exhibit A hereto.

The Undersigned hereby agrees that the City may include all of the Property owned by the Undersigned in the Urban Renewal Area.

DATED this 27 day of Sept, 2021.

Coyote Ridge, LC

By: 

Title: Member

RESOLUTION NO. _____

RESOLUTION DETERMINING THE NECESSITY AND SETTING DATES OF A CONSULTATION AND A PUBLIC HEARING ON A PROPOSED SOUTH 81ST STREET URBAN RENEWAL PLAN FOR A PROPOSED URBAN RENEWAL AREA IN THE CITY OF WEST DES MOINES, STATE OF IOWA

WHEREAS, it is hereby found and determined that one or more economic development areas, as defined in Chapter 403, Code of Iowa, exist within the City and the rehabilitation, conservation, redevelopment, development, or combination thereof, of the area is necessary in the interest of the public health, safety, or welfare of the residents of the City; and

WHEREAS, this Council has caused there to be prepared a proposed South 81st Street Urban Renewal Plan ("Plan" or "Urban Renewal Plan") for the South 81st Street Urban Renewal Area ("Area" or "Urban Renewal Area"), which proposed Plan is attached hereto as Exhibit 1 and which is incorporated herein by reference; and

WHEREAS, the purpose of the Plan is to form the South 81st Street Urban Renewal Area suitable for economic development and to include a list of proposed projects to be undertaken within the Urban Renewal Area, and a copy of the Plan has been placed on file for public inspection in the office of the City Clerk; and

WHEREAS, the property proposed to be included in the Urban Renewal Area is legally described in the Plan and this Council has reasonable cause to believe that the Area described in the Plan satisfies the eligibility criteria for designation as an urban renewal area under Iowa law and; and

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

WHEREAS, the proposed Urban Renewal Area includes land classified as agricultural land and written permission of the current owners has been, or will be, obtained; and

WHEREAS, the Iowa statutes require the City Council to submit the proposed Urban Renewal Plan to the Planning and Zoning Commission for review and recommendation as to its conformity with the general plan for development of the City as a whole prior to Council approval of such Plan, and further provides that the Planning and Zoning Commission shall submit its written recommendations thereon to this Council within thirty (30) days of its receipt of such proposed Urban Renewal Plan; and

WHEREAS, the Iowa statutes require the City Council to notify all affected taxing entities of the consideration being given to the proposed Urban Renewal Plan and to hold a consultation with such taxing entities with respect thereto, and further provides that the designated representative of each affected taxing entity may attend the consultation and make written recommendations for modifications to the proposed division of revenue included as a part thereof,

to which the City shall submit written responses as provided in Section 403.5, Code of Iowa, as amended; and

WHEREAS, the Iowa statutes further require the City Council to hold a public hearing on the proposed Urban Renewal Plan subsequent to notice thereof by publication in a newspaper having general circulation within the City, which notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the Plan and shall outline the general scope of the urban renewal project under consideration, with a copy of the notice also being mailed to each affected taxing entity.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, STATE OF IOWA:

That the consultation on the proposed Urban Renewal Plan required by Section 403.5(2), Code of Iowa, as amended, shall be held on the January 26, 2022, in the Board Room, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa, at 11:00 A.M., and the Community and Economic Development Director, or his delegate, is hereby appointed to serve as the designated representative of the City for purposes of conducting the consultation, receiving any recommendations that may be made with respect thereto and responding to the same in accordance with Section 403.5(2), Code of Iowa.

That the City Clerk is authorized and directed to cause a notice of such consultation to be sent by regular mail to all affected taxing entities, as defined in Section 403.17(1), Code of Iowa, along with a copy of this Resolution and the proposed Urban Renewal Plan, the notice to be in substantially the following form:

NOTICE OF A CONSULTATION TO BE HELD BETWEEN THE
CITY OF WEST DES MOINES, STATE OF IOWA AND ALL
AFFECTED TAXING ENTITIES CONCERNING THE
PROPOSED SOUTH 81ST STREET URBAN RENEWAL PLAN
FOR THE CITY OF WEST DES MOINES, STATE OF IOWA

The City of West Des Moines, State of Iowa will hold a consultation with all affected taxing entities, as defined in Section 403.17(1), Code of Iowa, as amended, commencing at 11:00 A.M. on January 26, 2022, in the Board Room, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa concerning a proposed South 81st Street Urban Renewal Plan for a proposed South 81st Street Urban Renewal Area, a copy of which is attached hereto. The consultation meeting will also be accessible virtually, at <https://tinyurl.com/4n7e8325>.

Each affected taxing entity may appoint a representative to attend the consultation. The consultation may include a discussion of the estimated growth in valuation of taxable property included in the proposed Urban Renewal Area, the fiscal impact of the division of revenue on the affected taxing entities, the estimated impact on the provision of services by each of the affected taxing entities in the proposed Urban Renewal Area, and the duration of any bond issuance included in the Plan.

The designated representative of any affected taxing entity may make written recommendations for modifications to the proposed division of revenue no later than seven days following the date of the consultation. The Community and Economic Development Director, or his delegate, as the designated representative of the City of West Des Moines, State of Iowa, shall submit a written response to the affected taxing entity, no later than seven days prior to the public hearing on the proposed South 81st Street Urban Renewal Plan, addressing any recommendations made by that entity for modification to the proposed division of revenue.

This notice is given by order of the City Council of the City of West Des Moines, State of Iowa, as provided by Section 403.5, Code of Iowa, as amended.

Dated this _____ day of _____, 2022.

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

(End of Notice)

That a public hearing shall be held on the proposed Urban Renewal Plan before the City Council at its meeting which commences at 5:30 P.M. on February 21, 2022, in the Council Chambers, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa.

That the City Clerk is authorized and directed to publish notice of this public hearing in the Des Moines Register, once on a date not less than four (4) nor more than twenty (20) days before the date of the public hearing, and to mail a copy of the notice by ordinary mail to each affected taxing entity, such notice in each case to be in substantially the following form:

(One publication required)

NOTICE OF PUBLIC HEARING TO CONSIDER APPROVAL OF A
PROPOSED SOUTH 81ST STREET URBAN RENEWAL PLAN FOR A
PROPOSED URBAN RENEWAL AREA IN THE CITY OF WEST DES
MOINES, STATE OF IOWA

The City Council of the City of West Des Moines, State of Iowa, will hold a public hearing before itself at its meeting which commences at 5:30 P.M. on February 21, 2022 in the Council Chambers, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa, to consider adoption of a proposed South 81st Street Urban Renewal Plan (the "Plan") concerning a proposed Urban Renewal Area in the City of West Des Moines, State of Iowa.

The South 81st Street Urban Renewal Area is proposed to contain the land legally described as follows:

BEGINNING AT THE CENTER OF SECTION 23, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH P.M., DALLAS COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 23 TO THE NORTHWEST CORNER OF THE EAST 163.62 FEET OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23;

THENCE SOUTH, ALONG THE WEST LINE OF SAID EAST 163.62 FEET OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23 EXTENDED SOUTH TO THE INTERSECTION OF SAID WEST LINE AND THE SOUTH RIGHT-OF-WAY LINE OF BOONEVILLE ROAD;

THENCE WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE EAST RIGHT-OF-WAY LINE OF SOUTH 88TH STREET;

THENCE NORTH, ALONG SAID EAST RIGHT-OF-WAY LINE TO THE EAST LINE OF PARCEL 5 OF PARCEL 'A' AS SHOWN ON THE WARRANTY DEED RECORDED IN BOOK 2016 ON PAGE 8822 IN THE DALLAS COUNTY RECORDER'S OFFICE;

THENCE SOUTH, ALONG SAID EAST LINE TO THE SOUTH CORNER THEREOF;

THENCE NORTHWEST, ALONG THE WESTERLY LINE OF SAID PARCEL 5 TO THE NORTHWEST CORNER THEREOF;

THENCE EAST, ALONG THE NORTH LINE OF SAID PARCEL 5 TO SAID EAST RIGHT-OF-WAY LINE OF SOUTH 88TH STREET;

THENCE NORTH, ALONG SAID EAST RIGHT-OF-WAY LINE TO THE NORTHWEST CORNER OF LOT 7 IN SUNSET RIDGE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID LOT 7 TO THE NORTHEAST CORNER THEREOF, SAID POINT BEING ON THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14;

THENCE SOUTH, ALONG SAID EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14 TO THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 23;

THENCE EAST, ALONG THE NORTH LINE OF SAID NORTHEAST 1/4 OF THE NORTHWEST 1/4 TO THE NORTH 1/4 CORNER OF SAID SECTION 23;

THENCE SOUTH, ALONG THE EAST LINE OF SAID NORTHWEST 1/4 OF SECTION 23 TO THE POINT OF BEGINNING.

A copy of the Plan is on file for public inspection in the office of the City Clerk, City Hall, City of West Des Moines, Iowa.

The City of West Des Moines, State of Iowa is the local public agency which, if such Plan is approved, shall undertake the urban renewal activities described in such Plan.

The general scope of the urban renewal activities under consideration in the Plan is to stimulate, through public involvement and commitment, private investment in housing and residential development for low and moderate income families and the provision of public improvements related to housing and residential development in the Urban Renewal Area through various public purpose and special financing activities outlined in the Plan. To accomplish the objectives of the Plan, and to encourage the further economic development of the Urban Renewal Area, the Plan provides that such special financing activities may include, but not be limited to, the making of loans or grants of public funds to private entities under Chapter 15A, Code of Iowa. The City also may reimburse or directly undertake the installation, construction and reconstruction of substantial public improvements, including, but not limited to, street, water, sanitary sewer, storm sewer or other public improvements. The City also may acquire and make land available for development or redevelopment by private enterprise as authorized by law. The Plan provides that the City may issue bonds or use available funds for purposes allowed by the Plan and that tax increment reimbursement of the costs of urban renewal projects may be sought if and to the extent incurred by the City. The Plan initially proposes specific public infrastructure or site improvements to be undertaken by the City, and provides that the Plan may be amended from time to time.

Any person or organization desiring to be heard shall be afforded an opportunity to be heard at such hearing.

This notice is given by order of the City Council of the City of West Des Moines, State of Iowa, as provided by Section 403.5, Code of Iowa.

Dated this _____ day of _____, 2022.

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

(End of Notice)

That the proposed Urban Renewal Plan, attached hereto as Exhibit 1, for the proposed Urban Renewal Area described therein is hereby officially declared to be the proposed Urban Renewal Plan referred to in the notices for purposes of such consultation and hearing and that a copy of the Plan shall be placed on file in the office of the City Clerk.

That the proposed Urban Renewal Plan be submitted to the Planning and Zoning Commission for review and recommendation as to its conformity with the general plan for the development of the City as a whole, with such recommendation to be submitted in writing to this Council within thirty (30) days of the date hereof.

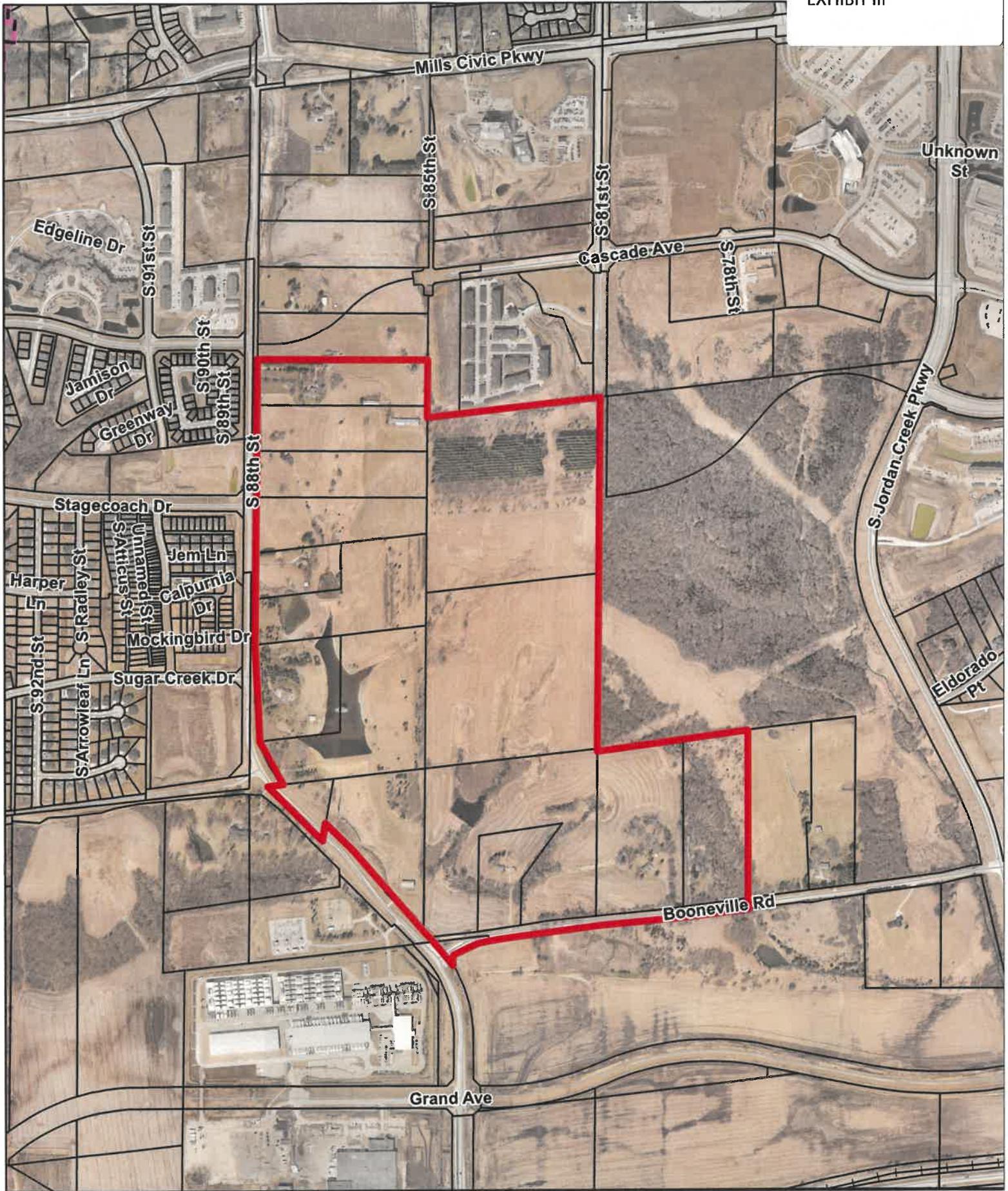
PASSED AND APPROVED this 18th day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

Label the Plan as Exhibit 1 (with all exhibits) and attach it to this Resolution.



CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: January 18, 2022

ITEM: Resolution - Accepting Conveyance of Property Interests from Warren County for Fox Ridge Townhomes Plat 1 Final Plat

FINANCIAL IMPACT: Minimal filing costs.

SYNOPSIS: Property interests necessary to connect a new street (SE 25th Street) to Veterans Parkway within the Fox Ridge Townhomes Plat 1 have been donated from Warren County by way of a Public Right-of-way Easement and Utility Easement. At the December 20, 2021 meeting, the Fox Ridge Townhomes Plat 1 Final Plat was approved with a condition of approval for the execution of the easement from Warren County prior to recording the final plat and prior to any building permits being issued within the Fox Ridge development. The attached resolution for policy and title purposes, formally accepts the property interests and authorizes the filing of all relevant documents.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION:

Adopt a Resolution approving and accepting conveyance of property interests to the City of West Des Moines from Warren County for Fox Ridge Townhomes Plat 1 Final Plat.

Lead Staff Member: Jessica D. Spoden, Assistant City Attorney

STAFF REVIEWS

Department Director	JDS
Appropriations/Finance	
Legal	
Agenda Acceptance	gs

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION NO. _____

**AUTHORIZING APPROVAL AND ACCEPTANCE OF CONVEYANCE OF PROPERTY INTERESTS
FOR FOX RIDGE TOWNHOMES PLAT 1 FINAL PLAT**

WHEREAS, Warren County has agreed to donate the property interest necessary for SE 25th Street to connect to Veterans Parkway; and

WHEREAS, it is the policy of the City of West Des Moines, Iowa, to approve the conveyance of all property interests to the City; and

WHEREAS, it is in the best interest of the citizens of the City to approve and accept the above-described documents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The documents described above conveying property interests to the City of West Des Moines, Iowa, are hereby approved and accepted.
2. The City Clerk is directed to certify the Council's approval and acceptance.
3. The documents shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED this 18th day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

Prepared by: Jessica Spoden, City of West Des Moines Legal Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620

Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265 (515) 222-3600

SPACE ABOVE THIS LINE FOR RECORDER

PUBLIC RIGHT-OF-WAY EASEMENT AND UTILITY EASEMENT

1. Grant of Permanent Easement

The undersigned, on behalf of **Warren County** ("Grantor"), owner of the property upon which this Easement is located, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby convey to the **City of West Des Moines, Iowa**, a municipal corporation ("City"), a permanent and perpetual Public Right-of-Way and Utility Easement ("Easement") upon, over, under, through, and across the real property as shown and legally described on the attached **Exhibit "A" ("Easement Area")**.

Use and Purpose of Easement

This Easement is granted to the City for the purpose of accessing the Easement Area to construct, operate, and maintain a public roadway, public sidewalk, appurtenances and public and private utilities and to allow the City and other non-City owned utilities, upon prior reasonable notice to Grantor, to enter at any time upon, over, under, through and across the Easement Area to use as much of the surface and sub-surface thereof to locate, construct, replace, rebuild, enlarge, reconstruct, patrol and repair (including the right to expand the roadway and build additional utilities and appurtenances thereto as authorized by the City) and to forever maintain the public roadway and utilities whenever necessary within the Easement Area, subject to the following terms and conditions:

- a) Other than a public roadway and public sidewalks, no structure, building or obstruction of any kind whatsoever shall be erected upon property that is the subject of this Easement without the express written consent of the City. The Grantor reserves and retains all other property rights in and to the Easement Area.
- b) The City agrees to obtain at its sole cost and expense such permits, licenses or other authority which may be required from federal, state, county, municipal or other governmental agency or units exercising jurisdiction over the use and purpose set forth above before using the Easement or exercising the rights herein provided, and further agrees to comply with and strictly observe any and all laws, rules, and regulations of any such governmental agency or unit.

- c) The City shall take reasonable steps to ensure that all work performed by or at the direction or authority of the City in the Easement Area will be initiated and completed within a reasonable period. Following completion of the work performed by or at the direction or authority of the City, the City shall be responsible for the timely removal of all debris, spoils, equipment, etc. used by or at the direction or authority of the City in connection with the work performed in the Easement Area.
- d) Unless done at the direction or by the authority of the City, nothing in this Easement shall obligate the City to perform any work or engage in any repair or restoration of the Easement Area resulting from actions taken by other individuals or entities (i.e., utility companies).
- e) It is understood and agreed that the consideration for this Easement includes full compensation for damages to Grantor as agreed upon by the City and the Grantor.

2. Hold Harmless

Each party shall defend, indemnify and hold the other party harmless from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, related to this Easement, to the extent such damage or injury is attributable to the negligent or willful misconduct of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claim and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claim, and indemnitee does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

3. Benefits, Burdens and Assignment

All provisions of this Easement, including benefits and burdens, run with the land and are binding upon the City and the Grantor, including but not limited to future owners, developers, lessees, occupants or assignees. Grantor acknowledges and agrees that this Easement is assignable by the City without consent from the Grantor to a third-party public entity, and assignable by the City with written notice to and consent from the Grantor to a third-party private entity.

4. Jurisdiction and Venue

The City and the Grantor agree that the District Court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties shall consent to the jurisdiction of **Warren** County, Iowa.

5. Lawful Authority

The Grantor covenants with the City that it holds the above-described legal property by good and marketable title, free and clear of liens, easements, and encumbrances, except any of record, and that the Grantor has a right and lawful authority to make and execute this Easement. Grantor warrants and defends said Easement against the lawful claims of all persons claiming by, through or under Grantor.

6. Approval of City

This Easements shall not be binding until they have received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Easement by the City Clerk.

7. Attorney Fees

Either party may enforce this Easement by appropriate action, and the prevailing party shall recover as part of its costs the reasonable attorney fees incurred in such action.

8. Words and Phrases

Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or gender neutral, according to the context.

9. Parties

The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, contractors, successors and assigns. The term "Grantor" shall refer to the undersigned, its assigns, successors in interest, or lessees, if any.

10. Integration

This Easement shall constitute the entire agreement between the parties and no amendments or additions to this Easement shall be binding unless in writing and signed by both parties.

11. Paragraph Headings

The paragraph headings in this Easement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Easement.

Dated this 21 day of December, 2021.

WARREN COUNTY

Aaron J. DeKock

By: Aaron DeKock, Chairman
Warren County Board of Supervisors

STATE OF IOWA)
) SS
COUNTY OF WARREN)

This record was acknowledged before me on this 21 day of December, 2021, by Aaron DeKock, Chairman of the Warren County Board of Supervisors on behalf of whom the record was executed.



MELANIE McCOMBS
Commission Number 703979
My Commission Expires 10-12-2021
Melanie McCombs
NOTARY PUBLIC

CERTIFICATION BY CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that acquisition of the within and foregoing Right-of-Way Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, 2021, and that this certificate is made pursuant to the authority of said City Council.

Signed this _____ day of _____, 2021.

CITY OF WEST DES MOINES, IOWA

BY: _____
Ryan T. Jacobson, City Clerk

INDEX LEGEND

LOCATION: SE.1/4 SEC. 4 T77N R25W
 WEST DES MOINES
 WARREN COUNTY IOWA

PARCEL ID 93025041841

REQUESTOR: CITY OF WEST DES MOINES IOWA

PROPRIETOR: WARREN COUNTY IOWA
 301 N. BUXTON STREET
 INDIANOLA IOWA 50125

SURVEYOR: JOEL R. ROMEY
 COMPANY: RACCOON VALLEY LAND SURVEYING LLC
 33235 L AVENUE
 ADEL IOWA 50003
 PHONE: 515.493.8317

EXHIBIT "A"

RIGHT-OF-WAY EASEMENT

SE.1/4 SEC 4 T77N R25W WEST DES MOINES IOWA

EASEMENT DESCRIPTION:

AN IRREGULAR SHAPED PORTION OF THE SOUTHEAST QUARTER (SE.1/4) OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5th P.M., WEST DES MOINES, WARREN COUNTY, IOWA DESCRIBED AS:
 COMMENCING AT THE NORTHWEST CORNER OF THE SE.1/4 OF SAID SECTION 4; THENCE S00°58'05"E ALONG THE WEST LINE OF THE SE.1/4 OF SAID SECTION 4, A DISTANCE OF 366.36 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF VETERANS PARKWAY AS IT IS PRESENTLY ESTABLISHED AND TO THE NORTHERLY LINE OF THE CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY RIGHT-OF-WAY AS IT WAS PREVIOUSLY ESTABLISHED; THENCE EASTERLY ALONG SAID RIGHT-OF-WAY LINES AND ALONG A 2814.93 FEET RADIUS CURVE CONCAVE NORTHERLY, A DISTANCE OF 274.69 FEET, SAID CURVE HAVING A CHORD BEARING OF N74°48'05"E AND A CHORD LENGTH OF 274.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID RIGHT-OF-WAY LINES AND ALONG A 2814.93 FEET RADIUS CURVE CONCAVE NORTHERLY, A DISTANCE OF 100.04 FEET, SAID CURVE HAVING A CHORD BEARING OF N70°59'20"E AND A CHORD LENGTH OF 100.00 FEET; THENCE S19°40'10"E, A DISTANCE OF 100.02 FEET TO THE SOUTHERLY LINE OF SAID CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY RIGHT-OF-WAY; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY RIGHT-OF-WAY AND ALONG A 2914.93 FEET RADIUS CURVE CONCAVE NORTHERLY, A DISTANCE OF 100.01 FEET, SAID CURVE HAVING A CHORD BEARING OF S70°57'57"W AND A CHORD LENGTH OF 100.00 FEET; THENCE N19°40'10"W, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.



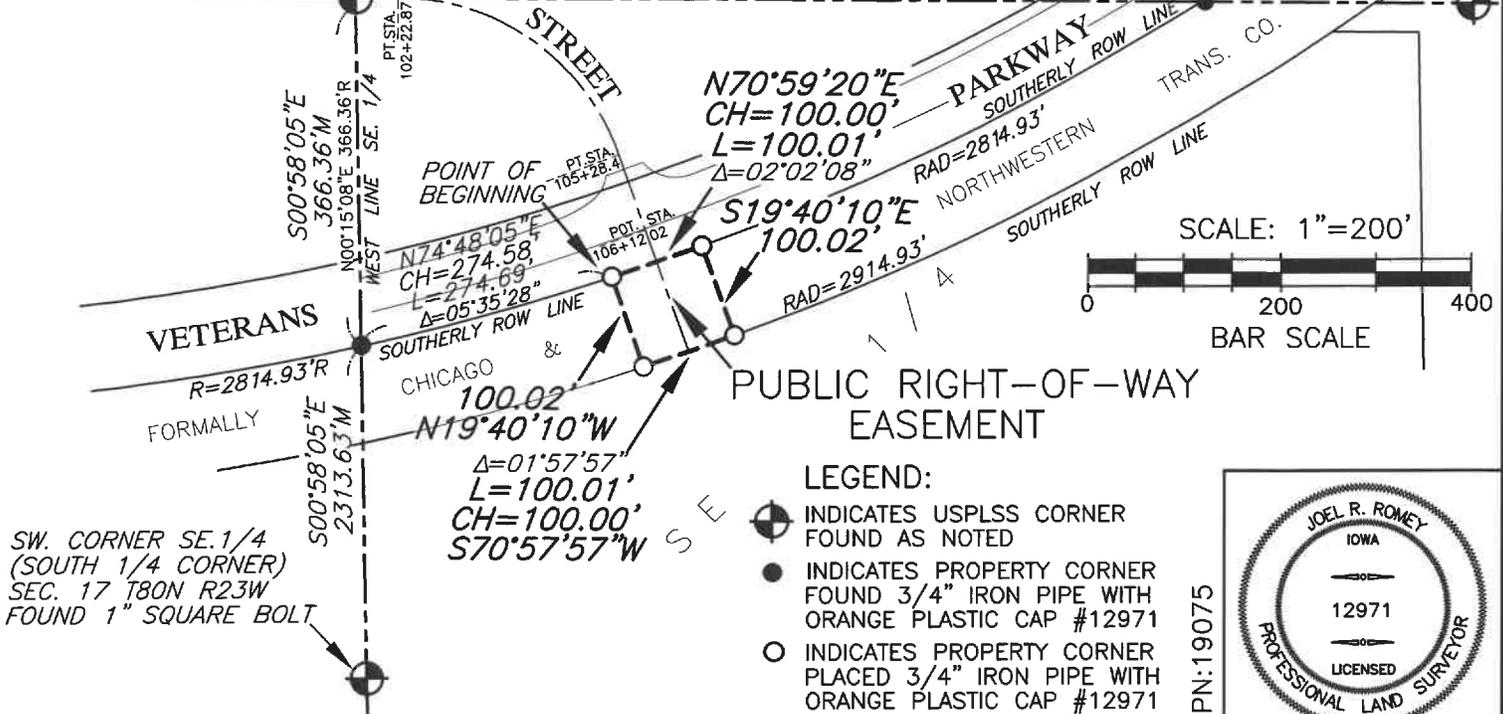
POINT OF COMMENCEMENT
 NW. CORNER SE.1/4
 (CENTER OF SECTION)
 SEC. 4 T77N R25W
 FOUND 3/4" IRON ROD

NE. CORNER SE.1/4
 (EAST 1/4 CORNER)
 SEC. 4 T77N R25W
 FOUND NAIL

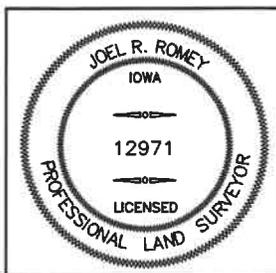
ADAMS

N89°33'20"E
 892.86'M
 S88°19'40"E 892.86'R

N89°33'20"E
 1749.77'M



- LEGEND:**
- INDICATES USPLSS CORNER FOUND AS NOTED
 - INDICATES PROPERTY CORNER FOUND 3/4" IRON PIPE WITH ORANGE PLASTIC CAP #12971
 - INDICATES PROPERTY CORNER PLACED 3/4" IRON PIPE WITH ORANGE PLASTIC CAP #12971



SE STUBBS ENGINEERING
 431 NE 72ND STREET
 PLEASANT HILL IA 50327
 PHONE 515.979.8499

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED BY ME AND THE RELATED SURVEY WORK WAS PERFORMED UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA. LICENSE RENEWAL DATE: 31 DEC. 2021 PAGES COVERED BY THIS SEAL: THIS PAGE ONLY

SIGNED: *Joel R. Romey* DATE: 24 NOV 2021
 JOEL R. ROMEY P.L.S. 12971

CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: 4(k) Settlement Agreement with Mediacom

DATE: 1-18-2022

FINANCIAL IMPACT: \$591,000

BACKGROUND: The City and Mediacom have reached resolution of the lawsuit filed in December, 2020. Terms and conditions are contained in the Settlement Agreement, which addresses each party's concerns and provides the City the opportunity to continue to serve the needs of West Des Moines residents and businesses by moving the City-wide conduit project forward.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION: Approval of the Settlement Agreement by the City Council

Lead Staff Member: Dick Scieszinski, Jamie Letzring

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	

**RESOLUTION APPROVING SETTLEMENT AGREEMENT BY AND BETWEEN MCC
IOWA LLC d/b/a MEDIACOM AND CITY OF WEST DES MOINES
AND WEST DES MOINES CITY COUNCIL**

WHEREAS, on or about December 10, 2020, MCC Iowa LLC d/b/a Mediacom filed a Petition for Declaratory Judgment and Injunction against the City of West Des Moines and the West Des Moines City Council in the Iowa District Court for Polk County (*MCC Iowa LLC d/b/a Mediacom v. City of West Des Moines and the West Des Moines City Council*, Case No. EQCE086347); and

WHEREAS, the Parties to the lawsuit have reached a proposed settlement and have memorialized the terms in a formal Settlement Agreement; and

WHEREAS, the Settlement Agreement addresses the concerns of each Party; and

WHEREAS, approval of the Settlement Agreement is in the best interest of the City of West Des Moines.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The *Settlement Agreement by and between MCC Iowa LLC d/b/a/ Mediacom and the City of West Des Moines and West Des Moines City Council* (“Agreement”) is hereby approved.
2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor’s signature.
3. The West Des Moines Finance Department is authorized to make appropriate payment as provided by the terms of the Agreement.

PASSED AND ADOPTED this _____ day of January, 2022.

Russ Trimble,

ATTEST:

Ryan T. Jacobson
City Clerk

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

ITEM: Approval of Proclamation
Martin Luther King Jr. Day
January 17, 2022

DATE: January 18, 2022

FINANCIAL IMPACT: None

BACKGROUND:

Dr. Martin Luther King Jr. devoted his life to advancing equality, social justice, and opportunity for all, and challenged all Americans to participate in the never-ending work of building a more perfect union.

The West Des Moines Human Rights Commission has requested the City adopt a proclamation to recognize Martin Luther King Jr. Day, which will be presented during the Martin Luther King Jr. Day events hosted by the commission on Monday, January 17th.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approval of Proclamation recognizing Martin Luther King Jr. Day

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

STAFF REVIEWS

Department Director	Ryan T. Jacobson, City Clerk
Appropriations/Finance	
Legal	
Agenda Acceptance	<i>RTJ</i>

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

Proclamation
Martin Luther King Jr. Day
January 17, 2022

Whereas, Dr. Martin Luther King Jr. devoted his life to advancing equality, social justice, and opportunity for all, and challenged all Americans to participate in the never-ending work of building a more perfect union; and

Whereas, Dr. King's teachings can continue to guide and inspire us in addressing challenges in our communities; and

Whereas, we are forever indebted to him for his meaningful contributions and therefore it is proper and fitting to highlight the life of a man who has had such a profound impact on changing an entire nation; and

Whereas, Dr. King, a leader in the American civil rights movement of the 1960's, fought for racial and economic justice and is lauded for the nonviolent approach to civil disobedience; and

Whereas, the King Holiday and Service Act, enacted in 1994, designated the King Holiday as a national day of volunteer service; and

Whereas, The Universal Declaration of Human Rights empowers us all. The principles enshrined in the Declaration are as relevant today as they were in 1948; and

Whereas, since 1994 millions of Americans have been inspired by the life and work of Dr. Martin Luther King Jr. to serve their neighbors and communities on the King Holiday; and

Whereas, serving on the King Holiday is an appropriate way to honor Dr. King, meet local and national needs, bring our citizens together, and strengthen our communities and nation; and

Whereas, the King Day of Service is the only federal holiday commemorated as a national day of service, and offers an opportunity for Americans to give back to their communities on the holiday and make an ongoing commitment to service throughout the year; and

Whereas, each of us can and must contribute to making our communities better with increased access and opportunity for all our citizens; and

Whereas, the citizens of West Des Moines, Iowa have the opportunity to participate in events throughout our city on the King Day of Service, January 17, 2022, as well as create and implement community service projects where they identify the need.

NOW, THEREFORE, I, Russ Trimble, Mayor of the City of West Des Moines, Iowa, do hereby proclaim

Martin Luther King Jr. Day 2022

as a Day of Service in West Des Moines, and call upon the people of the community to pay tribute to the life and works of Dr. Martin Luther King Jr. through participation in community service projects on Martin Luther King Day and throughout the year.

Signed this 17th day of January, 2022.

ATTEST:

Russ Trimble, Mayor

Ryan T. Jacobson, City Clerk

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

ITEM: Approval of Proclamation
West Des Moines Day of Kindness
January 28, 2022

DATE: January 18, 2022

FINANCIAL IMPACT: None

BACKGROUND:

The West Des Moines Chamber of Commerce and the West Des Moines Leadership Academy have requested the City adopt a proclamation for West Des Moines Day of Kindness to spread joy through a focused day of kindness.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approval of Proclamation recognizing West Des Moines Day of Kindness

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

STAFF REVIEWS

Department Director	Ryan T. Jacobson, City Clerk
Appropriations/Finance	
Legal	
Agenda Acceptance	<i>RTJ</i>

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

Proclamation
West Des Moines Day of Kindness
January 28, 2022

Whereas, it is the mission of the city to serve people honestly and effectively and through a variety of services, strive to provide the quality of life desired by the community; and

Whereas, it is the mission of the chamber to champion all things West Des Moines by strengthening our area companies, providing personalized resources and attracting a top workforce to position West Des Moines as the best suburban city in America; and

Whereas, it is the vision of the West Des Moines Leadership Academy to positively influence the future of West Des Moines and the Greater Des Moines community through strategic leadership development and workforce retention; and

Whereas, the West Des Moines Leadership Academy would like to champion this day of kindness for years to come; and

Whereas, putting smiles on faces of those who live, work, and play in West Des Moines should be something we all strive for; and

Whereas, studies show that kindness benefits not only the receiver, but also the giver, whether these are companies or people. Companies that value kindness have lower turnover on their teams, lower recruitment costs, and higher productivity; and

Whereas, a random act of kindness is giving your best self to others without requests or promise of return on investment. It's simply doing something nice for someone else, without them asking and without you doing it for anything in return; and

Whereas, the City of West Des Moines recognizes the benefits of having a kind and caring community.

NOW, THEREFORE, I, Russ Trimble, Mayor of the City of West Des Moines, Iowa, do hereby proclaim January 28, 2022, as:

West Des Moines Day of Kindness

in the City of West Des Moines and urge all citizens to celebrate West Des Moines Day of Kindness and support efforts to promote a spirit of kindness this day and every day.

Signed this 18th day of January, 2022.

ATTEST:

Russ Trimble, Mayor

Ryan T. Jacobson, City Clerk

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

DATE: January 18, 2022

ITEM: Resolution - Approval of Plat Approval and Repayment Agreement

FINANCIAL IMPACT: \$613,239.00 to City

BACKGROUND: On August 20, 2018 the City Council approved an Agreement between the City and Chayse Holdings, L.L.C. regarding payment for the installation of sanitary sewer and the reconstruction of the intersection of South 88th Street and Mills Civic Parkway. Due to the uncertainty at the time regarding financing and timing of construction by the City of the entire intersection, Chayse Holdings submitted a proposal to initiate development of the northwest corner of the intersection and pay its proportionate share for construction of the roadway.

The Agreement required the City to construct three lanes of Mills Civic Parkway from approximately 81st Street to 93rd Street and construct 88th Street from Mills Civic Parkway north to Coachlight Drive. In return, Chayse was required to dedicate property necessary for construction of its portion of the improvements and pay the City \$250,000 as its contribution toward construction of Mills Civic Parkway and 88th Street. In addition, the City was required to acquire property and construct a public sanitary sewer, with Chayse agreeing to pay the City the actual cost of constructing that portion of the sewer that would serve its property.

Although construction of the improvements was completed, payment from Chayse was not received. Chayse incurred additional City-related development costs which have also not been received, with a total amount of \$613,239.00 owed to the City. The attached Plat Approval and Repayment Agreement provides for final plat approval by the City of the remaining portion of the Chayse property, contingent upon Chayse meeting all City code and development requirements. The Agreement further provides that if approved, payment received by Chayse from sale of the property would be made to the City, after which the final plat would be released for recordation. Chayse anticipates adequate proceeds from sale of the property to pay the total amount owed.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Approve the Plat Approval and Repayment Agreement between City of West Des Moines and Chayse Holdings, L.L.C.

Lead Staff Member: Richard Scieszinski, City Attorney *RJS*

STAFF REVIEWS

Department Director	Tom Hadden, City Manager
Appropriations/Finance	Tim Stiles, Finance Director

Legal	Richard J. Scieszinski, City Attorney
Agenda Acceptance	<i>RTJ</i>

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed			
Recommendation			

RESOLUTION NO. _____

**RESOLUTION REGARDING THE PLAT APPROVAL AND REPAYMENT
AGREEMENT BETWEEN CHAYSE HOLDINGS, L.L.C. AND
THE CITY OF WEST DES MOINES**

WHEREAS, on August 20, 2018 Chayse Holdings, L.L.C., an Iowa limited liability company (“Chayse”) and the City of West Des Moines entered into an agreement requiring construction by the City of a portion of Mills Civic Parkway and 88th Street and the installation of sanitary sewer in exchange for payment by Chayse Holdings to the City of its proportionate cost of the Improvements; and

WHEREAS, payment from Chayse to the City for the costs related to the Improvements, including additional City-related development costs, has not been received; and

WHEREAS, in an effort to resolve the outstanding issues related to the costs incurred and the payment owed by Chase Holdings to the City, the parties have negotiated the attached *Plat Approval and Repayment Agreement*; and

WHEREAS, it is in the best interest of the City to approve the above-described Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The *Plat Approval and Repayment Agreement* between the City of West Des Moines and Chayse Holdings, L.L.C. is hereby approved.
2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor’s signature.

PASSED AND ADOPTED this 18^h day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

PLAT APPROVAL AND REPAYMENT AGREEMENT

THIS PLAT APPROVAL AND REPAYMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2022, by and between Chayse Holdings, L.L.C., an Iowa limited liability company (“Developer”) and the City of West Des Moines, Iowa, a municipal corporation (“City”).

RECITALS

WHEREAS, the Developer is the owner of real property located in the City, legally described in Exhibit “A”, to be known as Cedar Ridge Plat 3 (“Real Estate”);

WHEREAS, the Developer intends to subsequently sell the Real Estate to an interested Purchaser (“Purchaser”);

WHEREAS, the Developer seeks Final Plat approval from the City of the Real Estate prior to its sale to the Purchaser, and has agreed to make payment of outstanding fees owed to the City related to development of the Real Estate in conjunction with approval by the City of the Final Plat of the Real Estate (“Final Plat”);

WHEREAS, the parties desire to enter into this Agreement to set forth the terms of their respective obligations in connection with Final Plat approval for the Real Estate.

NOW, THEREFORE, in consideration of the mutual obligations contained in this Agreement, the parties hereto agree as follows:

1. The Developer intends to sell the Real Estate upon the approval of the Final Plat by the City.
2. The Developer has agreed to undertake certain obligations and make certain payments due and owing to the City pursuant to City Code and the attached Development Agreement between Developer and City entered into on August 20, 2018 (“Development Agreement”) and the unexecuted First Amendment to the Agreement (“First Amendment”) related to the installation of the Cedar Ridge Sanitary Sewer, the construction of the South 88th Street and Mills Civic Parkway Improvement Project, installation of MidAmerican Streetlights at 88th Street and Mills Civic Parkway, and all Cedar Ridge plat related fees. Developer has agreed to fulfill these obligations prior to or in conjunction with the City approving and releasing for recordation the Final Plat with the County Recorder. The obligations and actions to be undertaken by the Developer are shown on the attached Exhibit “B” (“Developer Obligations”), and the payments due and owing by the Developer are shown on the attached Exhibit “C” (“Developer Expenses”).

3. The Developer acknowledges, understands, and agrees that the Developer Expenses do not include other expenses due and owing to the City related to other projects completed by the Developer. The Developer agrees that the other expenses remain due and owing until paid in full as determined by the City.
4. Prior to approval of the Final Plat, the Developer shall complete the Developer Obligations to the City's satisfaction.
5. Upon completion of the Developer Obligations, Cedar Ridge Plat 3 shall be presented to the West Des Moines City Council for consideration and approval.
6. The parties agree that upon approval by the City of the Final Plat, the City may withhold releasing the Final Plat for recordation until full payment of the Developer Expenses is received.
7. Developer, in conjunction with the Purchaser of the Real Estate, shall schedule a closing date for the sale and conveyance of the Real Estate from the Developer to the Purchaser within thirty (30) days from the date of City approval of the Final Plat.
8. Upon the sale of the Real Estate, certified funds totaling the Developer Expenses shall be transmitted to the City by wire transfer or certified check, Attn: Legal Department, 4200 Mills Civic Pkwy, West Des Moines, IA 50265.
9. The City shall release for recordation the Final Plat with the County Recorder within five (5) business days of the receipt of the Developer Expenses.
10. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefits of the heirs, successors and assigns of the respective parties hereto.
11. If any provision hereof is for any reason unenforceable by a court of law, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provisions had never been contained herein.
12. All provisions of this Plat Approval and Repayment Agreement, the Development Agreement of August 20, 2018 and the unexecuted First Amendment to the Agreement and any amendments, except as provided herein shall remain in full force and effect until the obligations of the parties have been completed. The terms and provisions of each Agreement shall be read to fulfill the intent of the parties as set forth in this Plat Approval and Repayment Agreement. For the avoidance of doubt, execution of the Development Agreement of August 20 occurred prior to completion of the project, with clarification of the parties intent regarding their obligations provided in the First Amendment to the Agreement. If any provision of this Plat Approval Agreement conflicts with the Development Agreement or the First Amendment to the Agreement, the provisions of this Plat Approval Agreement shall control. This Plat Approval Agreement is binding upon and shall inure to the benefit of Developer and Purchaser and their respective successors and permitted assigns.

Development Agreement or the First Amendment to the Agreement, the provisions of this Plat Approval Agreement shall control. This Plat Approval Agreement is binding upon and shall inure to the benefit of Developer and Purchaser and their respective successors and permitted assigns.

14. The City and Developer shall retain all other rights and responsibilities as set forth in the Development Agreement, any amendments thereto, City Code and/or Iowa law.
15. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the City has caused this Plat Approval Agreement to be duly executed in name and its behalf by its Mayor and its sealed to be duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representatives all on as of the day first above written.

By: _____
Russ Trimble, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa, and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in the Roll Call No. _____, passed on the ___ day of _____, 2022, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary Public in and for the State of Iowa

CHAYSE HOLDINGS, L.L.C.
an Iowa limited liability company

Tobis Torstenson
Managing Member

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This record was acknowledged before me on the ____ day of _____, 2022 by Tobis Torstenson, Managing Member of Chayse Holdings, L.L.C, an Iowa limited liability company, on behalf of whom the record was executed.

Notary Public
(Stamp or Seal)

Exhibit "A": Real Estate

ALL OF LOTS 37, 38 AND OUTLOT 'Z', CEDAR RIDGE PLAT 2, AN OFFICIAL PLAT, AND ALL OF LOTS 25 AND 26, CEDAR RIDGE, AN OFFICIAL PLAT, ALL WITHIN THE CITY OF WEST DES MOINES, DALLAS COUNTY IOWA AND CONTAINING 12.80 ACRES (557,377 SQUARE FEET).

THE PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

Exhibit "B": Developer Obligations

1. Final Plat Checklist – All highlighted items will need to be provided. As part of these items, please note the following:
 - a. Consent will need to be provided from all owners (Chayse Holdings, L.L.C., Oakstone Homes, and any other necessary parties)
 - b. Surety @ \$32.00/lf for public sidewalks – please have the civil engineer for the project provide a linear footage for confirmation of length from the City's Engineering Department prior to submitting surety.
 - c. Parkland Dedication surety in the amount of \$26,043.72. Please identify who will be the responsible entity for constructing the improvements outlined in the Parkland Dedication Agreement.
 - d. Payment of Sanitary Sewer Capital Charge in the amount of \$29,484.00 for the 26 lots.
 - e. Payment of \$450.00 for street signs.
 - f. Payment for street lights along Cedar Ridge Drive and Cedar Ridge Cove is to be made directly to MidAmerican Energy. Please request they send the City confirmation payment has been made.
 - g. Execution of deed to transfer ownership of Outlot Y, Cedar Ridge Plat 3 to Brian and Ann Bierbaum.
2. Execution of Necessary Legal Documents:
 - a. Parkland Dedication Agreement
 - b. Sanitary Sewer Easement
 - c. Storm Sewer Easement
 - d. Storm & Overland Flowage Easement
 - e. Overland Flowage Easement
 - f. Public Utility Easements
 - g. Storm Water Management Facility Maintenance Agreement
3. Completion and Acceptance of Public Improvements by the City or Provide Surety to the City to cover the costs of all necessary public improvements.
4. Execution of a deed to transfer ownership of Outlot X, Cedar Ridge Plat 2 to the City.

Exhibit "C": Developer Expenses

Chayse Holdings, LLC to City - Cedar Ridge

Total

Cedar Ridge Sewer Extension	ES-2021-00025009	\$ 407,372.85		\$ 407,372.85
Exaction 88th & MCP		\$ 250,000.00		\$ 250,000.00
MidAm Streetlights 88th & MCP	ES-2021-00025026	\$ 48,689.69		\$ 48,689.69
Cedar Ridge P2	ES-2020-00025029	\$ 787.80	Public Improvements	
Cedar Ridge P2	ES-2021-00075222	\$ 50.00	Stormwater Site Fees	
Cedar Ridge P2	ES-2020-00075259	\$ 50.00	Stormwater Site Fees	
Cedar Ridge P2	ES-2021-00075014	\$ 1,000.00	Stormwater Site Fees	
Cedar Ridge P2	ES-2021-00075128	\$ 50.00	Stormwater Site Fees	
Cedar Ridge P2	ES-2020-00075190	\$ 50.00	Stormwater Site Fees	
Cedar Ridge P2	ES-2020-00075139	\$ 50.00	Stormwater Site Fees	
Cedar Ridge P2	ES-2020-00025051	\$ 542.40	Quarterly Inspections	
Cedar Ridge P2	ES-2021-00075079	\$ 50.00	Stormwater Site Fees	\$ 2,630.20
Cedar Ridge P3	ES-2021-00025018	\$ 2,670.60	Quarterly Inspections	
Cedar Ridge P3	ES-2020-00025030	\$ 6,890.70	Quarterly Inspections	\$ 9,561.30
Total Due City (Prior to Offset):				\$ 718,254.04

City to Chayse Holdings, LLC ("Offset")

14,309sf of Outlot X, Cedar Ridge P2**	\$ 19,175.00	<i>**Outlot X was never transferred to the City - Chayse Holdings must execute a deed for Outlot X.</i>
57,133 sf (1/2 street lot "C" Cedar Ridge P2)	\$ 76,558.00	
Reimbursement of Sewer Connection Fee overpayment (\$4641/ac)	\$ 9,282.00	
Total:	\$ 105,015.00	

Total Chayse Holdings, LLC owes City for Cedar Ridge:	\$613,239.04
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CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: January 18, 2022

ITEM: Jordan Creek Tower, 575 & 595 S. 60th Street – Adopt the Jordan Creek Tower Area Development Plan, Amend Comprehensive Plan Land Use Map to designate Support Commercial land use and Establish the Jordan Creek Tower Specific Plan Ordinance regulating development of a mixed-use building – Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005 – ADP-005322-2021/CPAZCSP-005323-2021

RESOLUTION: Approval of Area Development Plan

RESOLUTION: Approval of Comprehensive Plan Land Use Map Amendment

ORDINANCE: Approval of 1st Reading of Specific Plan Ordinance

Background: Ed Arp with Civil Engineering Consultants, on behalf of the applicant, D.R.A. Properties, L.C. and property owner, Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005, requests approval of an Area Development Plan (ADP), Comprehensive Plan Land Use Map Amendment (CPA), and Zone Change Specific Plan (ZCSP) on that ground located at 575 & 595 S. 60th Street. The Area Development Plan, Comprehensive Plan Amendment and Zone Change Specific Plan (Rezoning) are being requested in anticipation of the development of a 5-story mixed use building on the property. The building will consist of ten (10) residential dwelling units, a restaurant, and space for offices and retail. The Area Development Plan identifies the planning parcel, land use, and primary circulation routes into and around the site. The proposed Specific Plan Ordinance regulates the land uses allowed on the site and will set regulations and requirements for such aspects as building location, streetscape landscaping, and screening.

Specifically, the following land use and related zoning applications are proposed with this request:

- Approve an Area Development Plan establishing a development planning area for the site;
- Amend the Comprehensive Plan Land Use Map for approximately 2.5 acres to change from Office (OF) to Support Commercial (SC) land use; and
- Rezone the 2.5 acres establishing the Jordan Creek Tower Specific Plan Ordinance.

Staff Review & Comment:

- **Financial Impact:** There is no City funding of this project; however, there is staff time for processing of development application and inspections during construction.
- **Development Intent:** The Jordan Creek Tower Specific Plan intends to establish a framework for the integration of a mix of land uses on the site, including multi-family residential, restaurants, retail and offices.
- **Key Development Aspects:**
 - **Area Development Plan:** The Town Center Overlay District is broken out into multiple defined geographic areas. The subject property is located within Area 9. An Area Development Plan is required for all developments within the Town Center Overlay District. The applicant has submitted an Area Development Plan which outlines the planning units, basic street system serving the property, ingress and egress locations, utilities, and stormwater detention areas. Since this property is proposed to be developed with only one building, the applicant is proposing one planning unit on the site, which will have a designated land use of Support Commercial to allow mixed use including residential, retail and offices. Access to the site will be via an existing shared driveway with Morningstar

Assisted Living from S. 60th Street and from an existing shared private driveway on the west side of the property. There will be no direct access to the site from Stagecoach Drive.

- Specific Plan Maps: The proposed Specific Plan maps indicate the streets, utilities, landscaping and building location on the site for the future development of the site. The detailed site plan for the site will be reviewed as an Overlay District Site Plan and is currently in the review process. Any substantial changes to the building and site layout as shown on the Specific Plan maps could require an amendment to the Specific Plan map; however, none is anticipated since development of the site is known and the Specific Plan Map has been tailored to that development.
 - Land Uses: The applicant is proposing to construct 10 dwelling units, an approximately 7,608 square foot restaurant which includes an approximately 841 square foot patio and 378sf exterior walkway to the patio, approximately 5,361 square feet of retail and approximately 27,230 square feet of office space within the proposed building. The underlying land use and zoning of the property is proposed as Support Commercial, which will allow for residential dwellings along with the commercial land uses.
 - Building Design and Location: The Specific Plan Ordinance proposes a minimum 25' building setback from all property lines, which is the same building setback required of other properties within the Town Center Overlay District and what the properties immediately north and south of the subject site have or are to provide. This setback provides for some consistency for the alignment of the buildings along this portion of S. 60th Street. The Specific Plan allows for a maximum of 60' of height with an additional 12' of height allowed for every additional 10' of building setback. This 60' height is consistent with the Professional Commerce Park District which is the underlying zoning designation for the properties along S. 60th Street, as well as within the Jordan Creek Business Park Specific Plan which is located immediately to the north. The building is proposed to be a 5-story, 70-foot tall building, with tower elements adding an additional 5 feet. The southern portion of the building, which will contain the restaurant, will be one story in height, with the top floor stepped back from S. 60th Street to help reduce the mass of the structure. The building will be setback an additional 10 feet from S. 60th Street to allow the proposed 70' of height.
- Traffic Analysis Findings: A traffic analysis was completed for the Comprehensive Plan Amendment/Rezoning of this site. The proposed development is expected to generate slightly more peak hour traffic compared to what was previously allocated for office on the site, but the total amount of new trips loaded to the planned traffic network is less than what was modeled in early traffic studies. Previous recommendations for surrounding public streets remain adequate.
 - Development & Planning Subcommittee: This project was brought to the Development & Planning City Council Subcommittee on December 20, 2021 to discuss parking allowances on the site. Parking minimums as provided in City code or as applied in other recent developments would require a total of 191 parking spaces for the site based on the following:
 - 8 spaces per 1,000 square feet of restaurant (consistent with Ruth Chris')
 - 3.5 spaces per 1,000 square feet for offices
 - 3.5 spaces per 1,000 square feet for retail
 - 2 spaces per dwelling unit, plus 1 visitor space per 10 units

The applicant was proposing 165 spaces based largely on reducing the minimum required for the restaurant down to 5 spaces per 1,000 square feet. Staff was not comfortable with this proposal and could not find any basis to support only requiring 5 spaces per 1,000 square feet in the research done for the 2019 parking code amendment. Eight communities require 10 stalls and 3 communities require only one to 2.5 stalls per 1,000 square feet. As noted, the 8 stalls is what was recently approved for the Ruth Chris' Restaurant in the proposed Village on Jordan Creek mixed use building.

The parking research for retail indicated the average number of stalls required range from 2.99 (Metro), 3.99 (other 'target' or WDM comparable cities outside of Iowa) and 4.5 (Iowa) stalls. Eight of the 28 communities researched have parking requirements ranging from 2 to 3.3 stalls per 1,000 square feet which is below West Des Moines 3.5 spaces per 1,000 square feet requirement. The 2019 research indicated the average number of required stalls for office range from 3.45 spaces (Iowa), 3.56 (other 'target' cities) and 3.65 (Metro) per 1,000 square feet for office. There are thirteen cities that require between 2.0 to 3.3 spaces per 1,000 square feet.

The applicant indicated that one known office user is a broker-based business which does not have patrons coming and going from the building and therefore would only need parking for their employees. Additionally, the developer noted that their other existing office developments have experienced a reduction in office users as a result of the pandemic which they do not see rebounding to pre-Covid numbers. After further discussion, it was determined that a reduction in the parking ratio required for the office aspect made the most sense and provided the most security to accommodate future changes in tenancy. The Specific Plan Ordinance has been written with a requirement of 2.5 spaces per 1,000 square feet of gross floor area for the office portion of the development, with restaurant, retail and residential requirements as indicated in the bulleted list above. The reduction in office requirements brings the total number of required spaces to 165 which can be accommodated within the site.

Outstanding Issues: There are no outstanding issues.

Plan and Zoning Commission Action:

Date: January 10, 2022

Vote: 4-0, for approval with Commissioners Drake and Davis absent and Commissioner Crowley abstaining

Recommendation: Approval of Area Development Plan, Approval of Comprehensive Plan Amendment and approval of Specific Plan Ordinance

City Council First Reading:

Date:

Vote:

Recommendation: Approve the Area Development Plan, Comprehensive Plan Land Use Map Amendment and Rezoning request establishing the Jordan Creek Tower Specific Plan (ZCSP) Ordinance, subject to the applicant meeting all City Code requirements.

Lead Staff Member: Brian Portz

Approval Meeting Dates:

Plan and Zoning Commission	January 10, 2022
City Council: First Reading	January 18, 2022
City Council: Second Reading	
City Council: Third Reading	

Staff Report Reviews:

Plan & Zoning Commission	<input checked="" type="checkbox"/> Development Coordinator (or) <input checked="" type="checkbox"/> Director	<input checked="" type="checkbox"/> Legal Department
City Council	<input checked="" type="checkbox"/> Director <input type="checkbox"/> Appropriations/Finance	<input checked="" type="checkbox"/> Legal Department <input checked="" type="checkbox"/> Agenda Acceptance <i>JP</i>

Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	1/5/22
Date(s) of Mailed Notices	12/30/21

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning		
Date Reviewed	12/20/21		
Recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Split

Location Map



**A RESOLUTION OF THE PLAN AND ZONING COMMISSION
NO. PZC-22-001**

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant D.R.A. Properties, L.C. and property owner, Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005, requests approval of the Jordan Creek Tower Area Development Plan for that certain 2.5 acre site located at 575 & 595 S. 60th Street.

WHEREAS, on January 10, 2022 this Commission held a duly-noticed meeting to consider the application for the Jordan Creek Tower Area Development Plan (ADP-005322-2021)

NOW, THEREFORE, the Plan and Zoning Commission of the City of West Des Moines recommends that City Council approve the Jordan Creek Tower Area Development Plan (ADP-005322-2021) subject to compliance with all the conditions of approval as stated in the staff report, including conditions added at the meeting, and attached hereto as Exhibit "A", if applicable.

PASSED AND ADOPTED on January 10, 2022.



Erica Andersen, Chair
Plan and Zoning Commission

I **HEREBY CERTIFY** that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on January 10, 2022, by the following vote:

AYES: ANDERSEN, CONLIN, COSTA, HATHFIELD

NAYS:

ABSTENTIONS: CROWLEY

ABSENT: DAVIS, DRAKE

ATTEST:


Recording Secretary

**A RESOLUTION OF THE PLAN AND ZONING COMMISSION
NO. PZC-22-003**

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant D.R.A. Properties, L.C. and property owner, Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005, requests approval of a Rezoning Request to establish the Jordan Creek Tower Zone Change Specific Plan (ZCSP) on property as legally defined in the Specific Plan (ZCSP) Ordinance and indicated on the Location Map, both of which are included in the staff report. Specifically, the underlying zoning of Support Commercial (SC) zoning shall be applied to accommodate the development of a 5-story mixed use building including residential, restaurant, retail and commercial uses; and

WHEREAS, the Rezoning request complies with the applicable provisions of Iowa Code Chapter 414, the Comprehensive Plan and City Code.

NOW, THEREFORE, the Plan and Zoning Commission of the City of West Des Moines recommends that City Council approve the Rezoning request, (CPAZCSP-005323-2021) subject to compliance with all the conditions of approval as stated in the staff report, including conditions added at the meeting, and attached hereto as Exhibit "A", if applicable.

PASSED AND ADOPTED on January 10, 2022.


Erica Andersen, Chair
Plan and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on January 10, 2022, by the following vote:

AYES: **ANDERSEN, CONLIN, COSTA, HATFIELD**

NAYS:

ABSTENTIONS: **CROWLEY**

ABSENT: **DAVIS, DRAKE**

ATTEST:


Recording Secretary

**A RESOLUTION OF THE PLAN AND ZONING COMMISSION
NO. PZC-22-002**

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant D.R.A. Properties, L.C. and property owner, Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005, requests approval of a Comprehensive Plan Land Use Map Amendment to change the land use designation of the Specific Plan development parcel as shown on the Specific Plan Sketch Plan included in the staff report from Office (OF) to Support Commercial (SC); and

WHEREAS, the comprehensive plan amendment complies with the applicable provisions of Iowa Code Chapter 414 and City Code.

NOW, THEREFORE, the Plan and Zoning Commission of the City of West Des Moines recommends that City Council approve the Comprehensive Plan Land Use Map Amendment, (CPAZCSP-005323-2021) subject to compliance with all the conditions of approval as stated in the staff report, including conditions added at the meeting, and attached hereto as Exhibit "A", if applicable.

PASSED AND ADOPTED on January 10, 2022.



**Erica Andersen, Chair
Plan and Zoning Commission**

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on January 10, 2022, by the following vote:

AYES: ANDERSEN, CONLIN, COSTA, HATFIELD

NAYS:

ABSTENTIONS: CROWLEY

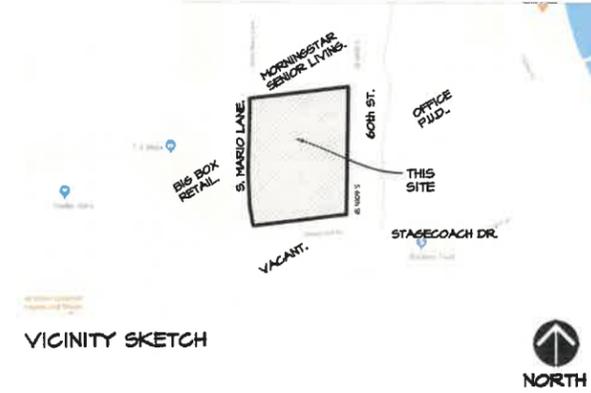
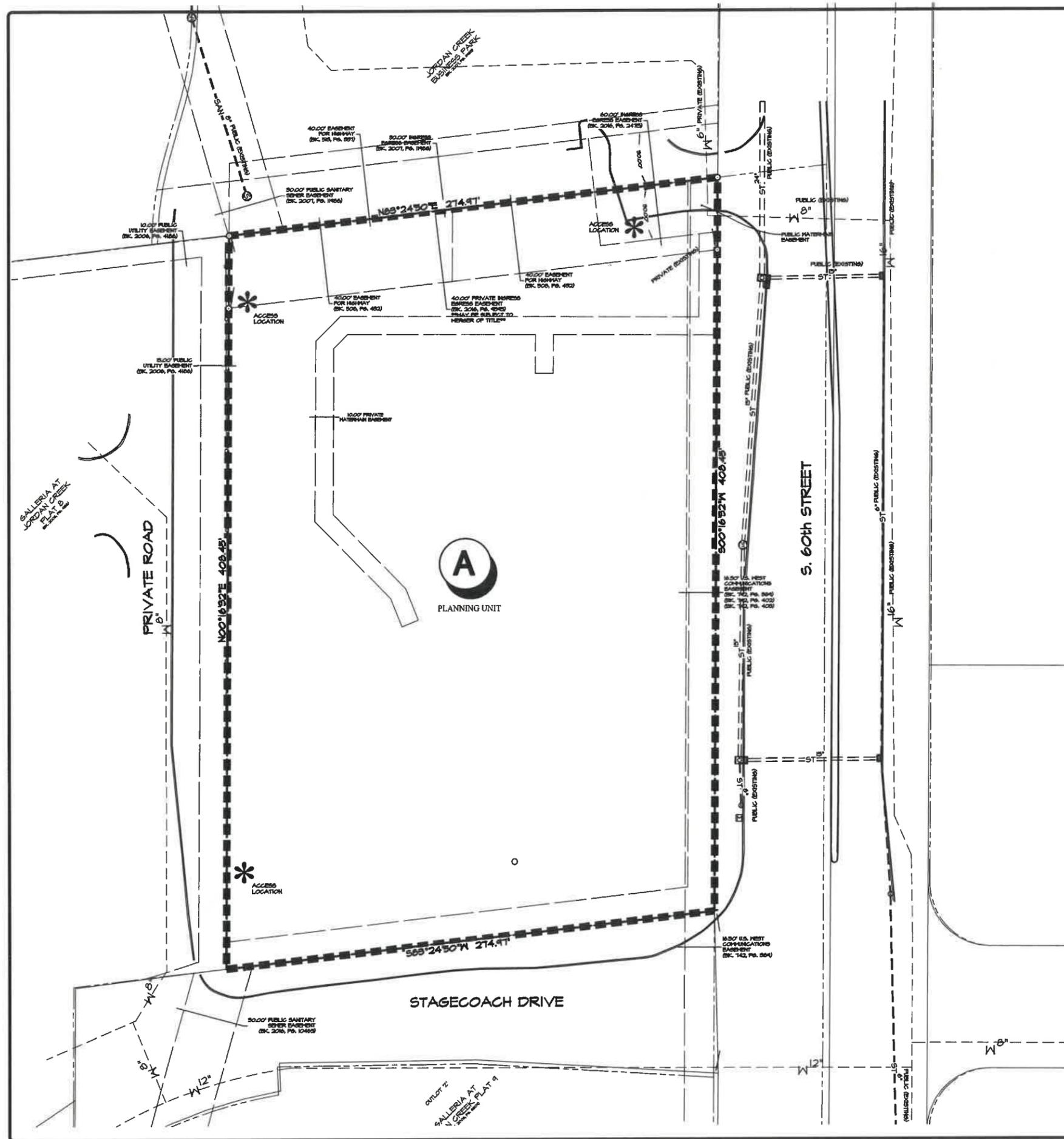
ABSENT: DAVIS, DRAKE

ATTEST:



Recording Secretary

PLANS INCLUDED ARE FOR ILLUSTRATIVE PURPOSES ONLY - APPROVED PLANS ON FILE WITH THE CITY



PROPERTY OWNER:
DENNIS R. ALBAUGH
REVOCABLE TRUST W/D
10/05/2005
1525 NE 26TH STREET
ANKENY, IOWA 50021
515.964.9444

PROPERTY ADDRESS:
575 & 545 60th STREET
WEST DES MOINES, IOWA 50266

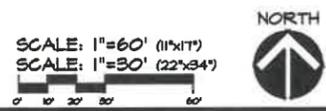
APPLICANT:
DRA PROPERTIES
1525 NE 26TH STREET
ANKENY, IOWA 50021
ATTN: DENNIS ALBAUGH
515.964.9444

LAND USE
PROPOSED: MIXED USE
COMP. PLAN DISTRICT
EXISTING: OFFICE

ZONING
EXISTING: UNZONED
PROPOSED: SPECIFIC PLAN MIXED USE

LEGAL DESCRIPTION
A PARCEL OF LAND IN THE NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4 OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 26 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID NE 1/4 SE 1/4, SAID POINT ALSO BEING THE SE CORNER OF JORDAN CREEK BUSINESS PARK, AN OFFICIAL PLAT RECORDED IN BOOK 2007, PAGE 1185; THENCE S88°24'50"W, 60.43 FEET ALONG THE NORTH LINE OF SAID NE 1/4 SE 1/4 AND THE SOUTH LINE OF SAID JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING ON THE WEST RIGHT-OF-WAY LINE OF S. 60TH STREET AS IT IS PRESENTLY ESTABLISHED; THENCE S00°16'32"W, 408.43 FEET ALONG SAID RIGHT-OF-WAY LINE TO A POINT ON THE SOUTH LINE OF SAID NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4, SAID POINT ALSO BEING THE NE CORNER OF OUTLOT '2', GALLERIA AT JORDAN CREEK PLAT 9, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 8609; THENCE S88°24'50"W, 274.91 FEET ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID OUTLOT '2' TO THE SW CORNER OF SAID NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4, SAID POINT ALSO BEING ON THE EAST LINE OF GALLERIA AT JORDAN CREEK PLAT 8, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 4186; THENCE N00°16'32"E, 408.43 FEET ALONG THE WEST LINE OF SAID NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4 AND THE EAST LINE OF SAID GALLERIA AT JORDAN CREEK PLAT 8 TO THE NW CORNER OF SAID NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4, SAID POINT ALSO BEING THE NE CORNER OF SAID GALLERIA AT JORDAN CREEK PLAT 8 AND ON THE SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK; THENCE N04°24'50"E, 274.91 FEET ALONG SAID NORTH LINE OF THE NE 1/4 SE 1/4 AND SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING CONTAINING 2.56 ACRES.

PLANNING UNITS
A **SPECIFIC PLAN MIXED USE**
2.56 ACRES
LAND USE: RESIDENTIAL
OFFICE
RESTAURANT
RETAIL



Civil Engineering Consultants, Inc.
2400 86th Street, Unit 12 Des Moines, Iowa 50322
515.276.4884 mail@cecinc.com



DATE:	10-27-2021
DATE OF SURVEY:	08/19
DESIGNED BY:	08/19
DRAWN BY:	08/19

JORDAN CREEK TOWER
575 & 545 60th STREET, WEST DES MOINES, IOWA
AREA DEVELOPMENT PLAN

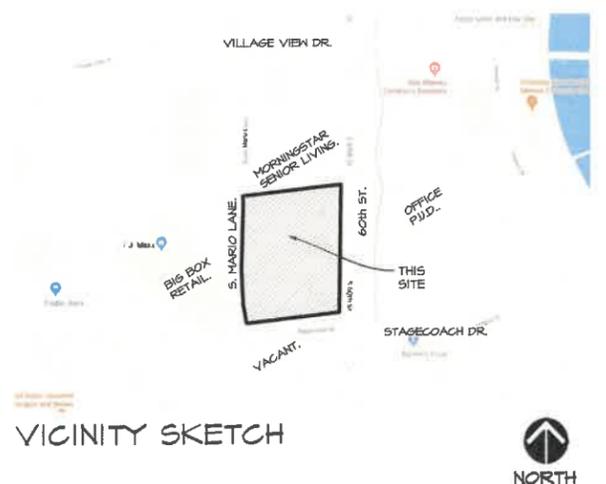
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T H E T O W E R

575 & 595 S. 60th STREET, WEST DES MOINES, IOWA 50266

PLANS INCLUDED ARE FOR ILLUSTRATIVE PURPOSES ONLY - APPROVED PLANS ON FILE WITH THE CITY



- NOTES**
- ONE WEEK PRIOR TO CONSTRUCTION CONTRACTOR SHALL NOTIFY:
 - OWNER
 - CIVIL ENGINEERING CONSULTANTS, INC.
 - CITY OF WEST DES MOINES ENGINEER'S OFFICE
 - ALL DIMENSIONS ARE TO BACK OF CURB, OUTSIDE OF BUILDING WALL, AND TO PROPERTY LINES. ALL RADI NOT LABELED: 5.0' TYPICAL.
 - LOCATIONS AND DIMENSIONS SHOWN ON PLANS FOR EXISTING FACILITIES ARE IN ACCORDANCE WITH AVAILABLE INFORMATION WITHOUT UNCOVERING AND MEASURING. ENGINEER DOES NOT GUARANTEE ACCURACY OF THIS INFORMATION OR THAT ALL EXISTING UNDERGROUND FACILITIES ARE SHOWN. IT IS RESPONSIBILITY OF CONTRACTOR TO CONTACT ALL PUBLIC AND/OR PRIVATE UTILITIES SERVING AREA TO DETERMINE PRESENT EXTENT AND EXACT LOCATION OF THEIR FACILITIES BEFORE BEGINNING WORK.
 - AT LEAST 48 HOURS PRIOR TO CONSTRUCTION, CONTRACTOR SHALL CALL IOWA ONE-CALL TO FIELD LOCATE EXISTING UNDERGROUND UTILITIES. LOCATION OF UTILITIES SHOWN ON PLAN ARE APPROXIMATE AND MUST BE VERIFIED. (1-800-242-9494)
 - CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT UTILITIES OR STRUCTURES AT SITE. CONTRACTOR'S RESPONSIBILITY TO NOTIFY OWNERS OF UTILITIES OR STRUCTURES CONCERNED BEFORE STARTING WORK. CONTRACTOR SHALL NOTIFY PROPER UTILITY IMMEDIATELY UPON BREAKING OR DAMAGE TO ANY UTILITY LINE OR APPURTENANCE, OR INTERRUPTION OF THEIR SERVICE. HE SHALL NOTIFY PROPER UTILITY INVOLVED. IF EXISTING UTILITY LINES ARE ENCOUNTERED THAT CONFLICT IN LOCATION WITH NEW CONSTRUCTION, CONTRACTOR SHALL NOTIFY ENGINEER SO THAT CONFLICT MAY BE RESOLVED.
 - CONTRACTOR SHALL REMOVE ALL DEBRIS SPILLED ON CITY OF WEST DES MOINES RIGHT-OF-WAY AND ADJOINING PROPERTY IMMEDIATELY.
 - AT NO TIME SHALL EQUIPMENT, CONSTRUCTION MATERIAL AND/OR STOCKPILED FILL BE STORED IN CITY OF WEST DES MOINES RIGHT-OF-WAY.
 - DEVELOPER IS RESPONSIBLE FOR MAINTAINING ALL EROSION AND SEDIMENTATION CONTROL DEVICES THROUGHOUT CONSTRUCTION.
 - OFF-STREET PARKING AND ACCESS DRIVES SHALL BE PROVIDED PRIOR CONSTRUCTION FOR CREWS AND EQUIPMENT.
 - ADDITIONAL EROSION AND SEDIMENTATION CONTROL DEVICES MAY BE REQUIRED BASED UPON ACTUAL FIELD CONDITION.
 - ALL TRASH DUMPSTERS SHALL BE SCREENED FROM VIEW WITH APPROVED STRUCTURE.
 - NO CHANGES TO APPROVED PLAN MAY BE MADE WITHOUT PRIOR WRITTEN APPROVAL OF CITY OF WEST DES MOINES.
 - ALL WORK WITHIN CITY RIGHT-OF-WAY (R.O.W) SHALL BE DONE IN ACCORDANCE WITH SUDAS AND CITY OF WEST DES MOINES GENERAL SUPPLEMENTAL SPECIFICATIONS TO 2012 SUDAS AND REQUIRES A R.O.W PERMIT.
 - TRANSFORMERS, JUNCTION BOXES AIR CONDITIONERS OVER 3 FEET IN HEIGHT OR OTHER SUCH ITEMS MAY NOT BE LOCATED IN REQUIRED SETBACK AREAS.
 - REQUIRED LANDSCAPING, BOTH EXISTING AND PROPOSED, SHALL BE MAINTAINED FOR LIFE OF CERTIFICATE OF OCCUPANCY.
 - SITE SHALL BE MAINTAINED IN COMPLIANCE WITH ALL CITY CODE APPLICABLE ON DATE OF SITE PLAN APPROVAL.
 - ANY ROOFTOP MECHANICAL EQUIPMENT MUST BE SCREENED FROM VIEW AT STREET LEVEL.
 - ANY AMENDMENTS OR CHANGES TO PROJECT SITE THAT DO NOT MEET WHAT IS SHOWN ON SITE PLAN MUST BE APPROVED BY CITY PRIOR TO INSTALLATION/CONSTRUCTION.
 - LIGHTING MUST BE LOW GLARE CUT-OFF TYPE FIXTURES TO REDUCE GLARE OF LIGHT POLLUTION ON SURROUNDING PROPERTIES.
 - ALL DISTURBED AREAS SHOULD BE RESTORED BY SEEDING OR SODDING.
 - ALL EXTERIOR SIGNAGE TO BE REVIEWED AND APPROVED SEPARATELY BY CITY. ALL REQUIRED SIGN PERMITS, ACQUIRED, AND PAID BY CONTRACTOR.
 - CONTRACTOR IS RESPONSIBLE FOR SUBMITTAL OF ALL DOCUMENTS REQUIRED FOR ALL CONSTRUCTION AND DEMOLITION PERMITS. CONTRACTOR SHALL PAY FOR ALL REQUIRED PERMITS.
 - SITE SIGNAGE IS NOT REVIEWED OR APPROVED AS A PART OF THIS SITE PLAN. SEPARATE PERMIT APPLICATION AND REVIEW IS REQUIRED FOR SIGN PERMIT.

BENCHMARK
 CITY OF WEST DES MOINES BENCHMARKS
 #10. ELEVATION = 201.51 (NDM DATUM)
 #124. ELEVATION = 203.65 (NDM DATUM)

- STANDARD CITY OF WEST DES MOINES NOTES**
- GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION OF WORK OF ALL SUBCONTRACTORS INVOLVED IN PROJECT.
 - CONTACT BUILDING INSPECTION (515) 222-3630, A MINIMUM OF 24 HOURS IN ADVANCE FOR PRIVATE UTILITY INSTALLATION INSPECTIONS.
 - ALL LIGHTS ARE TO BE DOWNCAST CUTOFF VARIETY. WALL PACKS ARE PROHIBITED. MAXIMUM ILLUMINATION ALLOWED AT PROPERTY LINE IS ONE FOOT-CANDLE.
 - ALL CONSTRUCTION WITHIN PUBLIC ROW/EASEMENTS, AND/OR CONNECTION TO PUBLIC SEWERS AND STREETS, SHALL COMPLY WITH THE WEST DES MOINES STANDARD CONSTRUCTION SPECIFICATIONS FOR SUBDIVISIONS, DSM METRO DESIGN STANDARDS AND NDM ADDENDA.
 - AT LEAST ONE WEEK PRIOR TO ANY CONSTRUCTION WITHIN PUBLIC ROW/EASEMENTS AND/OR ANY CONNECTION TO PUBLIC STREETS, THE CONTRACTOR SHALL CONTACT THE NDM ENGINEERING SERVICES (222.3475) TO SCHEDULE ANY REQUIRED INSPECTIONS. IT IS IMPORTANT TO NOTE CITY APPROVAL OF THIS PLAN IS SUBJECT TO THE APPLICANT OBTAINING ALL NECESSARY EASEMENTS/AGREEMENTS AND APPLICABLE PERMITS.
 - SIGNING, PAVEMENT MARKINGS, AND OTHER TRAFFIC CONTROL DEVICES ON ALL PUBLIC AND PRIVATE STREETS, AND ALL APPROACHES TO TO ALL PUBLIC STREETS SHALL BE IN CONFORMANCE WITH M.U.T.C.D.

- GRADING NOTES**
- FINISHED GRADE ON ALL NON-PAVED AREAS SHALL BE WITHIN 0.20 FOOT OF PLAN GRADE. PAVED AREAS SHALL BE WITHIN 0.10 FOOT, WITH POSITIVE DRAINAGE OF ALL AREAS.
 - CONTRACTOR SHALL VERIFY LOCATION AND PROTECT ALL EXISTING UTILITIES AND STRUCTURES. DAMAGE TO UTILITIES AND STRUCTURES SHALL BE REPAIRED BY CONTRACTOR AT CONTRACTOR'S EXPENSE, TO SATISFACTION OF UTILITY OWNER.
 - TOPSOIL SHALL BE SPREAD TO A MINIMUM THICKNESS OF 6-INCHES ON ALL LANDSCAPED AREAS.
 - BACKFILL TO TOP OF ALL CURBS.
 - ALL ELEVATIONS ARE TO GUTTER GRADE UNLESS NOTED OTHERWISE.
 - COVER AND/OR FILTER SOCK AROUND ALL INTAKES PRIOR TO PAVING TO PREVENT SEDIMENT FROM ENTERING STORM SEWER.
 - ALL DEBRIS SPILLED ON CITY R.O.W. AND ADJOINING PROPERTY SHALL BE REMOVED BY CONTRACTOR IN A TIMELY FASHION.
 - ALL DISTURBED AREA TO BE SUBJECT TO REQUIREMENTS OF SHPPP.

- UTILITY NOTES**
- ALL UTILITIES SHALL BE CONSTRUCTED IN ACCORDANCE WITH SUDAS 2012 URBAN STANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS AND CITY OF WEST DES MOINES SUPPLEMENTAL SPECIFICATIONS.
 - CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT UTILITIES OR STRUCTURES AT SITE. CONTRACTOR'S RESPONSIBILITY TO NOTIFY OWNERS OF UTILITIES OR STRUCTURES CONCERNED BEFORE STARTING WORK. CONTRACTOR SHALL NOTIFY PROPER UTILITY IMMEDIATELY UPON BREAKING OR DAMAGE TO ANY UTILITY LINE OR APPURTENANCE, OR INTERRUPTION OF THEIR SERVICE. IF EXISTING UTILITY LINES ARE ENCOUNTERED IN CONFLICT WITH NEW CONSTRUCTION, CONTRACTOR SHALL NOTIFY ENGINEER SO CONFLICT MAY BE RESOLVED.
 - ALL SERVICES SHALL BE CONSTRUCTED TO WITHIN 5 FEET OF OUTSIDE OF BUILDING WALLS.
 - SIZE AND MATERIALS OF SANITARY SEWER SERVICE SHALL COMPLY WITH PLUMBING CODE.
 - ALL EXISTING TILE LINES ENCOUNTERED SHALL BE RESTORED OR ROUTED TO A STORM SEWER WHETHER ACTIVE OR NOT.
 - ALL STORM & SANITARY SEWER SHALL BE CONSTRUCTED WITH APPROPRIATE PERMITS.
 - ALL UTILITIES SHALL BE UNDERGROUND.
 - CONTRACTOR SHALL ADJUST ALL EXISTING UTILITY APPURTENANCES TO PROPOSED GRADE ELEVATIONS.

- PAVING NOTES**
- JUST PRIOR TO PAVING, COMPACT SUBGRADE TO 4% STANDARD PROCTOR DENSITY FOR A DEPTH OF ONE FOOT.
 - REMOVE & REPLACE SOIL AS REQUIRED IN AREAS OF CUT OR TRANSITIONS.
 - PROOF ROLL ALL PAVING SUBGRADES IN PRESENCE OF GEOTECHNICAL ENGINEER TO LOCATE SOFT SPOTS. ALL SOFT SPOTS TO BE REPAIRED PRIOR TO TESTING FOR DENSITY.
 - PROVIDE IN PLACE FIELD DENSITY TESTS. RECOMPACT & RETEST AREAS THAT FAIL DENSITY SPECS AT NO COST TO OWNER.
 - ALL EXPOSED CONCRETE SHALL HAVE 5-1% ENTRAINED AIR, $f_c = 4000$ PSI MIN. AND ALL AGGREGATE SHALL MEET ASTM C-39.
 - ALL ON SITE PAVING SHALL CONFORM TO REQUIREMENTS OF LATEST IOWA STATEWIDE URBAN STANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS INCLUDING ALL WEST DES MOINES SUPPLEMENTAL SPECIFICATIONS.
 - CONTRACTOR SHALL PREPARE AND SUBMIT FOR ALL REQUIRED CITY OF WEST DES MOINES PERMITS AND PAY NECESSARY FEES.
 - PARKING STRIPING SHALL BE DONE WITH 4" WIDE WHITE PAVEMENT PAINT WITH SILICA SAND TOPPING.
 - NEW PAVING SHALL BE 6-INCH P.C.C., EXCEPT NOTED OTHERWISE.
 - PROVIDE 2" CONCRETE AROUND ALL INTAKES AND MANHOLES WITHIN PAVED AREAS.
 - ALL PAVING WITHIN THE R.O.W. TO BE MINIMUM 1" THICK P.C.C.

PROPERTY OWNER:
 DENNIS R. ALBAUGH
 REVOCABLE TRUST U/A/D
 10/05/2005
 1525 NE 36TH STREET
 ANKENY, IOWA 50021
 515.964.9444

PROPERTY ADDRESS:
 575 & 595 S. 60th STREET
 WEST DES MOINES, IOWA 50266

APPLICANT:
 DRA PROPERTIES
 5525 NE 36th STREET
 ANKENY, IOWA 50021
 ATTN: DENNIS ALBAUGH
 515.964.9444

SITE PLAN PREPARED BY:
 CIVIL ENGINEERING CONSULTANTS, INC.
 2400 86th STREET #12
 WEST DES MOINES, IA 50322
 515.276.4884

ZONING:
 EXISTING: UNZONED
 PROPOSED: SPECIFIC PLAN MIXED USE

ADJACENT LAND USE
 NORTH: SENIOR LIVING
 EAST: OFFICE
 SOUTH: VACANT
 WEST: BIG BOX RETAIL

LAND USE
 PROPOSED: MIXED USE

COMP. PLAN DISTRICT
 EXISTING: OFFICE

LAND USE DENSITIES
 EXISTING: 6 DU/AC = 15 DU
 PROPOSED: 12 DU/AC = 184 DU

LEGAL DESCRIPTION

A PARCEL OF LAND IN THE NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4 OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 26 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS, COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID NE 1/4 SE 1/4, SAID POINT ALSO BEING THE SE CORNER OF JORDAN CREEK BUSINESS PARK, AN OFFICIAL PLAT RECORDED IN BOOK 2007, PAGE 1185; THENCE S03°24'50"W, 60.43 FEET ALONG THE NORTH LINE OF SAID PLAT RECORDED IN BOOK 2006, PAGE 600; THENCE S03°24'50"W, 274.47 FEET ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID OUTLOT '2' TO THE SW CORNER OF SAID NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4, SAID POINT ALSO BEING THE NE CORNER OF SAID GALLERIA AT JORDAN CREEK PLAT #4, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 4186; THENCE N00°16'32"E, 408.45 FEET ALONG THE WEST LINE OF SAID NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4 AND THE EAST LINE OF SAID GALLERIA AT JORDAN CREEK PLAT #4 TO THE NW CORNER OF SAID NORTH 400 FEET OF THE EAST 333 FEET OF THE NE 1/4 SE 1/4, SAID POINT ALSO BEING THE NE CORNER OF SAID GALLERIA AT JORDAN CREEK BUSINESS PARK; THENCE N04°24'50"E, 274.47 FEET ALONG SAID NORTH LINE OF THE NE 1/4 SE 1/4 AND SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING CONTAINING 256 ACRES.

GENERAL LEGEND

	PROPOSED FLAT BOUNDARY		EXISTING LOT LINE
	PROPOSED SECTION LINE		EXISTING SANITARY/STORM MANHOLE
	PROPOSED LOT LINE		EXISTING WATER VALVE
	PROPOSED CENTERLINE		EXISTING FIRE HYDRANT
	PROPOSED EASEMENT LINE		EXISTING STORM SEWER SINGLE INTAKE
	PROPOSED FLARED END SECTION		EXISTING STORM SEWER DOUBLE INTAKE
	PROPOSED DRAIN BASIN OR SEDIMENT RISER		EXISTING STORM SEWER ROUND INTAKE
	PROPOSED DRAIN BASIN WITH SOLID GRATE		EXISTING FLARED END SECTION
	PROPOSED WATER VALVE		EXISTING DECIDUOUS TREE
	PROPOSED FIRE HYDRANT ASSEMBLY		EXISTING CONIFEROUS TREE
	PROPOSED BLOW-OFF HYDRANT		EXISTING SHRUB
	PROPOSED SCOUR STOP MAT		EXISTING POWER POLE
	PROPOSED TURF REINFORCEMENT MAT		EXISTING STREET LIGHT
	PROPOSED STORM SEWER WITH SIZE		EXISTING GUY ANCHOR
	PROPOSED WATER SEWER WITH SIZE		EXISTING ELECTRIC TRANSFORMER
	PROPOSED WATER SERVICE		EXISTING GAS METER
	PROPOSED PROPOSED CONTOUR		EXISTING TELEPHONE RISER
	PROPOSED SILTY FENCE		EXISTING SIGN
	PROPOSED ADDRESS		EXISTING UNDERGROUND TELEVISION
	PROPOSED RIPRAP		EXISTING UNDERGROUND ELECTRIC
			EXISTING UNDERGROUND GAS
			EXISTING UNDERGROUND FIBER OPTIC
			EXISTING UNDERGROUND TELEPHONE
			EXISTING OVERHEAD ELECTRIC
			EXISTING SANITARY SEWER WITH SIZE
			EXISTING STORM SEWER WITH SIZE
			EXISTING WATER MAIN WITH SIZE
			EXISTING CONTOUR

SITE AREAS:

BUILDING	24100 SF	21.64%
IMPERVIOUS (PAVED AREA)	49100 SF	44.11%
PERVIOUS	38700 SF	34.20%
TOTAL SITE AREA	111510 SF	100.00%

IMPERVIOUS AREA
 TOTAL IMPERVIOUS SURFACE = 73,811 SF

OPEN SPACE REQUIREMENT
 TOTAL SITE 111,510 SF. OPEN SPACE REQUIRED: 25%
 OPEN SPACE REQUIRED: 27,878 SF
 OPEN SPACE PROVIDED: 40,195 SF

PARKING:
 RESTAURANT: 8/1000 = 515 STALLS
 OFFICE USE: 2.5/1000 S.F. = 601 STALLS
 RESIDENTIAL: 2 PER CONDO = 20 STALLS
 RETAIL: 3.3/1000 S.F. = 118 STALLS
 VISITOR STALLS: 1/10 UNITS = 1 STALL

STALLS REQUIRED: 1644 INCLUDING 6 ADA STALLS.
 STALLS SHOWN: SURFACE STALLS = 118 INCLUDING 6 ADA STALLS.
 UNDERGROUND PARKING = 47 STALLS.
 STALLS SHOWN: 165

CERTIFICATION



I HEREBY CERTIFY THAT THE PORTION OF THIS TECHNICAL SUBMISSION DESCRIBED BELOW WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LANDSCAPE ARCHITECT UNDER THE LAWS OF THE STATE OF IOWA.

BY: EDWARD H. ARP, IOWA REG. NO. 250
 PAGES OR SHEETS COVERED BY THIS SEAL.
 SHEETS 1-5

PRELIMINARY - NOT FOR CONSTRUCTION

Civil Engineering Consultants,
 2400 86th Street, Unit 12, Des Moines, Iowa
 515.276.4884, mail@cecinc.com

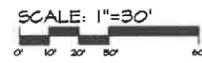
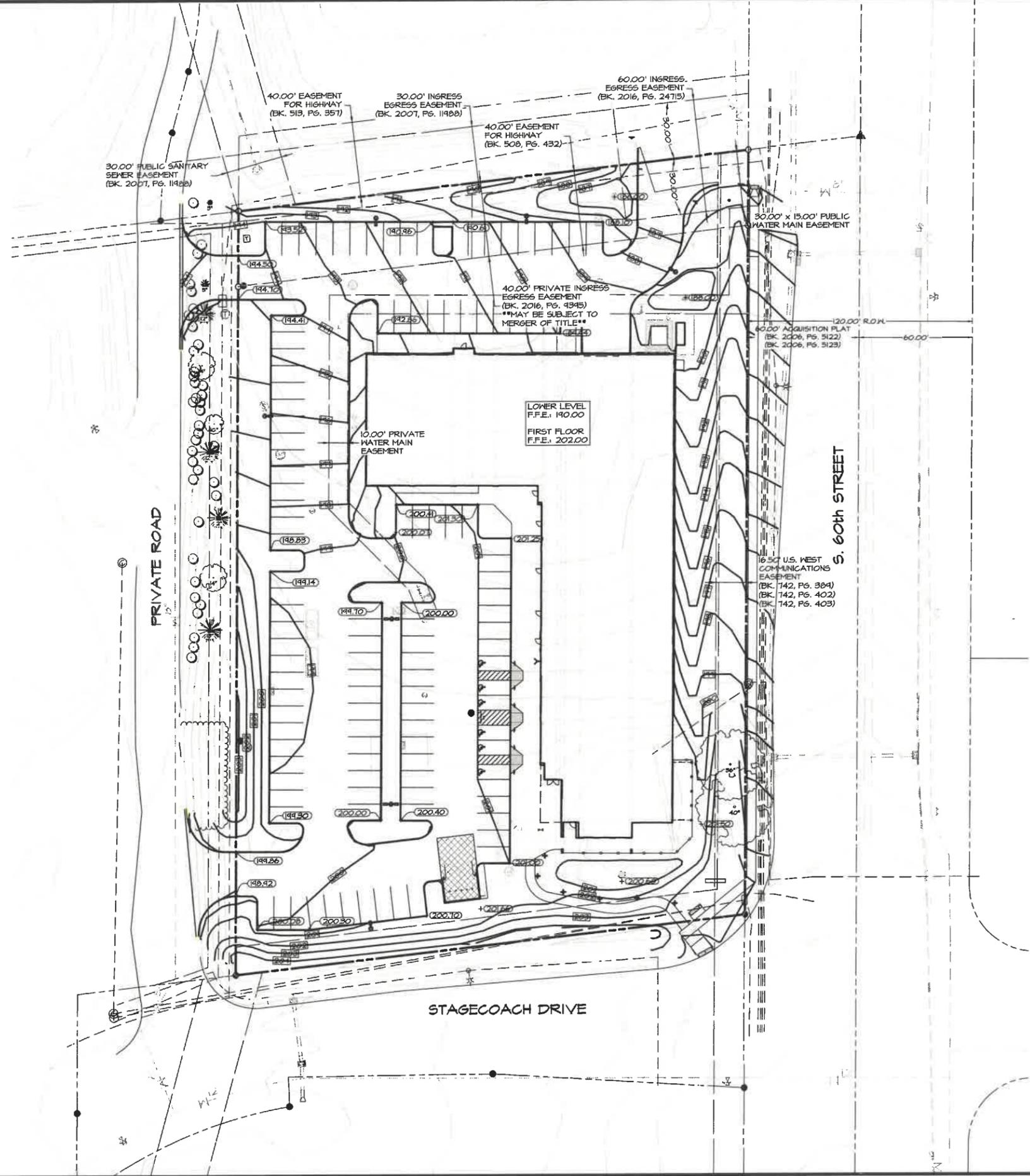


DATE:

2ND SUBMITTAL 11-18-2021	JAG	511
1ST SUBMITTAL 10-28-2021	JAG	511
DATE OF SURVEY: NOV. 25, 2014	JAG	511
DESIGNED BY:	JAG	511
DRAWN BY:	JAG	511

THE TOWER
 575 & 595 S. 60th STREET, WEST DES MOINES, IA
 SPECIFIC PLAN (COVER)

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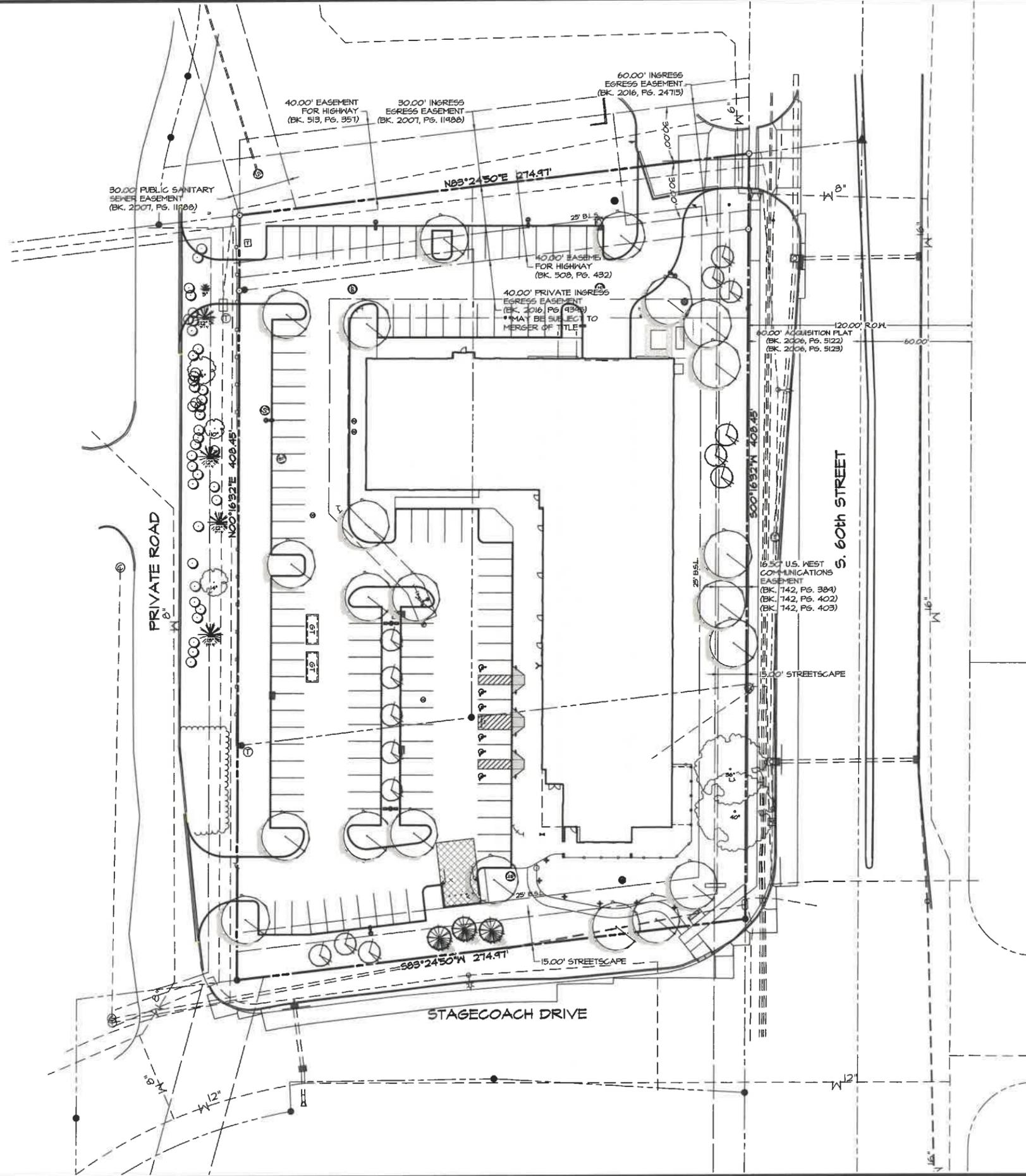


PRELIMINARY - NOT FOR CONSTRUCTION

THE TOWER
 575 & 545 S. 60TH STREET, WEST DES MOINES, IA
 SPECIFIC PLAN (GRADING PLAN)

DATE:	2ND SUBMITTAL 11-18-2021
DESIGNED BY:	1ST SUBMITTAL 10-28-2021
DRAWN BY:	NOV. 25, 2014
	JAG
	STM

CEC
 Civil Engineering Consultants, Inc.
 2400 86th Street, Unit 12 · Des Moines, Iowa 50322
 515.276.4884 · mail@cecinc.com



PRELIMINARY - NOT FOR CONSTRUCTION

THE TOWER
 575 & 545 S. 60TH STREET, WEST DES MOINES, IA
SPECIFIC PLAN (LANDSCAPE PLAN)

DATE	DATE
2ND SUBMITTAL 11-16-2021	DESIGNED BY: JAS
1ST SUBMITTAL 10-28-2021	DRAWN BY: STM
DATE OF SURVEY: NOV. 25, 2014	



Civil Engineering Consultants, Inc.
 2400 86th Street · Unit 12 · Des Moines, Iowa 50322
 515.276.4884 · mail@cecinc.com



PROJECTED ENTRANCE FOR COMMERCIAL OFFICE SPACES & CONDO GUESTS

MATERIAL CHANGE TO METAL BATTENS (WOOD LOOK) OVER METAL PANEL FOR SIGNAGE ATTACHMENT

LARGE OVERHANG OVER RESTAURANT MAIN ENTRANCE

EXTERIOR MATERIAL LEGEND	
MAT. LABEL	MATERIAL DESCRIPTION
BATT	LONGBOARD LINK & LOCK BATTENS; COLOR: BURNT SIENNA
CMU-1	CONCRETE MASONRY UNIT
COL-1	EXTERIOR STEEL COLUMN; BLACK FINISH
CONC	EXPOSED CAST IN PLACE CONCRETE; CAST STONE FORMLINER FINISH
COP-1	PREFINISHED ACM COPING; COLOR: BLACK
CW-1	KAUWEER 180 CURTAIN WALL SYSTEM; 7" DEPTH; COLOR: BLACK
FAS-1	DRY-DESIGN ACM PANEL W/ CONCEALED FASTENERS; COLOR: BLACK
FCP-1	FIBER CEMENT PANEL W/ CONCEALED FASTENERS; NICHIA VINTAGEWOOD; COLOR: CEDAR
FCP-2	FIBER CEMENT PANEL W/ CONCEALED FASTENERS; NICHIA EMPIRE BLOCK
GR-1	GLASS PANEL GLAZED RAIL SYSTEM
MP-1	DRY-DESIGN ACM PANEL W/ CONCEALED FASTENERS; COLOR: BLACK
MP-2	DRY-DESIGN ACM PANEL W/ CONCEALED FASTENERS; COLOR: WHITE
NWS-1	MINIWALL SLIDING THERMALLY BROKEN OPERABLE GLASS WALL SYSTEM IN-SWINGS; CLEAR ANODIZED ALUMINUM TOP & BOTTOM RAIL; STANDARD MOUNT W/ FRAMELESS GLASS
SF-1	T.B. ALUMINUM STOREFRONT FRAMING; BLACK FINISH
VIS-1	1" INSULATED VISION GLASS; CLEAR W/ LOW E COATING
VIS-2	1" INSULATED FRITTED GLASS; COLOR: BLACK
WD-1	DELTA MILLWORKS ACCOYA S58 BURNED AND BRUSHED WOOD SIDING (OR APPROVED EQUAL)





1 EAST ELEVATION
SCALE: 1/8" = 1'-0"

EXTERIOR MATERIAL LEGEND	
MAT. LABEL	MATERIAL DESCRIPTION
BATT	LONGBOARD LNK & LOCK BATTENS; COLOR: BURNT SIENNA
CMU-1	CONCRETE MASONRY UNIT
COL-1	EXTERIOR STEEL COLUMN; BLACK FINISH
CONC	EXPOSED CAST IN PLACE CONCRETE; CAST STONE FORMLINER FINISH
COP-1	PREFINISHED ACM COPING; COLOR: BLACK
CW-1	KAWNEER 1800 CURTAIN WALL SYSTEM; 7 1/2" DEPTH; COLOR: BLACK
FAS-1	DRY-DESIGN ACM PANEL; W/ CONCEALED FASTENERS; COLOR: BLACK
FCP-1	FIBER CEMENT PANEL; W/ CONCEALED FASTENERS; NICHHA VINTAGEWOOD; COLOR: CEDAR
FCP-2	FIBER CEMENT PANEL; W/ CONCEALED FASTENERS; NICHHA EMPIRE BLOCK
GR-1	GLASS PANEL; GUARD RAIL SYSTEM
MP-1	DRY-DESIGN ACM PANEL; W/ CONCEALED FASTENERS; COLOR: BLACK
MP-2	DRY-DESIGN ACM PANEL; W/ CONCEALED FASTENERS; COLOR: WHITE
NWS-1	NANA WALL SYSTEM; THERMALLY BROKEN OPERABLE GLASS WALL SYSTEM IN-SWINGING; CLEAR ANODIZED ALUMINUM TOP & BOTTOM RAIL; STANDARD MOUNT W/ FRAMELESS GLASS
SF-1	T.B. ALUMINUM STOREFRONT FRAMING; BLACK FINISH
VIS-1	1" INSULATED VISION GLASS; CLEAR W/ LOW E COATING
VIS-2	1" INSULATED FRITTED GLASS; COLOR: BLACK
WD-1	DELTA MILLWORKS ACCOYA SSB BURNED AND BRUSHED WOOD SIDING (OR APPROVED EQUIV.)



2 NORTH ELEVATION
SCALE: 1/8" = 1'-0"

Prepared by: Brian Portz, City of West Des Moines Development Services Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620

When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant D.R.A. Properties, L.C. and property owner, Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005, request approval of an Area Development Plan for that certain 2.5 acre site located at 575 & 595 S. 60th Street; and

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on January 10, 2022, the Plan and Zoning Commission did recommend to the City Council, by a 4-0 vote, for approval of the Area Development Plan; and

WHEREAS, on this day this City Council held a duly noticed Public meeting to consider the application for Area Development Plan.

NOW, THEREFORE, The City Council hereby approves the Area Development Plan (ADP-005322-2021) as shown on attached Comprehensive Plan Land Use Map Change Illustration, subject to compliance with all the conditions in the staff report, dated January 18, 2022, including conditions added at the meeting, and attached hereto as Exhibit "A". Violation(s) of any such condition(s) shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on January 18, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan Jacobson, City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on January 18, 2022, by the indicated vote.

Exhibit A: Conditions of Approval

1. None.

Exhibit B: Legal Description

A PARCEL OF LAND IN THE NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4 OF SECTION 13, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH/ P.M., CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID NE1/4 SE1/4, SAID POINT ALSO BEING THE SE CORNER OF JORDAN CREEK BUSINESS PARK, AN OFFICIAL PLAT RECORDED IN BOOK 2007, PAGE 11985; THENCE S83°24'50"W, 60.43 FEET ALONG THE NORTH LINE OF SAID NE1/4 SE1/4 AND THE SOUTH LINE OF SAID JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING ON THE WEST RIGHT-OF-WAY LINE OF S. 60TH/ STREET AS IT IS PRESENTLY ESTABLISHED; THENCE S00°16'32"W, 408.45 FEET ALONG SAID RIGHT-OF-WAY LINE TO A POINT ON THE SOUTH LINE OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING THE NE CORNER OF OUTLOT 'Z', GALLERIA AT JORDAN CREEK PLAT 9, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 8809; THENCE S83°24'50"W, 274.97 FEET ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID OUTLOT 'Z' TO THE SW CORNER OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING ON THE EAST LINE OF GALLERIA AT JORDAN CREEK PLAT 8, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 4186; THENCE N00°16'32"E, 408.45 FEET ALONG THE WEST LINE OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4 AND THE EAST LINE OF SAID GALLERIA AT JORDAN CREEK PLAT 8 TO THE NW CORNER OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING THE NE CORNER OF SAID GALLERIA AT JORDAN CREEK PLAT 8 AND ON THE SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK; THENCE N89°24'50"E, 274.97 FEET ALONG SAID NORTH LINE OF THE NE1/4 SE1/4 AND SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING CONTAINING 2.56 ACRES.

Prepared by: Brian Portz, City of West Des Moines Development Services Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620

When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant D.R.A. Properties, L.C. and property owner, Dennis R. Albaugh Revocable Trust U/A/D 10/05/2005, requests approval of a Comprehensive Plan Land Use Map Amendment to change the land use designation from Office (OF) to Support Commercial (SC) on the ground legally described in attached Exhibit 'B' and as indicated on the attached Comprehensive Plan Land Use Map Change Illustration; and

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, the Comprehensive Plan Land Use Map Amendment complies with applicable provisions of Iowa Code Chapter 414 and City Code; and

WHEREAS, on January 10, 2022, the Plan and Zoning Commission did recommend to the City Council, by a 4-0 vote, approval of the Comprehensive Plan Land Use Map Amendment; and

WHEREAS, on this day this City Council held a duly noticed Public Hearing to consider the application for Comprehensive Plan Land Use Map Amendment.

NOW, THEREFORE, The City Council hereby approves the Comprehensive Plan Land Use Map Amendment (CPAZCSP-005323-2021) as shown on attached Comprehensive Plan Land Use Map Change Illustration, subject to compliance with all the conditions in the staff report, dated January 18, 2022, including conditions added at the meeting, and attached hereto as Exhibit "A". Violation(s) of any such condition(s) shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on January 18, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan Jacobson, City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on January 18, 2022, by the indicated vote.

Exhibit A: Conditions of Approval

1. None

Exhibit B: Legal Description

A PARCEL OF LAND IN THE NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4 OF SECTION 13, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH/ P.M., CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID NE1/4 SE1/4, SAID POINT ALSO BEING THE SE CORNER OF JORDAN CREEK BUSINESS PARK, AN OFFICIAL PLAT RECORDED IN BOOK 2007, PAGE 11985; THENCE S83°24'50"W, 60.43 FEET ALONG THE NORTH LINE OF SAID NE1/4 SE1/4 AND THE SOUTH LINE OF SAID JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING ON THE WEST RIGHT-OF-WAY LINE OF S. 60TH/ STREET AS IT IS PRESENTLY ESTABLISHED; THENCE S00°16'32"W, 408.45 FEET ALONG SAID RIGHT-OF-WAY LINE TO A POINT ON THE SOUTH LINE OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING THE NE CORNER OF OUTLOT 'Z', GALLERIA AT JORDAN CREEK PLAT 9, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 8809; THENCE S83°24'50"W, 274.97 FEET ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID OUTLOT 'Z' TO THE SW CORNER OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING ON THE EAST LINE OF GALLERIA AT JORDAN CREEK PLAT 8, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 4106; THENCE N00°16'32"E, 408.45 FEET ALONG THE WEST LINE OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4 AND THE EAST LINE OF SAID GALLERIA AT JORDAN CREEK PLAT 8 TO THE NW CORNER OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING THE NE CORNER OF SAID GALLERIA AT JORDAN CREEK PLAT 8 AND ON THE SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK; THENCE N89°24'50"E, 274.97 FEET ALONG SAID NORTH LINE OF THE NE1/4 SE1/4 AND SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING CONTAINING 2.56 ACRES.

Comprehensive Plan Land Use Map Change Illustration



ORDINANCE

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA 2019, ACCORDING TO TITLE 9, ZONING, CHAPTER 9, PLANNED UNIT DEVELOPMENT DISTRICT, PERTAINING TO P.U.D. (PLANNED UNIT DEVELOPMENT) DISTRICT REGULATIONS AND GUIDELINES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

SECTION 1. AMENDMENT. Amend the Zoning Map of the City of West Des Moines, Iowa, by adding the following legally described property from “Unzoned” to **Jordan Creek Tower Zone Change Specific Plan (ZCSP)** of West Des Moines, Iowa:

Legal Description

A PARCEL OF LAND IN THE NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4 OF SECTION 13, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH/ P.M., CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AS A POINT OF REFERENCE AT THE NE CORNER OF SAID NE1/4 SE1/4, SAID POINT ALSO BEING THE SE CORNER OF JORDAN CREEK BUSINESS PARK, AN OFFICIAL PLAT RECORDED IN BOOK 2007, PAGE 11485; THENCE S83°24'50"W, 60.43 FEET ALONG THE NORTH LINE OF SAID NE1/4 SE1/4 AND THE SOUTH LINE OF SAID JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING ON THE WEST RIGHT-OF-WAY LINE OF S. 60TH/ STREET AS IT IS PRESENTLY ESTABLISHED; THENCE S00°16'32"W, 408.45 FEET ALONG SAID RIGHT-OF-WAY LINE TO A POINT ON THE SOUTH LINE OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING THE NE CORNER OF OUTLOT 'Z', GALLERIA AT JORDAN CREEK PLAT 9, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 8809; THENCE S83°24'50"W, 274.97 FEET ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID OUTLOT 'Z' TO THE SW CORNER OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING ON THE EAST LINE OF GALLERIA AT JORDAN CREEK PLAT 8, AN OFFICIAL PLAT RECORDED IN BOOK 2006, PAGE 4186; THENCE N00°16'32"E, 408.45 FEET ALONG THE WEST LINE OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4 AND THE EAST LINE OF SAID GALLERIA AT JORDAN CREEK PLAT 8 TO THE NW CORNER OF SAID NORTH 408 FEET OF THE EAST 333 FEET OF THE NE1/4 SE1/4, SAID POINT ALSO BEING THE NE CORNER OF SAID GALLERIA AT JORDAN CREEK PLAT 8 AND ON THE SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK; THENCE N89°24'50"E, 274.97 FEET ALONG SAID NORTH LINE OF THE NE1/4 SE1/4 AND SAID SOUTH LINE OF JORDAN CREEK BUSINESS PARK TO THE POINT OF BEGINNING CONTAINING 2.56 ACRES.

SECTION 2. DEVELOPMENT INTENT: The Jordan Creek Tower Specific Plan intends to establish a framework for the integration of a mix of land uses on the site, including multi-family residential, restaurants, retail and offices.

SECTION 3. REQUIRED PLANS. The following plans shall be required as a part of the processing of the development of the Jordan Creek Tower Specific Plan:

- A. Area Development Plan: An Area Development Plan is a plan that identifies planning units, major circulation patterns, master storm water drainage and detention concepts, utilities, shared public spaces, land use assumptions and proposed densities. It is intended to be a tool used to promote the communication and cooperation between adjacent property owners and developers within a development to ensure cohesive and unified development.

An Area Development Plan shall be reviewed by the Plan and Zoning Commission and approved by the City Council prior to, or in conjunction with, the review of the Specific Plan for any property within said specific plan area. No major changes to the Area Development Plan shall be made without approval of an amended plan, if deemed necessary, from the appropriate reviewing bodies.

Attached to this document (Exhibit I) or on file with the City Clerk is the City Council approved Area Development Plan for this development.

- B. Specific Plan: A Specific Plan identifies the development intent for each planning unit indicated on the Area Development Plan or more specifically delineated on the Specific Plan Map. The Specific Plan shall conform to the general development intent identified in the approved Area Development Plan, as well as the Town Center Overlay District Guidelines. The Specific Plan shall be reviewed by the Plan and Zoning Commission and adopted by the City Council by Ordinance.

This document shall constitute the Specific Plan Ordinance for Jordan Creek Tower. Attached to and made a part of this ordinance is a Specific Plan Map that illustrates the overall site layout concept for Jordan Creek Tower (Exhibit II). This document and the associated exhibits (included or on file with the City Clerk) are intended to specify the components, parameters, and requirements to be adhered to and implemented in order to ensure the realization of the Jordan Creek Tower development concept. It is recognized that modifications and changes in building footprints and layout may be necessary in response to market demands and specific tenants. These changes may be allowed with the appropriate City approvals if the shift does not have a negative impact on the traffic patterns for the building/area and the total number of vehicle trips does not exceed that which has been allocated to the overall Jordan Creek Tower development. At the discretion of the Director of Development Services, changes to the layout of the development that are deemed to be 'major' changes shall require an amendment to the Specific Plan Map and/or Ordinance, whichever is applicable. Major amendments shall require the review and approval of the Plan and Zoning Commission and City Council.

Where the Specific Plan Map and Specific Plan Ordinance conflict, the Specific Plan Ordinance shall prevail.

- C. Site Development Applications (Overlay District Site Plans, Major Modifications and Minor Modifications): Site Plans for development within the Jordan Creek Tower development must meet the intent of the approved Specific Plan. Site plans shall be submitted to the City of West Des Moines for review and approval prior to the development or modification of any portion of the associated supporting lot. Site plans for permitted uses which comply (as determined by the Director of Development Services) with the design intent as set forth in this Specific Plan will be subject to administrative review and approval by the Director of

Development Services. A one-week review and comment period by each and all-available members of the Plan and Zoning Commission and City Council shall precede the administrative approval. If upon review, two (2) or more members of the City Council, Plan and Zoning Commission, or a combination thereof request such; or if the Director of Development Services deems the proposed site plan is not in compliance with the approved Specific Plan or is potentially controversial, the site plan will be processed through the traditional full site plan review and approval process.

At the discretion of the Director of Development Services, an amendment to the Jordan Creek Tower Specific Plan Ordinance may be required to bring consistency between the ordinance and site plan development proposed.

An overlay district site plan must be approved prior to the issuance of any building permit, including footing and foundation permits, for construction of any structure within the area proposed for development.

Upon approval of an Overlay District Site Plan, any modifications to that intended or constructed shall first receive approval of a site modification application (Major Modification or Minor Modification). Major Modifications shall follow the same approval process as do Overlay District Site Plans. Minor Modifications may be approved administratively by staff without Plan and Zoning Commission or City Council review if no deviations from city code requirements are proposed.

- D. *Preliminary and Final Platting*: Platting for any parcel shall be at the discretion of the developer. Platting, if needed for subdivision or right-of-way dedication, shall be done in accordance with the City's Subdivision Ordinance. Platted outlots are not buildable until such time that they are replatted through the City's Subdivision process.

Unless otherwise specifically restricted by City Council action, ground work and construction of private roads and utilities may be started, at the developer's risk, upon approval of a preliminary plat or overlay district site plan by the City Council. Public street and utility construction may begin, at the risk of the developer, after approval of the preliminary plat or overlay district site plan which includes the improvements by the City Council and construction improvement plans by the City of West Des Moines.

Prior to approval of the final plat or first overlay district site plan, unless otherwise allowed by Council, the developer shall provide the appropriate agreements, easements, and sureties, as required, for all public rights-of-way and other public improvements (utilities, sidewalks, street lights, etc.) within and associated with the development.

SECTION 4. CONDITIONS. Whereas, Title 9 of the West Des Moines City Code includes Chapter 9, PUD Planned Unit Development District and establishes certain regulations and guidelines pertaining to accompanying information required on plat and site plan documents. Now, therefore, the following conditions, restrictions, and regulations are adopted as part of this approval, to wit:

In addition to the Specific Plan Map, the following general development criteria shall be integrated into and made a part of this Specific Plan Ordinance:

- A. *General Conformance to Subdivision Ordinance*: All subdivisions, public streets, public street rights-of-way, and general development shall adhere to the standards and design criteria set

forth in the West Des Moines subdivision ordinances and the most current design standards adopted by the City of West Des Moines pertaining thereto unless otherwise stated within this ordinance.

- B. General Conformance to Zoning Ordinance: Unless otherwise specified herein, the development of the Jordan Creek Tower Specific Plan shall comply with Title 9, Zoning, or any other applicable codes.
- C. Flood Hazard: In all areas within a 100-year frequency flood hazard zone, or adjoining drainageways, and detention ponding areas involving potential flood hazards, no building shall be erected that has a lowest floor, including basements, less than one foot (1') above the determining level of the 100-year frequency flood event, and no building shall be located within twenty-five feet (25') of any easement or property boundary of a major drainageway, storm water detention basin, or pond, unless said location is approved as part of a development entitlement by the City Council and said building is structurally designed accordingly.

SECTION 5. FIRE ACCESS:

- A. All internal drive aisles and parking lots shall permit the travel of the Fire Department's largest vehicle, including adequate accommodation of the vehicle's turning needs. Approval of unique design solutions to accommodate fire access may be granted by the City Council if, the solutions proposed are recommended by the West Des Moines Fire Department.
- B. At the discretion of the City's Fire Marshal, "No Parking Fire Lane" areas may be established as necessary to ensure efficient movement and access of the fire trucks. Unless otherwise privately agreed upon, the developer of the Jordan Creek Tower development shall be responsible for the procurement and erection of approved fire lane signage.
- C. All access drives and drive aisles shall maintain a minimum of twenty feet (20') of clear pavement.
- D. A minimum of fourteen feet (14') of vertical clearance over the travel portion shall be maintained at all times over all vehicle travel ways.
- E. The developer or its designee shall be responsible for enforcement of no parking lanes and maintaining adequate clearance of structures and vegetation along and above all vehicle travel ways regardless if public or private.
- F. Adequate fire accesses as determined by the City's Fire Marshal shall be provided at all times to those areas under construction.

SECTION 6. DEVELOPER RESPONSIBILITY: Unless otherwise provided in a separate agreement specifically approved by the City Council, the developer, its successors and/or assigns, if any, shall pay all planning, engineering, and construction costs for the development of the planned unit development as required by this Ordinance, and shall pay all costs related to approved site plans, which may include but is not limited to the cost of all street improvements, storm sewers, sanitary sewers, water mains and service lines, drainage-way improvements, detention basins, buffers, and other improvements as required. No occupancy permits, either temporary or permanent, shall be issued until all necessary improvements applicable to the area/lot or structure requesting occupancy are installed and accepted by the City of West Des Moines. Nothing in this Ordinance shall be construed to prevent the developer, its successors and/or assigns, if any, from entering into private agreement(s) as it/they may desire to share the cost of improvements.

Street Lighting: The Developer shall be responsible for all costs associated with the installation of public and private streetlights within or adjacent to this development.

Mailboxes: The Developer shall be responsible for installation of any required Cluster Box Units (CBUs) as per standards of the local U.S. Postal Service Post Office.

SECTION 7. REQUIREMENTS. Unless provided otherwise in this Ordinance, all general use regulations, performance standards and provisions set forth in Title 9, Zoning, of the City Code for the Support Commercial (SC) District shall apply to all development within the Jordan Creek Tower Specific Plan area, as more specifically described below. To the extent that the provisions of this Section conflict with or are more restrictive than similar provisions provided elsewhere in the West Des Moines Zoning Ordinance, the provisions of this Section shall control.

The following land use, design criteria and development standards and regulations shall apply to all parcels within the Jordan Creek Tower Specific Plan area:

A. Land Use: All land uses as set forth in Title 9, Zoning, of the City Code for the Support Commercial (SC) District as permitted and permitted conditionally shall apply except as designated below:

1. Permitted Uses: Permitted uses shall include the following:
 - a. All Permitted (P) uses allowed within the Support Commercial (SC) district except those that have been prohibited by this ordinance.
 - b. All Permitted Conditional (PC) uses allowed within the Support Commercial (SC) district except those that have been prohibited by this ordinance may be allowed with the approval of the appropriate review body.
 - c. Residential uses shall be allowed on upper floors of a mixed-use building at a maximum density of four (4) dwelling units per acre.

2. Prohibited Uses: the following permitted and permitted conditional uses otherwise allowed in the Support Commercial (SC) District shall be prohibited:

- | | |
|-------------|---|
| Division A | Agriculture, Forestry & Fishing except SIC 075 Veterinary Services for Animal Specialties and SIC 0752: Animal Specialty Services Grooming and Boarding |
| Division E | Transportation, Communication and Public Utilities except SIC 49 Small and Large Solar Energy Systems and Electric Vehicle Charging Stations |
| SIC 55 | Automotive dealers and service stations |
| SIC 726 | Funeral services and Crematories |
| SIC 7299-02 | Massage therapy establishments and steam bath services |
| SIC 7299-03 | Dating and escort services |
| SIC 75 | Automotive repair, services, and parking |
| SIC 7699 | Repair shops and related services, not elsewhere classified, except Lock and Key services |

3. Bulk Regulations:
 - a. Lot Area: The minimum lot area for any developable parcel within the development shall be 60,000 square feet.
 - b. Building Setback: Buildings shall be setback a minimum of twenty-five feet (25') on all property boundaries. The setback shall be measured from the property line to the visible primary vertical foundation wall. Intermittent encroachment up to ten feet (10') into the setback for canopies, awnings, building bump-outs, outdoor pedestrian and

dining areas, etc. may be allowed at the discretion of the Director of the Development Services.

- c. **Building Height:** The maximum building height for buildings shall not exceed sixty feet (60') in height as measured from the average finished grade, except, an additional twelve feet (12') of height shall be allowed for each additional ten feet (10') of setback from the perimeter PUD boundary line.
- d. **Parking Ratios:**
 - i. Parking ratios for the site shall be required as follows:
 - 1) Two (2) parking spaces per dwelling unit plus one (1) visitor space per ten (10) dwelling units
 - 2) Eight (8) parking spaces per one thousand (1,000) square feet of restaurant gross floor area
 - 3) Three and one half (3.5) spaces per one thousand (1,000) square feet of retail tenant gross floor area
 - 4) Two and one half (2.5) spaces per one thousand (1,000) square feet of office tenant gross floor area
 - 5) All other uses not defined herein shall follow city code.
 - ii. At the discretion of the Development Services Director, a less stringent parking calculation may be used provided the applicant can demonstrate a parking rate less than the above is adequate due to the type of potential use, shared uses or off-peak uses.
 - iii. If the property is subdivided into two or more lots and shared parking is intended, a shared parking agreement shall be executed in conjunction with the approval of the subdivision plat.
- e. **Parking Setbacks:**
 - i. Parking and vehicle use areas should be located in areas away from S. 60th Street and behind the building pad whenever possible. Adequate screening of views from S. 60th Street and adjoining properties outside of the development of any surface parking shall be appropriately mitigated as provided for elsewhere in this ordinance.
 - ii. Off-street parking areas shall be setback from the perimeter boundaries of the Jordan Creek Tower Specific Plan area as follows:
 - 1) Along east boundary (S. 60th Street) – Minimum of twenty-five feet (25')
 - 2) Along south, west and north property boundaries - Minimum of five feet (5') or as necessary to achieve adequate visual screening.
 - iii. Minimum parking stall measurements and drive aisle widths shall conform to Chapter 15 of the City's Zoning Ordinance.
 - iv. No portion of any parking lot or drive aisle associated with parking may be located within a required buffer or streetscape.

B. **Landscaping:** The landscaping requirements specified herein are intended to create an aesthetically pleasing development which enhances the appearance and character of the City of West Des Moines, while protecting the general health, safety and welfare of the citizens. Landscaping is required to address the following primary aspects or consequences of development:

- Open space protection and enhancement

- Mitigation of paving expanses associated with off-street parking
- Visual screening of undesirable views, activities and/or site elements, and
- Street side enhancement ('streetscapes')

At the time of overlay district site plan review for this parcel, landscaping shall be evaluated to ensure achievement of the standards stated within this Specific Plan ordinance. Additional vegetation beyond that required herein may be required to be implemented in response to additional details of the use, buildings, parking, site layout, etc. Details regarding specific varieties, exact quantities, and the minimum size at time of planting shall be provided and approved as part of the site plan submittal and shall meet the general guidelines in respect to the minimum plant size traditionally applied to development within the City.

1. Open Space: The intent of open space is to allow for a balance between natural areas and the built environment and to provide for the overall beautification and "greening" of the City.
 - a. A minimum of twenty-five percent (25%) open space shall be provided within the parcel.
 - b. Open space shall be considered all areas unencumbered by buildings or paved areas associated with parking, drive aisles, and loading docks or zones. Plaza areas, water features (not for detention) and structures such as gazebos, arbors, pergolas, etc. that are associated with outdoor pedestrian use areas, as well as designated and enhanced pedestrian walkways through and between areas within the development may be counted towards fulfilling the minimum open space requirement.
 - c. Vegetation at a rate of two (2) trees and three (3) shrubs per 3,000 square feet of required open space shall be provided within the parcel.
 - i. Vegetation substitution:
 - 1) One (1) evergreen tree or six (6) shrubs may be substituted for one (1) required tree; however, no more than twenty-five percent (25%) of the required number of trees may be substituted unless specifically approved by the Director of Development Services in order to meet a defined design intent.
 - 2) A twenty-five (25) square foot mass planting of perennials or ornamental grasses may be substituted for three (3) shrubs.
 - d. Vegetation required as part of the open space may be placed into off-street parking areas or streetscapes; however the open space vegetation is in addition to that which would be required of streetscapes or parking islands and may not be counted towards fulfilling the minimum amount of vegetation required for these areas.
2. Off-Street Parking Areas:
 - a. All off-street parking areas shall be landscaped to screen their visibility from street rights-of-way and adjoining property outside of the Jordan Creek Tower development.
 - b. All off-street parking areas shall be aesthetically improved to reduce obtrusive characteristics that are inherent to their function. Multiple landscape islands combined with vegetation shall be incorporated to effectively eliminate a "sea of asphalt/concrete" and to provide shade thus decreasing heat reflection back into the environment. Landscape islands and/or pods shall be implemented in accordance with the following:
 - i. Islands or open areas shall be located at the terminus end of all parking rows. Terminal islands shall measure at least ten feet (10') in width and shall match, at

- a minimum, the stall length unless otherwise allowed per the discretion of the Director of Development Services.
 - ii. Landscaped islands shall be placed, at a minimum, every eighteen (18) stalls within a linear row of parking. At a minimum, internal islands shall match the dimensions of one (1) parking stall.
 - c. Landscape Vegetation shall be provided as follows:
 - i. Two trees in each 9' by 34' island
 - ii. One tree in each 9' by 17' island
 - iii. Additional shrubs, ground covers, grasses, and flowers may be provided in landscaped islands but is not required.
3. Streetscaping: A landscaped edge or 'streetscape' shall be provided along all public and private streets adjacent to the Jordan Creek Tower Specific Plan area. These streetscapes are intended to provide desired green to the City, interest, comfort to pedestrians, visual softening of pavement expanses, bring human scale to adjoining buildings, minimize heat-reflection, and provide traffic calming benefits. The streetscape should have a noticeable planting pattern, design, or plant variety and should attempt to serve as a distinguishing or identifiable landmark for the development.
- a. Unless otherwise required to be located differently due to presence of existing utilities and/or easements, Streetscaping shall be located within the first fifteen feet (15') parallel and adjacent to the public street right-of-way or back of curb of private streets and primary access drives.
 - b. Vegetation within streetscape areas shall be provided at a rate of one (1) tree and three (3) shrubs per thirty-five (35) lineal feet of streetscape. A twenty-five (25) square foot mass planting of perennials or ornamental grasses may be substituted for three (3) shrubs.
 - c. Vegetation required of streetscapes shall be in addition to vegetation required of parking and open space. Vegetation required as part of open space may be placed into streetscapes; however, the open space vegetation may not be counted towards fulfilling the minimum amount of vegetation required for the streetscape.
4. Visual Screening:
- a. Views from public streets and adjoining properties of the negative aspects of development and land uses such as loading docks or overhead doors; heating, ventilation, or air conditioning (HVAC) units; or similar electrical or mechanical appurtenances shall be adequately screened. Said screening shall be achieved by careful selection of location and/or orientation of the buildings and elements, in combination with the use of architectural enclosures and/or earth berming and landscaping consisting of evergreen material for year-round screening.
 - b. Mechanical Equipment: All mechanical equipment (both ground and roof mounted) shall be screened from ground level views from public streets and adjoining properties through architecturally incorporated opaque screen walls, raised parapet walls, penthouse feature, or other opaque material comprised of materials consistent with the associated primary structure. Screening measures and materials shall be reviewed as part of the site plan review process.
 - i. Trash Enclosures: Trash receptacles and dumpsters shall be screened by the use of a permanent enclosure. Enclosures shall be constructed of materials consistent with or complementary to the primary structure. Whenever possible, the trash

enclosure shall be located as and incorporated as an extension of the primary building rather than a free-standing element within the site. Additionally, the enclosure should be landscaped to minimize the visual presence and impact of the structure on surrounding properties, businesses, and public streets.

- ii. Loading Docks and Overhead Doors: Views of loading docks and overhead doors shall be screened from adjacent properties and public rights-of-way by the use of landscaping in combination with berming or other architectural elements as approved by the city. The vegetation species shall be selected for its density and height and shall be of sufficient size to provide adequate screening.
- iii. Vehicle Use Canopies: Canopies must be designed to incorporate the building's architecture through the use of similar building materials, roof design and color, including the application of brick or stone to canopy support columns. When possible, canopies should be designed as an extension of the building rather than an added on element.
 - 1) Unless appropriate site design measures are implemented to mitigate the presence and visibility thereof, canopies shall not be located at the intersection of major streets.
 - 2) The vehicle use area will be screened through landscaping to minimize the visual presence and impact of the structure on surrounding properties, businesses, and public streets. Said screening shall be achieved through the use of location and/or earth berming and landscaping consisting of evergreen material for year-round screening.

C. Pedestrian Use Areas and Elements: The Jordan Creek Tower development, in alignment with Town Center Overlay District Guidelines, aims to encourage pedestrian movement and opportunities for pedestrian interaction through interconnected sidewalks and gathering areas. The attached Specific Plan Map indicates the location of an anticipated pedestrian node on the site. Specific details and final materials and layouts for the pedestrian area shall be submitted, reviewed, and approved as part of the overlay district site plan for this parcel. In general, pedestrian use areas shall abide by the following:

1. These areas shall encourage opportunities for interaction among pedestrians through the provision of seating opportunities (benches, chairs, tables, planter walls, etc.). Without compromising the design intent of the plazas, the developer is encouraged to maximize the number of furniture/seating opportunities throughout the development.
2. Open space plaza areas shall incorporate a variety of hardscape landscape materials (stone pavers, stamped concrete, field boulders, etc.) for visual interest and variety and shall implement landscape vegetation to soften, enhance, and delineate the areas. All plaza/pedestrian areas are required to incorporate 'green' through the incorporation of planter beds, containers, or raised planters.
3. Appropriate lighting should be incorporated into the plaza areas and along pedestrian pathways for safety reasons and to extend the usability of the area into the evening hours. Such lighting may be provided by either pole mounted fixture or bollard style lighting.
4. Plaza areas associated with establishments which serve alcoholic beverages shall provide a definable boundary (change in material, unmovable signage, physical feature, etc.) between the private establishments in which alcohol consumption is allowed and the public area in which it is not. A physical barrier (fencing, railing, landscaping, etc.) shall prohibit access into the patio area from the public area; all access into the patio area shall be through the interior of the establishment. The barrier specifications shall be reviewed and approved as part of the alcohol permit application.

5. Unless provided prior to site development, the installation of these pedestrian elements shall occur in conjunction with the development of the parcel and shall be completed prior to issuance of a final occupancy permit.

D. *Pedestrian Connections*: Pedestrian walkways to allow and encourage pedestrian movement within the Jordan Creek Tower area, as well as to surrounding developments shall be provided. Pedestrian pathways internal to the development and across parking areas and drive aisles shall be constructed with contrasting color, paving material or pavement patterns to the adjoining paving in order to provide a definable and highly visible crosswalk. Simply striping pedestrian crosswalks shall not meet the intent of this section.

E. *Lighting*:

1. Light fixtures shall not exceed twenty-eight feet (28') in height as measured from the ground to the top of the light structure.
2. The footcandle level at the north and west property lines shall be less than one (1). Due to streetlights along the east and south, the achievement of less than one (1) footcandle is not possible and shall not be required.
3. Said fixtures are to be downcast, cut-off variety to direct lighting to parking areas and pedestrian pathways and eliminate glare to neighboring properties. Bulbs shall not be exposed or extend down past the fixture. Care should be taken to ensure that adjoining residences are not looking up and into the bulbs of light fixtures, which may include shields on the fixtures or other means of shielding glare.
4. No wall packs or floodlighting without shields to direct the light downward are allowed. In addition to cut-off fixtures, particular attention shall be given to eliminate hot spots and light glare. To achieve this, additional measures may include, but are not limited to, lowering parking lot light levels after business hours, turning off lights not necessary for security purposes, and use of landscaping for light screening/blockage.
5. As a part of the overlay district site plan for this parcel, a photometric plan must be submitted. During the review, the applicant must demonstrate how lighting will not adversely affect adjoining properties.

SECTION 8. ARCHITECTURE. The intent is to create building façades that are varied and articulated to provide visual interest to pedestrians and to establish a unique identity for the development. The architectural design shall be acceptable to the City. The architecture shall attempt to express a creative presentation by careful attention to exterior building materials and details, use of fenestration, and change in building mass within the plane and roof design to lessen the plainness of appearance which can be characteristic of large commercial and mixed-use buildings. All sides to buildings shall receive high quality materials, finishes, and details (360° architectural treatment). There are no "backs" to a building. Materials should be durable, economically maintained and of a quality that will maintain their appearance over a prolonged time.

On file with the City are conceptual architectural illustrations of the building style and material options. Once City approval is gained on a particular building design, any alteration in design before or during construction must be reviewed and approved by the City's Development Services Department.

- A. This development shall accommodate or incorporate the following in building design and materials:

1. Corporate architecture shall be prohibited. Limited use of architectural elements characteristic of prototypical architecture may be allowed at the discretion of the Director of Development Services or the appropriate reviewing and approval body. Implementation of these architectural elements shall be minimized and whenever possible modified to give a unique image to the establishment. No standard corporate building design without modifications shall be implemented.
2. Buildings shall be organized to create a logical and identifiable relationship with the site and other buildings, open spaces, and pedestrian circulation paths.
3. The use of building articulation and materials which break up the building mass into modules that respect a pedestrian scale and reflects proportions similar to other buildings within the development.
4. The building's design should meet context and site objectives such as providing gateways, creating visual and physical linkages and framing or terminating views.
5. Variation in building height, mass and roof forms shall be provided to create interest while still maintaining an overall building continuity. Roofs should not be designed as attention-getting devices related to the reinforcement of signage or as an identifiable corporate image.
6. Entrances into buildings should be easily identified through the use of building design and detailing. Projected or recessed entryways, change in rooflines, addition of awnings or changes in building material are examples that can create this effect.
7. Shifts in building planes/facades and variation in exterior materials shall be incorporated to minimize long expanses of wall. Long blank walls shall be prohibited.
8. Variation in materials, material modules, expressed joints, textures, colors and details should be used to break up the mass of the buildings. Materials should change with the change in building planes.
9. Trim and structural elements such as posts or columns shall be sized to the scale of the building.
10. Whenever possible, ground floor tenant areas should provide the maximum possible glazing toward sidewalks to provide pedestrians with visual interest. Use of reflective glass or mirrored glass is discouraged. Efforts should be made to use clear glass on storefronts, windows and doors to promote the linkage of the interior and exterior of buildings.
11. Natural materials such as brick and stone, architectural precast concrete or metal acceptable to the City shall be the major cladding elements of the facades. Concrete products shall have integrated color rather than surface applied paint/staining and should generally have texture for interest; smooth finish concrete products may be used in conjunction with texture for accent purposes. The use of EIFS, synthetic stucco or composite materials shall be used in moderation and primarily used as an accent or trim material and cannot be the predominate building material. Use of EIFS is limited to areas of the building 6' above grade and higher and Use of vinyl materials is prohibited.
12. Architectural design for multi-family units shall include:
 - a. Unit design should incorporate elements such as balconies and patios to reinforce the connection between the residents and the activities within the development. A minimum of eighty percent (80%) of the multi-family units within the development must provide a balcony or porch/patio with a minimum usable area of forty (40) square feet and a minimum usable dimension of five feet (5') deep in either direction. In lieu of outdoor living area for individual units, area(s) of common defined and enhanced outdoor living space can be provided.

- b. Should covered parking be pursued, the architectural details of detached garages should incorporate the materials and treatments of the dwelling, such as windows, doors, trim and materials on all sides of the garage. For parking incorporated within the primary building, the design should place the garage doors on a non-street side façade and on facades not facing single-family residential development. Screening or design elements will be required to minimize the dominance of garage doors on the facade.

SECTION 9. SIGNAGE. All proposed ground and exterior wall signage requires a sign permit issued by the City of West Des Moines through normal sign review procedures. Signage shall abide by the standards and regulations for the Support Commercial zoning district as set forth in Title 9, Chapter 18: Signs. Illuminated signage shall not be allowed on the north plane of the building nor shall it be visible to the residential care facility to the north.

SECTION 10. PARKLAND DEDICATION: An area of land calculated by a set formula based upon the density (total number of dwelling units) of the proposed development is required to be dedicated for purposes of a public park and greenway as per city code. A Parkland Dedication Agreement, acceptable to the Parks and Recreation Department, detailing the specifics related to the Parkland Dedication obligations for the development of any area contained within the Specific Plan area is required to be submitted.

Intended amenities and facilities to fulfill Parkland Dedication requirements for the residential portion of the development shall be identified as part of the overlay district site plan review of the parcel.

SECTION 11. VEHICLE TRIP ALLOCATION. A traffic Impact Study (study) dated November 8, 2021, has been prepared for the Jordan Creek Tower development. Per the study, the Jordan Creek Tower development has been allocated 191 p.m. peak hour trips; 150 a.m. peak hour trips; and 1,634 ADT trips. Approval of this proposed Specific Plan does not constitute a guarantee that the proposed plan can be implemented. Development of all parcels and implementation of desired land uses, including specific high traffic generating tenants, will be limited by the available number of trips.

Should anticipated traffic exceed the total trips allocated for the Jordan Creek Tower development prior to full build out, further development of any remaining portion of the parcel may be limited or prohibited. Alternate uses to those planned within the study and approved as part of this Jordan Creek Tower Specific Plan Ordinance may be allowed, following completion of an amended traffic study analyzing the proposed alternative and appropriate city approval of an amendment to the respective specific plan ordinance and/or map, if necessary, if the existing uses and the proposed change(s) collectively do not exceed the total trips allocated to the development.

SECTION 12. STORM WATER MANAGEMENT PLAN. A Storm Water Management Plan for the entire development which governs the overall storm water management of the development shall be submitted to and approved by the City of West Des Moines. The Storm Water Plan shall be prepared at the developer's expense, by a Professional Engineer licensed in the State of Iowa. The Storm Water Management Plan shall comply with the City's applicable design standards for storm water management existing at the time of overlay district site plan approval.

SECTION 13. PROPERTY OWNERS ASSOCIATION: If deemed necessary, proper action shall be taken to establish development specific property owners associations, as well as a master association, if necessary. The owner's association(s) shall be responsible for the ongoing upkeep

and maintenance of any private infrastructure, common grounds such as buffer parks, storm water detention facilities, greenbelts, plazas and other common space, and any other specific development improvements noted as their responsibility in this ordinance or otherwise determined as part of the overlay district site plan review process.

SECTION 14. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 15. SAVINGS CLAUSE. If any section, provision, sentence, clause, phrase or part of the Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

SECTION 16. VIOLATIONS AND PENALTIES. Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Title 1, Chapter 4, Section 1 of the City Code of the City of West Des Moines, Iowa.

SECTION 17. OTHER REMEDIES. In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

SECTION 18. EFFECTIVE DATE. This Ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

Passed and approved this ____ day of _____, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

I certify that the foregoing was published as Ordinance No. _____ on the ____ day of _____, 2022.

Ryan T. Jacobson
City Clerk

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

ITEM: 6(b) Amendment No. 2 to License Agreement – Google Fiber **DATE:** 1-18-2022

FINANCIAL IMPACT:

Payments are now to be structured around a linear foot basis and will begin within 90 days of construction completion of the conduit network.

BACKGROUND:

On July 6, 2020, the City and Google Fiber entered into a Conduit Network License Agreement which detailed the respective rights and obligations with respect to the construction and maintenance of a citywide conduit-to-the-premises network. Under the original agreement from July of 2020, the City agreed to construct the Conduit Network to connect to residential and commercial structures in accordance with agreed upon engineering and design specifications using Drop Conduit.

The City wishes to reduce Drop Conduits from the scope of the Conduit Network and to amend the Agreement to remove certain Drop Conduits from the portions of the Conduit Network licensed by Google Fiber, and to make certain other changes to the Agreement.

OUTSTANDING ISSUES (if any):

RECOMMENDATION: Approval of second amended Conduit Network License Agreement, Google Fiber

Lead Staff Member: Jamie Letzring, Brian Hemesath

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	<i>DES Moines Register</i>
Dates(s) Published	<i>January 12, 2022</i>

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	

RESOLUTION NO. _____

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE
SECOND AMENDED AND RESTATED CONDUIT LICENSE AGREEMENT WITH
GOOGLE FIBER, INC.**

WHEREAS, the City of West Des Moines, Iowa (“City”) and Google Fiber, Inc., (“Google Fiber”) entered into a Conduit Network License Agreement on July 6, 2020 (“Agreement”) and entered into an amended Agreement (“First Amendment to the Agreement”) on June 21, 2021; and

WHEREAS, pursuant to the Agreement and the First Amendment to the Agreement, Google Fiber agreed to license conduit throughout the City-wide conduit network in exchange for Google Fiber paying a license fee calculated under the terms of the Agreement; and

WHEREAS, the City and Google Fiber desire to amend the First Amendment to the Agreement to clarify and revise certain terms and provisions of the previous Agreements; and

WHEREAS, pursuant to published notice, the City Council has held a public hearing on the proposal to approve and authorize execution of the Second Amended and Restated Conduit License Agreement with Google Fiber, Inc.; and

WHEREAS, the Council has determined that the Second Amended and Restated Conduit License Agreement is in the best interests of the City and its residents.

**NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY
OF WEST DES MOINES IN THE STATE OF IOWA:**

1. The public hearing regarding approval and execution of the Second Amended and Restated Agreement between the City of West Des Moines and Google Fiber, Inc. is closed.
2. The Second Amended and Restated Agreement is approved.
3. The Mayor is authorized to sign the Second Amended and Restated Agreement and the City Clerk is directed to attest to the Mayor’s signature.

PASSED AND APPROVED this 18th day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

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

DATE: January 18, 2022

ITEM: Resolution - Approval of the Conduit License Agreement between the City of West Des Moines and MCC Iowa LLC d/b/a Mediacom

FINANCIAL IMPACT: Unknown at this time. Contingent upon amount of lineal footage of conduit licensed by Mediacom

BACKGROUND: The City has negotiated a License Agreement with MCC Iowa LLC d/b/a Mediacom (“Mediacom”) in conjunction with approval of the Settlement Agreement regarding the pending litigation between the City and Mediacom. Mediacom has requested access to the conduit network, which is divided in three phases: Phase 1 is the area within the network where conduit installation has been designed and is being completed; Phase 2 is the area where the City has or is in the process of completing the design but has not yet installed the conduit; and Phase 3 is currently undefined new areas of the City where the Conduit Network may be installed.

Mediacom has indicated its intent to license up to 58,080 LF within Phase 1 if meeting Mediacom’s specifications. Mediacom has indicated its intent to license up to 153,120 LF of conduit within Phase 2. The City has incorporated Mediacom’s specifications for Phase 2 into the bid packages, which are ready for bid.

Mediacom will have the right to license conduit to and in the new areas that will comprise Phase 3 under the terms of the License Agreement and will be allowed to participate in the network design under the same terms as any other licensee.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Approve the Conduit License Agreement between the City of West Des Moines and MCC Iowa LLC d/b/a Mediacom

Lead Staff Member: Jamie Letzring, Deputy City Manager

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	<i>RJS</i>
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	<i>Des Moines Register</i>
Dates(s) Published	<i>January 12, 2022</i>

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation			

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE
CONDUIT LICENSE AGREEMENT BETWEEN THE CITY OF WEST DES MOINES,
IOWA AND MCC IOWA LLC d/b/a/ MEDIACOM**

WHEREAS, on even date herewith, the City of West Des Moines and MMC Iowa LLC, d/b/a Mediacom (“Mediacom”), entered into a Settlement Agreement regarding *MCC Iowa LLC d/b/a Mediacom v. City of West Des Moines and the West Des Moines City Council*, Case No. EQCE086347; and

WHEREAS, the Settlement Agreement contained terms and conditions regarding the rights, privileges and obligations of each party as they relate to the Digital Enterprise Conduit Network; and

WHEREAS, pursuant to the Settlement Agreement, Mediacom has agreed, among other things and at its option, to license conduit in the Digital Enterprise Conduit Network in exchange for Mediacom paying a license fee calculated under the terms of the Settlement Agreement; and

WHEREAS, the City and Mediacom desire to enter into this Conduit License Agreement to set forth the terms and conditions in which Mediacom will license conduit from the City of West Des Moines; and

WHEREAS, pursuant to published notice, the City Council has held a public hearing on the proposal to approve and authorize execution of the Conduit License Agreement between the City of West Des Moines and MCC Iowa LLC d/b/a Mediacom; and

WHEREAS, the Council has determined that the Conduit License Agreement is in the best interest of the City and its residents.

**NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY
OF WEST DES MOINES IN THE STATE OF IOWA:**

1. The public hearing regarding approval and execution of the Conduit License Agreement between the City of West Des Moines and MCC Iowa LLC d/b/a Mediacom is closed.
2. The Agreement is approved.
3. The Mayor is authorized to sign the Conduit License Agreement between the City of West Des Moines and MCC Iowa LLC d/b/a Mediacom and the City Clerk is directed to attest to the Mayor’s signature.

PASSED AND APPROVED this 18th day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

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

ITEM: Resolution - Approval of Conduit License Agreement with Mi-Fiber **DATE:** January 18, 2022

FINANCIAL IMPACT: Approximately \$93,500.00

BACKGROUND: The City has negotiated a License Agreement with Mi-Fiber that will allow Mi-Fiber to access a segment of Local Access conduit that is not yet part of the Digital Enterprise Conduit Network. The area to be licensed was constructed with funds separate from the funds used for the Conduit Network. The 18,861 lineal foot conduit is located in a portion of the SW Grand Prairie Parkway and Veterans Parkway right-of-way and will initially serve the The Preserve subdivision. The City will receive a lump-sum payment of \$5 per lineal foot. The Agreement will run for twenty years, with the option for Mi-Fiber to renew the contract for two successive five-year terms.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Approve the Conduit License Agreement between the City of West Des Moines and Mi-Fiber

Lead Staff Member: Jamie Letzring, Deputy City Manager

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	January 12, 2022

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation			

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A CONDUIT LICENSE AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA AND MI-FIBER, LLC

WHEREAS, the City of West Des Moines seeks to promote increased fiber access for the provision of broadband to businesses and residents that will provide competition and preserve the public right-of-way for future public needs; and

WHEREAS, the City wishes to expand its underground conduit to preserve its congested right-of-way, attract additional private sector companies as licensees, and encourage the deployment of a private, fiber-to-the-premises network, all in an effort to bring world-class connectivity to every resident and business in the City; and

WHEREAS, the City has negotiated an agreement with Mi-Fiber, LLC, an Iowa limited liability company, in which Mi-Fiber would license City-owned conduit and pay the City a fee to allow Mi-Fiber to install fiber in the conduit for a period of no less than twenty years; and

WHEREAS, the agreement negotiated between the City and Mi-Fiber fulfills the City's goals by providing that Mi-Fiber will license a portion of City-owned conduit, pay a licensing fee, and deploy its fiber-to-the-premises network to residents and businesses in the City; and

WHEREAS, pursuant to the terms of the Agreement, the City and Mi-Fiber would establish their respective rights and obligations in connection with the conduit network and provide that Mi-Fiber will be a licensee of the conduit network; and

WHEREAS, pursuant to published notice, the City Council has held a public hearing on the proposal to approve and authorize execution of the Conduit License Agreement between the City of West Des Moines and Mi-Fiber, Inc.; and

WHEREAS, approval of the Agreement is in the best interest of the City.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES IN THE STATE OF IOWA:

1. The public hearing regarding approval and execution of the Conduit License Agreement between the City of West Des Moines and Mi-Fiber, Inc. is closed.
2. The Conduit License Agreement Between the City of West Des Moines, Iowa and Mi-Fiber is approved.
3. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

PASSED AND APPROVED this 18th day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

CONDUIT LICENSE AGREEMENT
BETWEEN
THE CITY OF WEST DES MOINES IOWA
AND
MI-FIBER LLC

This Conduit License Agreement ("Agreement") is entered into this 19th day of November, 2021 by and between Mi-Fiber LLC (Mi-Fiber), an Iowa limited liability company, and the City of West Des Moines, Iowa ("the City"), a municipality organized and existing under the laws of the State of Iowa. The City and MI-FIBER are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

Background

WHEREAS, this Agreement is made in light of the following premises and circumstances, all of which are a part of this Agreement:

- A. MI-FIBER, a private limited-liability company authorized to provide communications or telecommunications services in the State of Iowa, will be the owner of certain fiber optic cables comprising a component of its communications or telecommunications facilities network that MI-FIBER plans to install within City-owned conduit within the geographic boundaries of the City;
- B. The City is a political subdivision of the State of Iowa and is or will be the owner of certain conduit within its boundaries;
- C. The intent of the Parties is to increase fiber access to businesses and residents of West Des Moines in a manner that promotes competition and preserves public ROW for future public needs; and
- D. The City and MI-FIBER desire to enter into an agreement to govern the terms and conditions under which the City will reserve certain conduits or space within its conduit to accommodate the installation and maintenance of MI-FIBER's fiber optic cable in connection with MI-FIBER's provision of communication services in the City.

Agreement Terms and Conditions

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the City and MI-FIBER for valuable consideration, the sufficiency of which is hereby acknowledged, hereby agree as follows:

1. Definitions

- 1.1 For the purpose of this Agreement, the following terms when used herein shall have the following meanings:

- (i) “Access Point” means a physical point in the Conduit: (a) where MI-FIBER can readily and safely access the inside of the Licensed Conduit and the Fiber for installation, repair, maintenance, replacement, and removal, without the need for excavating a road, sidewalk, or other surface, including without limitation at the vaults, pedestals, cabinets, and other Conduit termination or junction locations; and (b) is connected through Local Access Conduit to the Meet-Me Point.
- (ii) “City” means the City of West Des Moines, Iowa.
- (iii) “City Conduit” or “Conduit Network” means the physical multiple conduit manifold system owned by the City through which Fiber Optic Cable is run from Access Point to Access Point throughout the geographic area of the City and any corresponding City-owned Access Points connected thereto.
- (iv) “Conduit” refers to the physical pipe or tube through which Fiber Optic Cable is run.
- (v) “Costs” means all actual, documented, and reasonable costs incurred and computed in accordance with generally accepted accounting principles and include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs (the overhead allocation will not exceed twenty percent (20%) of the labor costs computed without such overhead); and (b) other direct costs and out-of-pocket expenses on a pass-through basis (including without limitation equipment, materials, supplies, contract services, sales, use or similar taxes, and professionals’ fees).
- (vi) “Delivery Date” means the date on which the City delivers to MI-FIBER the Licensed Conduit together with the Acceptance Testing results.
- (vii) “Equipment” means all Licensee communications and networking facilities not defined as Fiber Optic Cable including but not limited to splitters, splices, closures, and enclosures used in connection with providing its communications service.
- (viii) “Evaluation Period” means the period of twenty (20) calendar days after MI-FIBER receives the Acceptance Testing results.
- (ix) “Fiber Optic Cable” or “Fiber” means a glass strand or strands which is/are protected by a color-coded buffer tube and which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.
- (x) “Interfering Use” means any use of, or action with respect to, the Conduit that (a) causes any physical or electromagnetic interference in violation of any applicable Federal Communications Commission rule or the National Electrical Safety Code; (b) physically damages a Licensee’s Fiber or Equipment installed

in the Licensed Conduit; or (c) impedes a Licensee's ability to access, install, repair, replace, or remove the Licensee's Fiber or Equipment, or any portion thereof, due to the placement of Fiber or Equipment in intermediate vaults or other shared spaces in the City Conduit, in excess of the space allocated by the City.

- (xi) "Intermediate Access Point" or "IAP" means a vault shared by all Licensees installed along Local Access Conduit for the purpose of accessing Licensed Conduit for the installation and ongoing maintenance of Fiber Optic Cable. The use of the IAP to support Licensee Equipment will be limited to cable pulls, slack storage and reel-end splicing. Only Local Access Conduit may terminate at an IAP. Connections to outside networks may only occur at an IAP.
- (xii) "Licensed Conduit" means all or a portion of City Conduit specifically identified in Exhibit A, in which space shall be reserved and/or designated for MI-FIBER to "pull" or "run" and then maintain Fiber Optic Cable in accordance with and subject to the terms of this Agreement.
- (xiii) "Licensee" means MI-FIBER and any Third-Party User.
- (xiv) "Licensee Assigned Vault" means a vault installed by MI-FIBER at locations identified during the design review and approval process for their exclusive use to store Equipment and Fiber. An LAV shall connect to an IAP to access the Local Access Conduit.
- (xv) "Local Access Conduit" means that portion of the Licensed Conduit that is installed in the public rights-of-way and houses trunk cables, feeder cables, and distribution cables connecting between MMP, IAP and LAV throughout the Licensed Conduit.
- (xvi) "Meet-Me Point" means a point at which the Conduit connects to a facility or network designated by MI-FIBER, at which MI-FIBER may interconnect the Fiber to optronics and other facilities, and to other networks, for purposes of aggregating and backhauling the data carried on the Fiber and for connecting the Fiber to the public Internet.
- (xvii) "Right of Way" or "ROW" means the area of public street, highway, avenue, alley, bridge or sidewalk reserved by deed or easement for the purposes of maintenance or expansion of existing services.
- (xviii) "Service Access Point" or "SAP" means an Access Point located at buildings served by DCS.
- (xix) "Third-Party User" means any third party that installs or maintains any Fiber or Equipment in the Licensed Conduit pursuant to a license, lease, or other agreement with the City.

2. License

2.1 License Grant. Subject to the terms, conditions and limitations set forth herein, and in exchange for MI-FIBER's payment of the License Fee set forth in Section 3, the City hereby grants to MI-FIBER a license and right for the use of Licensed Conduit for the installation and maintenance of Fiber Optic Cable owned or employed by MI-FIBER.

2.2 Term. The initial term of this Agreement shall be twenty (20) years from the Date of this Agreement (the "Initial Term") unless terminated earlier in accordance with this Agreement. Upon the expiration of the Initial Term, the Agreement may be extended for two additional five (5) year periods upon written request by MI-FIBER not less than 60 days prior to the expiration of the current Term of this Agreement and approval by City. Any extension shall require an additional one-time payment as agreed to by MI-FIBER and the City.

2.3 Scope of Grant.

- (i) The City hereby grants to MI-FIBER a license for, and the right to access and use, the Licensed Conduit for purposes of installing, maintaining, operating, repairing, and replacing Fiber Optic Cable and providing any lawful service that does not constitute an Interfering Use. The Parties acknowledge and agree that this Agreement constitutes a license and right of use of the City's personal property, and that the rights granted by the City to MI-FIBER under this agreement is not a conveyance of any interest in any real property. Except as expressly provided in this Agreement, the City shall have no obligation whatsoever to install any additional conduit or to allocate any additional space in existing City Conduit to meet the needs of MI-FIBER.
- (ii) MI-FIBER is responsible for installing, maintaining, and replacing the Fiber Optic Cable in the Licensed Conduit and MI-FIBER shall undertake to obtain and provide all approvals, authorizations, coordination and supervision that is necessary in connection with its use of the subject Licensed Conduit and installation of Fiber Optic Cable.
- (iii) The City and MI-FIBER agree and acknowledge that MI-FIBER's use of the Licensed Conduit and installation of MI-FIBER's Fiber Optic Cable within such Licensed Conduit does not and will not create or convey to MI-FIBER any ownership or property rights of any nature in any City-owned Conduit, Fiber Optic Cable or Access Points. MI-FIBER may not encumber, offer as collateral, or allow any third-party claims of any type on or against the Licensed Conduit. Subject to MI-FIBER's rights under this Agreement, the City may use the City Conduit for any lawful purpose, provided that such use is not an Interfering Use and does not require MI-FIBER to share the dedicated ducts assigned to MI-FIBER within the Licensed Conduit except as set forth this in this Agreement.

2.4 Access to Licensed Conduit

- (i) **Notice of Delivery.** The City will provide written notice to MI-FIBER no later than twenty (20) days prior to the date, on or after the completion of installation of the Licensed Conduit, on which the City anticipates delivering the Licensed Conduit for Acceptance Testing (the “Estimated Delivery Date”).
- (ii) **Acceptance Testing.** The City will give MI-FIBER at least two (2) days’ prior notice of the date, time, and location of Acceptance Testing and MI-FIBER will have the right to have representatives present to observe the Acceptance Testing. On the Delivery Date for the Licensed Conduit, the City will provide the Acceptance Testing results. Nothing in this Section 2.4 will limit the City’s discretion to provide Third-Party Users with the same notice prior to such Third-Party User’s acceptance of its licensed conduit in the Conduit Network.
- (iii) **MI-FIBER’s Evaluation.** MI-FIBER shall have twenty (20) business days from the Delivery Date to either accept or reject the Licensed Conduit. If the Licensed Conduit is rejected in writing by MI-FIBER, the City shall have twenty (20) business days to cure any noted deficiency, and a new Evaluation Period shall be triggered when the City re-delivers the Licensed Conduit to MI-FIBER. If the re-delivered Licensed Conduit is rejected by MI-FIBER, this Agreement shall terminate unless the Parties mutually agree to the contrary. During the Evaluation Period, MI-FIBER may request by notice to the City the opportunity to independently verify the sufficiency of the Licensed Conduit and the City will provide MI-FIBER with escorted access to any intermediate points on the Conduit Network for the purpose of such independent verification, where such access is technically feasible and where an interface point can be made available for testing without adversely affecting the condition or operation of the Conduit Network. Nothing in this Agreement shall be interpreted as preventing the City from making similar access available to Third Party Users, provided such access does not infringe upon MI-FIBER’s rights hereunder.
- (iv) **Acceptance Date.** If MI-FIBER does not reject the Licensed Conduit during the Evaluation Period, the Licensed Conduit shall be deemed accepted (“Acceptance Date”) upon the earlier of the date written acceptance is provided by MI-FIBER to the City or the end of the Evaluation Period, provided that the Evaluation Period will be extended as noted above for the duration of any corrective action taken by the City.
- (v) **Access and Use.** During the Term, subject to and in accordance with the terms and conditions of this Agreement, MI-FIBER will have the right to use the Licensed Conduit for the purposes of installing, testing, maintaining, replacing, or removing its Fiber Optic Cable, and to provide any lawful service provided that such use is not an Interfering Use for any other Third Party User within the City Conduit. MI-FIBER also has the right to interconnect the Licensed

Conduit at an IAP to conduit that MI-FIBER may own, lease, or otherwise acquire for its own use, provided: (a) MI-FIBER receives written permission from the City in advance (such permission shall not be unreasonably withheld provided such connection is consistent with the City's stated purposes for constructing the City Conduit); (b) such connection does not damage or impair the City Conduit or other property of the City; and (c) such connection does not constitute an Interfering Use.

- (vi) The City will require Third-Party Users, if any, to: (a) provide MI-FIBER no less than 72 hours' prior written notice before such Third-Party User accesses any portion of the Licensed Conduit that is Local Access Conduit for any purpose, including without limitation to repair, maintain, or replace such Third-Party User's facilities installed in the Licensed Conduit, and (b) permit MI-FIBER to observe the work performed by or at the direction of the Third-Party User to ensure that MI-FIBER's Fiber Optic Cable is not damaged in the process. Likewise, MI-FIBER hereby agrees to: (x) provide Third Party Users no less than 72 hours' prior written notice before accessing any portion of the Licensed Conduit that is Local Access Conduit for any purpose, including without limitation to repair, maintain, or replace MI-FIBER's Fiber installed in the Licensed Conduit; and (y) permit Third Party Users to observe the work performed by or at the direction of MI-FIBER to ensure the Third Party User's Fiber and Equipment is not damaged in the process.
- (vii) MI-FIBER is solely responsible for obtaining all public, private or government approvals, authorizations, permits, certifications, easements, rights of way and attachment rights beyond those required for installation and maintenance within the Licensed Conduit, if any, that are necessary in order for MI-FIBER to install, light and transmit or receive signals using the Fiber Optic Cable installed in said Licensed Conduit, and shall provide documentary evidence thereof as and when reasonably requested by the City. This shall include, but not is not limited to, ensuring all necessary traffic control.

2.5 Limitations and Requirements for Use of the City Conduit

- (i) The City and MI-FIBER agree and acknowledge that MI-FIBER may use the Licensed Conduit to place and utilize Fiber Optic Cable for any lawful purpose for which the Fiber Optic Cable is technically suited, provided that MI-FIBER shall use the Fiber Optic Cable solely for its business purposes and such use is not an Interfering Use.
- (ii) MI-FIBER shall not, and the City shall not permit any Third-Party User of the City Conduit to, install, store, place, or operate any cables, wires, or other powered or unpowered facilities or equipment in, or to otherwise use or to take any other action with respect to, the Licensed Conduit if such installation, storage, placement, operation, or other use or action constitutes an Interfering Use. In the event that MI-FIBER determines that a Third-Party User is

engaging in an Interfering Use, MI-FIBER may notify the City and the City will promptly cooperate with MI-FIBER to determine the source of and remediate such Interfering Use. In the event that a Third-Party User notifies the City that it has determined that MI-FIBER is engaging in an Interfering Use, MI-FIBER will cooperate in good faith with the City and any Third-Party User to promptly determine the source of and remediate such Interfering Use.

- (iii) The City shall have the right at any time to remove or relocate any portion of the City Conduit that presents an imminent danger to life or property, at the City's sole discretion without incurring any liability for such removal or relocation, other than as a result of the City's negligence or willful conduct, provided that the City will restore such affected Licensed Conduit as soon as reasonably possible. The City will not be responsible for reinstalling and repairing MI-FIBER's Fiber Optic Cable nor paying MI-FIBER's Costs of reinstalling and repairing its Fiber for relocations under an emergency relocation or removal, and MI-FIBER agrees to promptly cooperate in the removal and relocation of its Fiber and facilities in the impacted Conduit under these circumstances. Other than in the case of an emergency relocation or removal described above, the City will give MI-FIBER one hundred and eighty (180) days' prior written notice (unless MI-FIBER consents to a shorter notice period in writing) before beginning any relocation or removal of any Licensed Conduit, and will provide for alternate pathways connected to the City Conduit suitable for housing MI-FIBER's Fiber Optic Cable in the relocated portion of the Licensed Conduit no later than thirty (30) days prior to the schedule date of relocation. MI-FIBER will cooperate in good faith with the City to facilitate such other relocation, including the removal or relocation of MI-FIBER's Fiber installed in the Licensed Conduit. The City shall pay MI-FIBER's Costs of reinstalling and repairing its Fiber resulting from any such non-emergency relocation.

- (iv) Any Fiber Optic Cable or Equipment provided by MI-FIBER in the Licensed Conduit shall be installed and maintained in accordance with the requirements and specifications of then current editions of the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), each of which are incorporated by reference in this Agreement. Further, MI-FIBER and its consultants and contractors shall at all times comply with the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA), with all applicable state and federal statutes and laws, and with all applicable regulations, rules and orders issued by any state or federal agency having jurisdiction thereof, including without limitation the Federal Communications Commission, the Iowa Utilities Board, or other applicable regulatory agency. As between the Parties, MI-FIBER shall be responsible for compliance with all data privacy and other legal requirements associated with the MI-FIBER Fiber Optic Cable and the transmission of data on or through its network, Fiber or Equipment.

- (v) The City reserves the right to make periodic inspections at any time of any part of MI-FIBER's Fiber Optic Cable and Equipment utilized by MI-FIBER in conjunction with the subject Fiber Optic Cable in the Licensed Conduit for purposes of assuring compliance with the terms and conditions hereof and with applicable laws, rules and regulations as reasonably necessary to prevent or detect interference with or damage to the City Conduit or breaches of MI-FIBER's obligations hereunder. Except in the case of an emergency, the City shall give MI-FIBER forty-eight (48) hours' notice before carrying out such inspections and MI-FIBER shall be permitted, but not required, to have a representative present for such inspections. Such inspections shall be conducted at the City's expense unless the City determines that MI-FIBER is not in compliance with the terms of this Agreement. In such instance, MI-FIBER shall be responsible for paying the City for all reasonable Costs incurred by the City in making the inspection. MI-FIBER agrees that such periodic inspections by the City, or the failure to do so, shall not relieve MI-FIBER of any responsibility, obligation or liability whether assumed under this Agreement or otherwise existing.

- (vi) In recognition of the value and benefit of a streamlined permitting process for the efficient and rapid deployment of facilities by private users in the City Conduit, the Parties will cooperate in good faith on executing a master permitting agreement or similar protocol that will be available for users of the City Conduit in connection with installing and maintaining their respective facilities therein. Where excavation (as defined in the West Des Moines City Code) of the street or sidewalk surface is not required, the master permitting agreement will enable users of the City Conduit to obtain permission from the City upon submission of a prior electronic, consolidated notice containing the scheduled time and location of work, and identifying information previously provided by the City to such user about the portions of the City Conduit to be accessed. If the City determines that an ordinance is required to adopt such streamlined permitting process, it will take steps consistent with applicable law and procedures to adopt such an ordinance prior to executing a master permitting agreement or similar protocol.

3. License Fees.

- 3.1 As a condition precedent to accessing the Licensed Conduit, MI-FIBER shall pay to the City a lump sum payment equivalent to Five Dollars (\$5.00) per linear foot of Local Access Conduit included within the Licensed Conduit (“License Payment”).
- 3.2 If such payment is not received by the City by the Acceptance Date, the City may terminate this Agreement consistent with Section 9.1(i).
- 3.3 During the Term of this Agreement, unless and until expressly and affirmatively compelled by federal or state statute or by a final, non-appealable order of a court with competent jurisdiction, the City will not charge MI-FIBER any additional charge, license, encroachment or franchise fee, or any in-kind service or any other consideration, other than the License Payment or other payments expressly described in this Agreement, for the use of the Licensed Conduit as and to the extent set forth in this Agreement. Notwithstanding the foregoing, in the event that MI-FIBER offers “cable service” or “video service,” as those terms are defined in Chapter 477A of the Iowa Code, as amended, over the Fiber Optic Cable in the Licensed Conduit, MI-FIBER will comply with the requirements with Chapter 477A of the Iowa Code including without limitation the payment of any applicable franchise fees to the City as well as any franchise fees implemented by the City related to the provision of “cable television” services under Iowa Code section 364.2.

4. Maintenance

- 4.1 During the Term, the City will be responsible for maintaining the structural integrity of the Licensed Conduit in good condition, utilizing sound engineering practices. If the City becomes aware of a blockage, cut, collapse, dislocation, destruction or other damage to the Licensed Conduit (“Damage”), the City will notify MI-FIBER as soon as practicable and will restore the Licensed Conduit in as timely and expedited a manner as reasonably possible. Notwithstanding anything to the contrary in this Agreement, if MI-FIBER or one of its contractors or agents causes Damage to the City Conduit, MI-FIBER shall notify and reimburse the City for the City’s Costs of repairing such Damage and restoring the City Conduit to its condition prior to such Damage.
- 4.2 With respect to the City Conduit and the facilities of any and all Licensees installed therein, City will on behalf of itself and any and all licensees comply with Iowa Code Chapter 480 (“Underground Facilities Information”) or other applicable law, including but not limited to registering the City Conduit with the Iowa One Call System and timely responding to excavation notices submitted by excavators through the Iowa One Call System by marking the Conduit Network. In particular, in its response to the excavation notices and in marking the location of the City Conduit, City will also respond on behalf of any and all Licensees with facilities contained within the portions of the City Conduit subject to the excavation notice and locate request, to the same extent and with the same degree of care as it does for the City Conduit.

- 4.3 MI-FIBER shall have sole responsibility for maintaining all of its Fiber Optic Cable and Equipment installed in the Licensed Conduit or interconnected to the Fiber Optic Cable or Equipment installed in the Licensed Conduit. MI-FIBER shall maintain its Fiber and Equipment in good repair and in a manner that will not constitute an Interfering Use.

5. Disclaimer of Warranties, Liability and Damages

- 5.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT BEYOND THE MANUFACTURERS' WARRANTY AS TO THE FITNESS OF THE LICENSED CONDUIT, EITHER EXPRESS, IMPLIED OR STATUTORY, AND THE PARTIES HEREBY EXPRESSLY EXCLUDE AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARISING BY A COURSE OF DEALING, USAGE, OR TRADE PRACTICE OR COURSE OF PERFORMANCE.
- 5.2 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Mutual Indemnification

- 6.1 Both the City and MI-FIBER (as "Indemnifying Party") hereby agree to indemnify, defend and hold harmless the other (as "Indemnitee") from and against any third party demand, claim, action, suit or proceeding ("Claim") and any resulting loss, liability, cost, expense or fine, including court and appeal costs and reasonable attorneys' fees and expenses ("Losses"), that are caused by or arise out of the actual or alleged acts or omissions, whether negligent or willful, of the Indemnifying Party, its personnel, agents, contractors or assigns, in connection with the performance under this Agreement or otherwise in connection with the construction (including any excavation), installation, operation, maintenance or use of the City Conduit or any equipment or facilities interconnected or associated therewith. In the event that any such liability, loss, damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

- 6.2 Notwithstanding the foregoing, each party's respective obligations as an Indemnifying Party under Section 6.1 above shall not include any liability or obligation to defend:
- (i) to the extent that Losses arise out of or are caused by the Indemnitee's intentional misconduct;
 - (ii) to the extent that the defense of any Claim is prejudiced, or the resulting Losses are caused by the Indemnitee's failure or refusal to provide the Indemnifying Party with timely notice of the Claim, or to cooperate in the defense thereof, or are caused by the Indemnitee entering into a settlement or compromise of the Claim without the prior written approval of the Indemnifying Party; or
 - (iii) to the extent that Losses result from the Indemnitee's failure or refusal to take commercially reasonable actions as the Indemnifying Party may request, and at the Indemnifying Party's sole cost and expense, in order to mitigate or lessen such Losses.
- 6.3 Notwithstanding anything herein to the contrary, MI-FIBER shall also indemnify the City against any third-party claims or charges comprising pass-throughs of property taxes imposed upon structures located in the ROW by reason of the City's attachments of facilities to such structures or improvements made to such structures in order to accommodate such attachments.

7. Insurance

- 7.1 MI-FIBER and all contractors shall at all times during the term of this agreement maintain insurance coverage as required by City and set out in Exhibit B, and as such minimum insurance coverage may from time to time be amended. MI-FIBER shall make available to the City proof of Insurance (which is available at MI-FIBER) evidencing coverage currently in effect prior to commencing installation of any Fiber Optic Cable within the City Conduit. MI-FIBER shall provide the City with thirty (30) days prior written notice of cancellation or any material adverse change in conditions. All policies shall include the City as an additional insured.

8. Assignment

- 8.1 Neither Party may transfer or assign, voluntarily or by operation of law, its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned, or delayed); provided, however, that either Party may assign its obligations and rights under this Agreement upon notice and without the other Party's consent to: (a) an entity that directly or indirectly controls, is controlled with or by, or is under common control with the assigning Party; (b) an entity resulting from any merger, consolidation or other reorganization involving the assigning Party; or (c) the purchaser of all or substantially all of assigning Party's assets.

- 8.2 MI-FIBER shall not have any right or authority to sublicense its right to use the Conduit under this Agreement to any party.
- 8.3 Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

9. Termination

- 9.1 The Parties shall have the right to terminate this Agreement and the license granted herein under the following circumstances:
- (i) The City may terminate this Agreement: (a) upon thirty (30) days written notice with an opportunity to cure within ten (10) days therefrom in the event that MI-FIBER commits a material breach of this Agreement, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, or becomes insolvent, or becomes subject to direct control by a trustee, receiver or similar authority, or uses the Licensed Fiber for any unlawful purpose, or (b) upon sixty (60) days written notice in the event that the City for any reason ceases to have rights to operate and maintain the City Conduit or any significant portion thereof. Under this provision, the City shall not be required to reimburse MI-FIBER for any portion of the License Fee.
 - (ii) MI-FIBER may terminate this Agreement upon thirty (30) days written notice with an opportunity to cure within ten (10) days therefrom in the event the City commits a material breach of this Agreement. If MI-FIBER properly terminates the Agreement under this provision, the City shall reimburse MI-FIBER a prorated portion of the License Fee based upon the number of years left in the Term.
 - (iii) MI-FIBER may terminate this Agreement for any reason upon sixty (60) days written notice. Under this provision, the City shall not be required to reimburse MI-FIBER for any portion of the License Fee.
 - (iv) In the event of termination of this Agreement under its terms for any reason, MI-FIBER shall remove all Fiber Optic Cable and Equipment installed by MI-FIBER in the City Conduit within one-hundred eighty (180) days after the effective date of the termination. All costs of any kind arising from removal of MI-FIBER's Fiber and Equipment shall be borne entirely by MI-FIBER.

10. General Provisions

10.1 Notices

- (i) All notices required or permitted to be given to either party by the other party under any provisions of this Agreement shall be in writing. Notice shall be deemed served when delivered by hand or sent by a nationally recognized

overnight courier service to the other party's address set forth below during normal business hours. If a Notice is mailed, service is deemed complete upon the earlier of actual delivery or the close of business on the third business day following the date when the Notice is placed in a receptacle regularly maintained by the U.S. Postal Service addressed to the party at the address set forth below with postage pre-paid.

(ii) Notices shall be given to the following:

If to the City:

City of West Des Moines
Attn: Deputy City Manager
4200 Mills Civic Pkwy
West Des Moines, IA 50265-0320

With a copy to:

City of West Des Moines
Attn: City Attorney
4200 Mills Civic Pkwy
West Des Moines, IA 50265-0320

If to MI-FIBER:

Mi-Fiber, LLC
Attn: General Manager
4464 114th St.
Urbandale, IA 50322

With a copy to:

Dentons Davis Brown PC
Attn: John Pietila, Attorney
4201 Westown Parkway, Ste 300
West Des Moines, IA 50266

Or to such other addresses and persons as MI-FIBER or the City may hereafter designate in a notice given in accordance with this Section 10.1.

- 10.2 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the Parties in the same manner in which this Agreement was approved.
- 10.3 Integration. This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement.

The parties agree that if a Schedule, Addendum, Rider or Exhibit or other document is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference

- 10.4 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit MI-FIBER and City.
- 10.5 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint utility, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.
- 10.6 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the invalid portion shall be severed from this Agreement. Such a determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 10.7 Further Assurances and Corrective Instruments. MI-FIBER agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.
- 10.8 Non-Waiver. Failure of the City to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, or to exercise any right or privilege hereunder, shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the same shall be and remain at all times in full force and effect.
- 10.9 Headings. All headings contained in this agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.
- 10.10 Governing Law. This Agreement and the rights and obligations contained in it shall be construed in accordance with, and governed by, the laws of the State of Iowa without regard to its choice of law provisions. Without limiting the preceding, this Agreement is intended by the parties to comply with Iowa Code Chapter 480A and shall be interpreted and construed in accordance with such intent.
- 10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

- 10.12 Legal Capacity. Both parties represent and warrant that they have the legal capacity to enter into this Agreement and that no Applicable Law prevents the execution and enforcement of this Agreement.
- 10.13 Approval of City. This Agreement shall not be binding until they have received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Agreement by the City Clerk.
- 10.14 Venue. Venue for any complaint, cause, case or action arising from or related to this Agreement shall be in the State of Iowa, County of Polk.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY OF WEST DES MOINES, IOWA, an Iowa municipal corporation

Steven K. Gaer
Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2021, before me a Notary Public in and for said County, 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2021, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

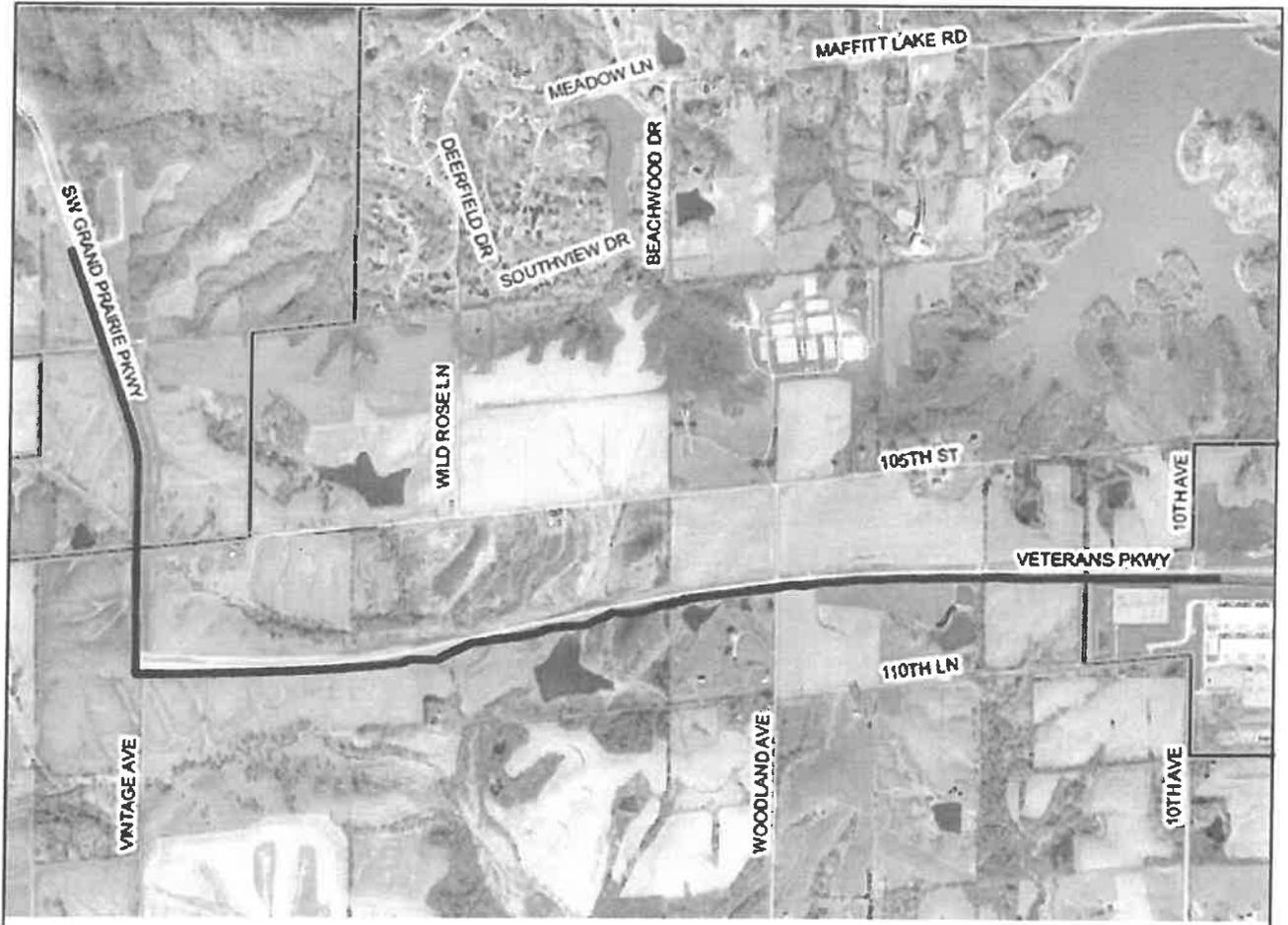
Notary, State of Iowa

EXHIBIT A

Licensed Conduit

For purposes of this Agreement, Licensed Conduit shall mean:

Approximately 18,661 linear feet of a single duct in a seven duct Local Access Conduit beginning from the intersection of SW 60th St (Warren Ave) and Veterans Pkwy, running west along the length of Veteran's Parkway to South Grand Prairie Parkway, then north along South Grand Prairie Parkway to The Preserve (See depiction below).



(3) Workers' Compensation and Employers Liability

As required by any applicable law or regulation. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Part 1- Workers Compensation

Statutory Benefits

(4) Employers Liability:

Bodily Injury Each Accident	\$500,000
Bodily Injury by Disease Policy Limit	\$500,000
Bodily Injury by Disease Each Employee	\$500,000

(5) Umbrella Liability

MI-FIBER will maintain umbrella liability insurance on an occurrence basis in excess of the general liability, automobile liability and employer's liability insurance described above which is at least broad as all underlying policies; including but not limited to Additional Insured and Waiver of Subrogation and Primary and Non-Contributory

Each Occurrence Limit	\$2,000,000
Aggregate Limit	\$2,000,000

Before providing any services, MI-FIBER shall make available to the City, proof of insurance showing adequate insurance, per this Agreement, to be in force.

Any subcontractors utilized shall be subject to the same insurance requirements above.

CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Agreement for Private Development-Project Ginger East -
 Microsoft Corporation

DATE: January 18, 2022

RESOLUTION: Approval of Development Agreement

FINANCIAL IMPACT: Based on the approved Alluvion Urban Renewal Plan Amendments No. 5 and No. 6, and the attached Development Agreement with Microsoft Corporation, the City anticipates providing incentives in the form of public infrastructure and an economic development grant, all totaling no more than \$11,000,000. These costs will be funded by incremental property tax revenues generated by the Ginger East (DSM-14) project. Microsoft intends to undertake approximately \$1.5-2 billion in improvements to their Ginger East project site located on an approximately 147-acre site within the Polk County portion of West Des Moines on the east side of Veterans Parkway at Maffitt Lake Road. The Development Agreement includes a Minimum Assessment Agreement with an assessed value of \$242 million on the project. In total there will be five phases to the development.

BACKGROUND: On August 2, 2021, City Council approved Alluvion Urban Renewal Area Amendment No. 5 and on December 6, 2021, City Council approved Amendment No. 6 to allow tax increment funds to be dispersed for eligible projects and an economic development grant. The Development Agreement outlines those actions required of each party.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution approving the Development Agreement and authorizing the Mayor to sign the Agreement on behalf of the City.

Lead Staff Member: Clyde E. Evans, AICP, Planner

STAFF REVIEWS

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

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Date(s) Published	December 23, 2021
Letter sent to surrounding property owners	N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	February 17, 2021		
Date Reviewed			
Recommendation	<input checked="" type="checkbox"/> Yes	No <input type="checkbox"/>	Split <input type="checkbox"/>

ATTACHMENTS:

- Exhibit I - Development Agreement
- Exhibit II - Resolution

DEVELOPMENT AGREEMENT

By and Between

CITY OF WEST DES MOINES, IOWA

and

MICROSOFT CORPORATION

(Ginger East Project)

_____, 2022

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement" or "Development Agreement") is made as of the day this Agreement is signed by both Parties (the "Effective Date"), by and between the City of West Des Moines, Iowa, a municipal corporation with its principal offices located at 4200 Mills Civic Parkway, West Des Moines, Iowa 50265 (the "City"), and Microsoft Corporation, a Washington corporation, with its principal offices located at One Microsoft Way, Redmond, Washington ("Developer"). The Parties are the City and the Developer.

WITNESSETH:

WHEREAS, in furtherance of the objectives of Chapter 403 and Chapter 15A of the Code of Iowa, 2021, as amended (the "Urban Renewal Act"), the City is engaged in carrying out urban renewal project activities in an area known as the Alluvion Urban Renewal Area ("Urban Renewal Area"); and

WHEREAS, the Developer has acquired certain property located within the Urban Renewal Area, as more particularly described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, the Developer is willing to cause certain Minimum Improvements to be constructed on the Development Property and to operate such Minimum Improvements for its business, including creation and retention of employment; and

WHEREAS, the City is willing to provide certain public improvements and an economic development grant to assist in the development of the Minimum Improvements; and

WHEREAS, the City believes that the development of the Minimum Improvements on the Development Property is in the vital and best interests of the City and in accordance with the public purposes and provisions of the applicable State and local laws and requirements under which the project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

ARTICLE 1. DEFINITIONS

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

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

Alluvion Urban Renewal Tax Increment Revenue Fund(s) means the special funds of the City created under the authority of Section 403.19(2) of the Code and the Ordinance(s), which

funds were created in order to pay the principal of and interest on loans, monies advanced or indebtedness, whether funded, refunded, assumed or otherwise, including bonds or other obligations issued under the authority of Section 403.9 or 403.12 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

Annual Certification Form is the annual form submitted by Developer to, among other things, document the monthly average of Full Time Equivalent Jobs in the form of Exhibit H.

Assessment Agreement or **Minimum Assessment Agreement** means the minimum assessment agreement in the form of Exhibit D attached hereto.

City means the City of West Des Moines, Iowa.

City Bonds or **Bonds** mean the general obligation bonds to be issued by the City in one or more series for the purpose of funding the Public Use Improvements and the payment of the Economic Development Grant. The City Bonds shall be issued in an aggregate principal amount estimated to be approximately \$11,000,000, subject to satisfaction of the conditions precedent set forth in Sections 4.3, 5.1, 6.1, and 6.2 of this Agreement, and also may be used to pay capitalized interest and costs of issuance of the City Bonds. Such aggregate principal amount may change depending on a variety of factors, such as the costs of projects, actual Bond sale terms, tax rates and levies, the timing of the sale, inclusion of capitalized interest, as necessary, and other factors. Developer recognizes and agrees that the City will use the Tax Increment generated by the construction of the Minimum Improvements to pay all of the Debt Service coming due on the City Bonds. The estimated repayment schedule(s) for the City Bonds will be attached hereto as Exhibit E and incorporated herein by reference. The current version of Exhibit E proposes five series of City Bonds; however, the number of series of City Bonds and amounts of such Bonds will necessarily change according to the City's borrowing decisions and other factors. Following each issuance of the City Bonds, the City shall deliver a copy of the final Debt Service schedule to the Developer, and such Debt Service schedule thereafter shall be substituted for and become part of Exhibit E to this Agreement. In addition, the parties acknowledge that if the City Bonds are refinanced in the future, Exhibit E shall be updated and such debt service schedule thereafter shall be substituted for and become Exhibit E to this Agreement. Any such refinancing shall not increase or accelerate the amounts owed by Developer in respect of the Debt Service, without the prior written approval of Developer.

Code means the Code of Iowa, 2021, as amended.

Conceptual Site Plan means the conceptual site plan for the Minimum Improvements on the Development Property, attached to this Agreement as Exhibit B and incorporated herein by reference. Site plans for the Minimum Improvements on the Development Property, which are consistent with this Agreement and the Conceptual Site Plan, shall be prepared and filed by the Developer with the appropriate City official under the provisions of the City Code, as the same may be amended from time to time. The site plans shall be processed through the normal City procedures of Planning and Zoning Commission, City Council review/approval and any other requirements per city regulations and City Code.

Conditions Precedent mean the conditions that must be satisfied by Developer under Sections 4.3, 5.1, 6.1, and 6.2 of this Agreement as a precedent to the City taking action under this Agreement.

Construction Plans means the plans, specifications, drawings and related documents reflecting the construction work to be performed by the Developer on the Development Property in accordance with the site plans for the Minimum Improvements on the Development Property and this Agreement. The Construction Plans will contain sufficient detail as required by the building inspector of the City or as required by applicable City codes. The Construction Plans may be amended by Developer in its sole discretion as long as Developer obtains the City's approval when required by the City Code and the Plans are consistent with this Agreement, which approval will not be unreasonably withheld.

County means Polk County, Iowa.

Debt Service means the scheduled principal and interest payments (including capitalized interest) related to the City Bonds.

Developer means Microsoft Corporation.

Development Property means the property within the Urban Renewal Plan and described in Exhibit A hereto and depicted in Exhibit B.

Economic Development Grant means the economic development grant to be made by the City under Article IV. The Economic Development Grant shall be in the aggregate amount of \$1,705,000 and shall be funded solely and only from the proceeds of the City Bonds.

Effective Date means the date the last party signs the Agreement, including all applicable Exhibits.

Event of Default means any of the events described in Section 9.1 of this Agreement.

Full Time Equivalent Job means the employment of one person:

a. For a 5-day, 32-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

b. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year including paid holidays, vacations, and other paid leave.

For purposes of this definition, "employment of one person" means the employment of one natural person and does not include "job sharing" or any other means of aggregation or combination of hours worked by more than one natural person; however, it does include replacement of one employee by another in the same job during the year.

Indemnified Parties means the City and the governing body members, officers, agents, servants and employees thereof. See Article VII.

Minimum Actual Value means the minimum actual value of the Minimum Improvements on the Development Property (land and building(s)) as set forth in the Minimum Assessment Agreement (Exhibit D).

Minimum Improvements shall mean the Minimum Improvements on the Development Property further depicted or described in Exhibits B and C.

Monthly Average means the average number of Full Time Equivalent Jobs as calculated in the Annual Certification Form (Exhibit H).

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

Mortgagee means any lender secured by a Mortgage.

Ordinance(s) means the respective ordinances of the City, under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided and a portion paid into the Alluvion Urban Renewal Tax Increment Revenue Fund pursuant to Iowa Code Section 403.19.

Prime Rate means the interest rate quoted by the Wall Street Journal as the prime rate for the banking industry.

Project shall mean the construction of the Minimum Improvements on the Development Property and the operation of such Minimum Improvements for Developer's business, including creation and retention of employment, as described in this Agreement.

Public Use Improvements means the Public Use Improvements listed in Exhibit G. Such Public Use Improvements shall be built over a period of years.

Shortfall Payment(s) means the payment(s) defined in Section 6.2(d) of this Agreement.

State means the State of Iowa.

Tax Increment means the tax increment revenues received by the City pursuant to Iowa Code Section 403.19, and the City's Ordinances implementing the division of taxes under Iowa Code Section 403.19, as such Code and Ordinances may be amended, generated by the construction of the Minimum Improvements on the Development Property within the Alluvion Urban Renewal Area.

Termination Date means the date of termination of this Agreement, as defined in the Minimum Assessment Agreement, Exhibit D, Section 1.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay, including but not limited to, storms, floods,

fires, explosions or other casualty losses, extreme or unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, the acts of any federal, State or local governmental unit (other than the City), pandemics (including COVID-19), epidemics, moratorium, insurrections, war, terrorist act, riots and failure of utility services. Notwithstanding the foregoing, each Party acknowledges and agrees that it is entering into this Agreement and committing to perform its respective obligations with an awareness of the effects of the COVID-19 outbreak, as of the Effective Date, the continuation of which the Parties agree will not be deemed an Unavoidable Delay absent changes in circumstances or occurrence of events beyond the Parties' reasonable control which would independently meet the definition of an Unavoidable Delay.

Urban Renewal Area means the property within the Alluvion Urban Renewal Area as described by the Alluvion Urban Renewal Plan, as amended from time to time.

Urban Renewal Plan means the Urban Renewal Plan for the Alluvion Urban Renewal Area approved by the City Council, as previously amended, and as may be amended from time to time.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 **Representations and Warranties of the City.** The City makes the following representations and warranties as of the Effective Date:

(a) The City is a municipal corporation organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations under this Agreement and has taken all actions required to authorize this Agreement.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing, nor do they conflict with or contravene any laws, order, rule or regulation applicable to the City.

(c) There is no litigation, proceeding, initiative, referendum, or investigation currently pending or, to the knowledge of the City Attorney, any threat of any of the same, contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to the Developer.

(d) This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity

Section 2.2 Representations and Warranties of the Developer. The Developer makes the following representations and warranties as of the Effective Date:

(a) Microsoft Corporation is a corporation duly organized and validly existing under the laws of the State of Washington, is qualified to do business in the State of Iowa, and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

(b) This Agreement has been duly and validly authorized, executed and delivered by the Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of the Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of (i) the articles of incorporation, bylaws or other corporate governing document of the Developer, or (ii) any contractual restriction, evidence of indebtedness, agreement or instrument to which the Developer is now a party or by which it or its property is bound, the breach of which would adversely affect the Developer's ability to perform its obligations hereunder.

(d) To Developer's knowledge, there are no actions, suits or proceedings pending against the Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable probability of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of the Developer as it relates to the performance of its obligations under this Agreement or which in any manner raises any questions affecting the validity of this Agreement or the Developer's ability to perform its obligations under this Agreement.

(e) To the Developer's knowledge, the Developer has not received any written notice from any local, State or federal official in the State that the activities of the Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). The Developer is not currently aware of any State or federal claim filed or threatened in writing to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Development Property, and the Developer is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

(f) The Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be substantially completed by the schedule set forth in Exhibit C.

(g) The Developer would not undertake its obligations under this Agreement without the construction by the City of the Public Use Improvements and the Economic Development Grant being made by the City pursuant to this Agreement.

ARTICLE III CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 3.1 Construction of Minimum Improvements. The Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with this Agreement, the Conceptual Site Plan, the site plans for the Minimum Improvements on the Development Property, and the Construction Plans submitted to the City. The Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be materially less than the scope and scale of the Minimum Improvements as detailed and outlined in the Conceptual Site Plan and the individual site plans for the Minimum Improvements on the Development Property. The Developer reasonably expects that the construction of the Minimum Improvements (land, buildings and equipment) will require an approximate investment of Three Hundred Fifteen Million Dollars (\$315,000,000).

Section 3.2 Site Plans. The Developer shall file with the City, and amend as necessary, the site plans for the Minimum Improvements on the Development Property, in accordance with the City Code. Any changes to the site plan must be approved by the City to the extent required under the City Code, which consent will not be unreasonably withheld. The Conceptual Site Plan for the Minimum Improvements is attached and incorporated herein as Exhibit B. See also definition of Conceptual Site Plan.

Section 3.3 Construction Plans. The Developer shall cause Construction Plans to be provided for each building to be constructed as part of the Minimum Improvements, which shall be in conformity in all material respects with the Conceptual Site Plan and the site plans for the Minimum Improvements on the Development Property, this Agreement, and all applicable State and local laws and regulations. The City agrees that the construction plans and specifications submitted to the building official of the City for the Development Property are adequate to be the Construction Plans, if such plans and specifications are approved by the City building official. The Construction Plans may be amended by Developer in accordance with the City's requirements for amending construction plans as long as the Construction Plans remain consistent with the terms of this Agreement.

Section 3.4 Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer shall cause construction of the Minimum Improvements with an expected substantial completion date of July 31, 2024, or 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. "Substantial completion" for this purpose does not include equipping the Minimum Improvements, installing personal property or commencing business operations in the Minimum Improvements. However, regardless of the actual completion date for the Minimum Improvements, the Minimum Improvements shall have an assessed valuation in the amount and as of the date set forth

in Section 1 of the Minimum Assessment Agreement (Exhibit D). All work with respect to the Minimum Improvements to be constructed or provided by the Developer shall be in conformity with the site plans for the Minimum Improvements on the Development Property and the Construction Plans.

(b) Pursuant to the Minimum Assessment Agreement in the form of Exhibit D attached hereto, the Minimum Improvements shall have at least the assessed valuation reflected in Exhibit D as of the corresponding "Assessed Valuation Date" (the "Minimum Actual Value"). The Minimum Actual Value is the value before commercial rollback set forth in Iowa Code Section 441.21 (currently, the assessed valuation for commercial and industrial property is multiplied by 90% to determine the taxable valuation).

Section 3.5. Certificate of Completion. Subject to the issuance of occupancy permit for the Minimum Improvements by the City, and upon written request of the Developer, the City will furnish the Developer with a Certificate of Completion in the recordable form, in substantially the form set forth in Exhibit I attached hereto. Such Certificate of Completion shall be conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of the Developer to construct the Minimum Improvements.

The Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property at the Developer's sole expense. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.5, the City shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the 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 reasonable opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Completion. Upon completion of such curative measures, the City shall issue the Certificate of Completion.

ARTICLE IV ECONOMIC DEVELOPMENT GRANT

Section 4.1. Economic Development Grant. For and in consideration of the obligations being assumed by the Developer as set forth in this Agreement, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article) to make an Economic Development Grant to Developer in the amount of \$1,705,000, to be paid as follows:

- (a) \$299,010 of the Economic Development Grant shall be disbursed to the Developer no later than February 1, 2025; and
- (b) In lieu of direct disbursement to the Developer, \$1,405,990 of the Economic Development Grant shall be paid by the City to the State of Iowa as reimbursement for all funds deemed due and owing by the State under that certain RISE Grant Agreement No. 2015-R-002 by no later than February 1, 2025.

Section 4.2. Source of Economic Development Grant Funds Limited. The Economic Development Grant shall be payable solely and only from the proceeds of the City Bonds, and shall not be payable in any manner by general taxation or from any other City funds. The parties further acknowledge and agree that, notwithstanding the estimated repayment schedule attached as Exhibit E, the City Bonds shall be sold at such times, on such terms and conditions, bear such interest rates, and mature at such times and in such amounts as the City, in its reasonable discretion, shall determine to be acceptable to it to align with the anticipated borrowing and construction schedules.

Section 4.3. Conditions Precedent to Funding Economic Development Grant by City.

(a) The City's obligation to disburse the Economic Development Grant as described in this Article shall be subject in all respects to Unavoidable Delays, the provisions of this Article, and to the satisfaction of all conditions and procedures required (in the reasonable judgment of bond counsel for the City) by Chapters 384 and 403 of the Code with respect to the issuance of the City Bonds, including the holding of all required public hearings relating to the same. It is recognized and agreed that the ability of the City to perform the obligations as described in this Agreement, including the payment of the Economic Development Grant, is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings relating to the issuance of City Bonds. In addition, all obligations of City to fund the Economic Development Grant are subject to fulfillment of each of the following Conditions Precedent:

(i) The representations and warranties made by Developer in Section 2.2 shall be true and correct as of a Developer recertification statement that may be requested by the City at or near the time of the issuance of City Bonds; such recertification statement of the representations and warranties made by Developer in Section 2.2 shall have the same force and effect as if made on the Effective Date;

(ii) The City shall have adopted the Urban Renewal Plan to include the Economic Development Grant and Public Use Improvements as urban renewal projects;

(iii) No Event of Default (as defined in Article 9) exists with respect to the Developer's performance of its obligations under this Agreement and all exhibits;

(iv) Regardless of the actual completion date of the Minimum Improvements, the Minimum Improvements shall have an assessed valuation in the amount and as of the date listed in Section 1 of the Minimum Assessment Agreement (Exhibit D);

(v) Execution by Developer of the Assessment Agreement between the City and the Developer substantially in the form of Exhibit D, pursuant to Section 6.2 of this Agreement;

(vi) There has not been a substantial change for the worse in the financial resources and ability of the Developer, or a substantial decrease in the financing commitments secured by the Developer for construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of the City, that the Developer will be unable to fulfill its covenants and obligations under this Agreement;

(vii) The Developer has completed the Minimum Improvements; and

(viii) The Developer has entered into an agreement with the West Des Moines Water Works (“Water Works”) pursuant to which the Developer agrees to pay for the costs of designing and completing a water tower to be owned and operated by Water Works for purposes of providing water service to the Development Property and the Urban Renewal Area (the “Water Works Agreement”). The Water Works Agreement will provide that all use of the water tower by the Developer and its employees, customers and suppliers shall be on the same basis as the general public and that the Developer will have no special legal entitlements or other rights not held by members of the general public with respect to ownership, maintenance or use of the water tower.

ARTICLE V PUBLIC USE IMPROVEMENTS

Section 5.1. Public Use Improvements. Contingent on the Developer's compliance with the terms of this Agreement in all material respects, including but not limited to continued compliance with the covenants in Section 6.1 and the execution of the Assessment Agreement as set forth in Section 6.2, and contingent upon satisfaction of the Conditions Precedent set forth below in Section 5.1(a), the City intends to issue City Bonds to fund, and then construct, certain Public Use Improvements associated with the construction of the Minimum Improvements. The City's obligation to issue the City Bonds to construct the Public Use Improvements as described in this Article shall be subject in all respects to Unavoidable Delays, the provisions of this Article, and to the satisfaction of all conditions and procedures required (in the judgment of bond counsel for the City) by Chapters 384 and 403 of the Code with respect to the issuance of the City Bonds, including the holding of all required public hearings relating to the same. The description of the Public Use Improvements to be funded by the City Bonds and other related information is contained in Exhibit G.

(a) Conditions Precedent to Issuing City Bonds for Public Use Improvements. It is recognized and agreed that the ability of the City to perform the obligations described in this Agreement, is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings relating to the issuance of the City Bonds. Specifically, all obligations of City to issue the City Bonds whose proceeds shall be used to construct Public Use Improvements are subject to each of the following Conditions Precedent:

(i) The representations and warranties made by Developer in Section 2.2 shall be true and correct as of a Developer recertification statement

that may be requested by the City at or near the time of the issuance of City Bonds; such recertification statement of the representations and warranties made by Developer in Section 2.2 shall have the same force and effect as if made on the Effective Date;

(ii) The City shall have adopted an Urban Renewal Plan to include the Economic Development Grant and Public Use Improvements as urban renewal projects;

(iii) The Developer shall be in compliance with all the terms and provisions of this Agreement in all material respects;

(iv) Regardless of the actual completion date of the Minimum Improvements, the Minimum Improvements shall have an assessed valuation in the amount and as of the date listed in Section 1 of the Minimum Assessment Agreement (Exhibit D);

(v) Execution by Developer of the Assessment Agreement between the City and the Developer substantially in the form of Exhibit D, pursuant to Section 6.2 of this Agreement;

(vi) There has not been a substantial change for the worse in the financial resources and ability of the Developer, which change(s) make it likely, in the reasonable judgment of the City, that the Developer will be unable to fulfill its covenants and obligations under this Agreement; and

(vii) The Developer has entered into the Water Works Agreement.

(b) Other Improvements. The City may determine to construct additional infrastructure improvements, in its sole discretion, when undertaking the construction of any of the Public Use Improvements, provided the additional infrastructure improvements do not materially adversely affect the development of the Minimum Improvements or the scheduled completion of the Public Use Improvements.

(c) Completion Date for Public Use Improvements. The City agrees to use its best efforts, consistent with its obligations under Chapter 26 of the Code of Iowa and Unavoidable Delays, to cause all the Public Use Improvements to be completed consistent with the estimated completion dates set forth in Exhibit G.

(d) Authority to Design, Engineer and Construct. The City shall design, engineer and construct the Public Use Improvements in accordance with current City standards and design guidelines, other applicable design standards, the terms of this Agreement, and in accordance with the provisions of the Iowa Code, including required public notice(s) and hearing(s) on the proposed Public Use Improvements.

(e) Right of Way and Easements. Except as set forth below, the City shall obtain, through condemnation if necessary and available, all required property and rights of way (including, without limitation, grading easements) necessary for construction of the

Public Use Improvements, as determined by final engineering design. The City shall be responsible, at its sole cost and expense, for the vacation of any existing roadway or rights of way that will no longer be required as the result of construction of the Public Use Improvements. Developer shall convey, at no cost to the City, easements and right of way dedications for adjoining streets in the approximate locations shown on Exhibit J as may be necessary for the construction and operation of all Public Use Improvements and cooperate with the City in the construction and operation of the Public Use Improvements. Developer shall also assist the City in clearing any and all existing easements on the Development Property that adversely affect the property conveyed for Public Use Improvements. If the Developer objects to providing a particular easement in good faith due to the impact of the location of the easement on the construction of the Minimum Improvements, the Parties agree to cooperate in good faith to resolve any such conflict. If such conflict cannot be resolved within sixty (60) days, the City shall have no obligation to construct any of the Public Use Improvements requiring such easements or rights of way dedications hereunder.

(f) Non-responsibility of Developer. The City acknowledges and agrees that Developer has no obligation or responsibility or liability whatsoever with respect to the design or quality of construction of the Public Use Improvements.

(g) No Special Assessment. The Development Property shall not be specially assessed for any of the Public Use Improvements to be constructed by City pursuant to this Agreement, but nothing in this Section shall preclude the City from specially assessing such property for improvements other than the Public Use Improvements constructed by the City pursuant to this Agreement.

(h) No Special Legal Entitlements. Developer recognizes and agrees that all of the Public Use Improvements shall be owned and maintained by the City for the benefit of the general public; that all use thereof by Developer and its employees, customers and suppliers shall be on the same basis as the general public; and that Developer shall have no special legal entitlements or other rights not held by members of the general public with respect to ownership, maintenance or use of the Public Use Improvements.

ARTICLE VI COVENANTS

Section 6.1. Covenants of the Developer. The Developer agrees with the City as follows:

- (a) The Developer has previously acquired the Development Property.
- (b) Following completion of the Minimum Improvements, the Developer will maintain, preserve and keep the Development Property (whether owned in fee or a leasehold interest), including but not limited to the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs.

(c) In carrying out the construction and operation of the Minimum Improvements, the Developer shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, religion, marital status, familial status, or physical disability. The Developer shall ensure that applicants for employment are considered, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, age, religion, marital status, familial status, or physical disability.

(d) The Developer will comply with all applicable land development laws and City ordinances, and all laws, rules and regulations applicable to the Project, other than laws, rules and regulations the failure to comply with which or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, or condition, financial or otherwise, of the Developer.

(e) The Developer shall pay, or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property. The Developer agrees that (i) it will not seek administrative review or judicial review of the applicability or constitutionality of any State tax statute relating to the taxation of property contained on the Development Property determined by any tax official to be applicable to the Development Property, or the Developer or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings, and (ii) it will not seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other chapter of the Code, of the taxation of real property contained in the Development Property. See also Exhibit D, Minimum Assessment Agreement.

(f) The Developer agrees during construction of the Minimum Improvements and during its ownership of the Minimum Improvements to keep the Minimum Improvements insured in a commercially reasonable manner. For so long as the Developer is Microsoft Corporation, or an entity owned 50% or more by Microsoft Corporation, the requirements of this Section shall be satisfied by the inclusion of the Development Property in the self-insurance program of Microsoft Corporation. Upon any damage, Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements to the pre-damage condition or shall have invested or will invest the same dollar amount for comparable improvements in another building or structure on the Development Property at Developer's discretion whether or not the net proceeds of insurance received by Developer for such purposes are sufficient.

(g) No later than 90 days from issuance of a certificate of occupancy for the Minimum Improvements, Developer shall employ at least 20 Full-Time Equivalent Jobs at the Development Property, and thereafter Developer shall retain a Monthly Average of at least 20 Full-Time Equivalent Jobs at the Development Property until the Termination Date of this Agreement, all subject to Unavoidable Delays.

(h) A duly authorized representative of the Developer shall certify to the City, on an annual basis, (i) proof of payment of all ad valorem taxes due on the Development Property; (ii) the total assessed valuation of the Development Property and the Minimum

Improvements as of the preceding January 1, as determined by the Assessor of the County where the Minimum Improvements are located; (iii) the number of Full Time Equivalent Jobs employed at the Minimum Improvements as of the date of the certification and as the first day of each of the preceding eleven (11) months; and (iv) the Developer's credit rating. The first such certification shall be provided by October 15, 2025 (although the jobs component will be prorated for the first certification), with subsequent certifications being provided by October 15 of each year until the Termination Date. Developer shall provide an annual certification by October 15 of each year on the Annual Certification Form attached as Exhibit H.

(i) The Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals for the Minimum Improvements, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(j) The Developer will reasonably 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 that are a direct result of Developer's activities on the Development Property.

(k) The parties agree that the Minimum Actual Value set forth in the Assessment Agreement takes into account the expectation that Developer will avail itself of the property tax exemptions provided by the State's web search portal exemption (Iowa Code Sections 423.3(92) and 427.1(35)) and that such exemptions shall not reduce the property tax assessments for the Development Property and Minimum Improvements (land and buildings) below the Minimum Actual Value set forth in the Assessment Agreement. In order to allow Developer to do so, Developer agrees not to claim the exemption provided by Section 1.10A-3 of the Municipal Code of the City (regarding Industrial Tax Abatement).

(l) Developer will maintain its operations at the Minimum Improvements on the Development Property, including the employee obligations in Section 6.1(g), until the Termination Date of this Agreement.

(m) By signing this Agreement, Developer hereby agrees to comply with all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Developer agrees that: (a) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein subject to Unavoidable Delay; (b) the Minimum Improvements shall be constructed and completed in accordance with the site plans and Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens or materialman's liens (or bonded during resolution of any disputes); and (d) all costs of constructing the Minimum Improvements shall be paid when due.

Section 6.2. Execution of Assessment Agreement.

(a) The Developer shall agree to, and with the City shall execute, an Assessment Agreement ("Minimum Assessment Agreement" or "Assessment Agreement") pursuant to the provisions of Section 403.6(19) of the Code specifying the Minimum Actual Value of the Development Property and the Minimum Improvements located thereon for calculation of real property taxes. The Assessment Agreement shall be in the form of Exhibit D.

(b) As provided in the Minimum Assessment Agreement, the Developer shall agree to the Minimum Actual Value for the Minimum Improvements and the Development Property, commencing with the assessment as of January 1, 2025 and continuing each year thereafter during the term of this Agreement until the City Bonds are paid in full. The Assessment Agreement provides for termination or reduction on the terms and conditions set forth therein.

(c) Nothing in the Assessment Agreement shall limit the discretion of the County Assessor to assign an actual value to the property in excess of the applicable Minimum Actual Value nor prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in such actual value for property tax purposes; provided, however, that the Developer shall not seek a reduction of such actual value below the applicable Minimum Actual Value in any year so long as the Assessment Agreement shall remain in effect. The Assessment Agreement shall remain in effect until the Termination Date as defined in Section 1 of the Assessment Agreement. The Assessment Agreement shall be certified by the County Assessor as provided in Code Section 403.6(19) 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 property (or part thereof), whether voluntary or involuntary, and such Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer.

(d) In the event that for any reason whatsoever, including but not limited to, a change in the tax laws of the State or to the Urban Renewal Act (for example, a change in commercial rollback to determine taxable value or a change in the manner in which incremental taxes are calculated or the duration of such collection under Code Section 403.19), the Tax Increment forecast to be received by the City from the County in each upcoming fiscal year generated from the Development Property and the Minimum Improvements, pursuant to Code Section 403.19, is not sufficient to fully pay the upcoming fiscal year's annual Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements, Developer agrees to promptly make a payment to the City equal to the difference between the amount of the available Tax Increment and the upcoming fiscal year's annual Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements (the "Shortfall Payment"). The intent of this provision is to ensure if, for any reason, the Tax Increment is not sufficient to make the annual Debt Service payments on the City Bonds, the Developer shall promptly make a Shortfall Payment to the City so that it can make all Debt Service payments when due. Further:

(i) "Debt Service" means the scheduled principal and interest payments (including capitalized interest) related to the City Bonds.

(ii) The City shall give reasonable notice of Developer's obligation to pay a Shortfall Payment, in which case Developer shall pay the Shortfall Payment to the City no later than 45 days after the City's written request. If the Shortfall Payment is not made when due, interest at a rate of Prime Rate plus 1% per annum shall accrue from the due date of the Shortfall Payment. The City shall notify the Developer by the March 31 before the fiscal year in which the City forecasts that a Shortfall Payment may become due. The City shall send a written request for payment to the Developer not less than 90 days before the date the City's semi-annual Debt Service payment is due. Such notice by the City shall be deemed reasonable notice.

For example, assume the City's Debt Service payments are due December 1, 2026 and June 1, 2027 (semi-annually). If the City forecasts that the Tax Increment will be insufficient to fully fund the Debt Service schedule, the City shall notify the Developer no later than March 31, 2026 of the amount of the Shortfall Payment. In this case, for the Debt Service Payment due December 1, 2026, the City shall send a written request for the Shortfall Payment by September 1, 2026 and Developer shall make the Shortfall Payment no later than October 15, 2026. Likewise, for the Debt Service Payment due June 1, 2027, the City shall send a written request for a Shortfall Payment by March 1, 2027 and Developer shall make the payment no later than April 15, 2027.

(iii) Subject to the terms of this Agreement, the City will issue debt for the Economic Development Grant and Public Use Improvements. The City is relying on the provisions of this Agreement, including but not limited to, the Minimum Assessment Agreement and the Shortfall Payment to provide the funds necessary to make all Debt Service Payments for the City Bonds. Developer hereby represents its current credit rating for long-term debt is "AAA", as determined by Standard & Poors Financial Services, LLC (S&P). Annually and continuing until the Bonds are paid off, Developer shall re-certify to the City its credit rating on Exhibit H. Additionally, Developer covenants to notify the City within 30 days of any future rating change. As long as Developer retains a credit rating of at least "AA-" (the lowest rating for long-term debt that is classified as "High Grade") as determined by Standard & Poors Financial Services, LLC (S&P) (or the equivalent rating schedule if an alternative rating agency is utilized in the future), no further security is required to secure the Shortfall Payment. However, if at any time before the City Bonds are paid off, Developer's credit rating falls below "AA-", Developer will, within 30 days of written demand by the City, contribute an amount equivalent to the next fiscal year's Debt Service into a City fund. Such City fund will be treated as an escrow account held solely to secure the payment of the Debt Service on the City Bonds ("Debt Service Escrow Account"). Once the Bonds are paid off, any remaining balance, plus interest earned, in the Debt Service Escrow Account will be returned to Developer. As an alternative to contribution of a cash amount to the City in the foregoing sentences, if Developer's credit rating drops below AA-

during the term of this Agreement under the conditions specified above, Developer can elect to issue a bond (“Surety Bond”) in the City’s favor, in order to secure Shortfall Payments, in an amount equivalent to the next fiscal year’s Debt Service of the City Bonds, including interest, contingent on the City’s prior review and approval of the terms and conditions of such Surety Bond.

(iv) If Developer contributes money into the Debt Service Escrow Account under paragraph 6.2(d)(iii), such a contribution by Developer shall not relieve Developer of its independent obligation to make Shortfall Payments described in Section 6.2(d). Rather, Developer’s obligation to make a Shortfall Payment shall continue until the Termination Date defined in Section 1 of the Minimum Assessment Agreement (Exhibit D). If, however, Developer fails to timely make a Shortfall Payment, then in addition to any other remedies available to the City, the City may use any funds in the Debt Service Escrow Account to pay Debt Service when due. The City will provide Developer with written notice of any withdrawal from the Escrow Account (and the amount of said draw). Within 30 calendar days of written notice of such withdrawal by the City, Developer shall replenish the Debt Service Escrow Account so that the Account contains the equivalent of the next fiscal year’s Debt Service.

(v) Exhibit E contains a proposed schedule for the payment of the City Bonds, but such schedule will vary based on actual sale costs, refinancing, if applicable, and other factors. Exhibit E shall be updated with actual debt service for City Bonds and if any refinancing for City Bonds occurs. When updated, such updated Exhibit E shall be substituted for and become Exhibit E to this Agreement.

(vi) The Developer's obligation to make a Shortfall Payment shall continue until the Termination Date defined in Section 1 of the Minimum Assessment Agreement (Exhibit D).

(vii) The City will provide an annual report to Developer of the status of the City Bonds on or before August 31 following each fiscal year end (June 30). This report may be in the form of the relevant portion of the City’s debt report describing the Bonds filed with the State of Iowa for the applicable fiscal year.

ARTICLE VII INDEMNIFICATION

Section 7.1. Release and Indemnification Covenants.

(a) The Developer releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article, the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements on the Development Property. Notwithstanding the foregoing, the Developer shall not provide such

indemnification if the damage or injuries are caused by the negligence or willful misconduct of the Indemnified Parties.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising from (i) the acquisition and condition of the Development Property and the construction, installation, ownership and operation of the Minimum Improvements or (ii) any hazardous substance or environmental contamination in or on the Development Property in violation of applicable environmental laws.

(c) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

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

ARTICLE VIII ASSIGNMENT OR TRANSFER

Section 8.1. Status of the Developer; No Transfer or Assignment. The Developer represents and agrees that, prior to the Termination Date, the Developer will maintain its existence as a corporation and will not wind up or otherwise dispose of all or substantially all of the Development Property or Minimum Improvements, or assign, participate, or otherwise act in such manner as to convey to any third party any interest in this Agreement to any other party unless: (a) the transferee, partnership, corporation, limited liability company or individual assumes in writing all of the obligations of the Developer under this Agreement arising after the transfer of this Agreement; and (b) the City consents thereto in writing in advance, such consent not to be unreasonably withheld.

Section 8.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer, or its permitted successors or assigns, agree that the Development Property or Minimum Improvements cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE IX DEFAULT AND REMEDIES

Section 9.1(A). Developer 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 in reference to Developer defaults, any one or more of the following events:

(a) Failure by the Developer to cause the construction of the Minimum Improvements to be commenced and completed pursuant to the terms, conditions and limitations of this Agreement;

(b) Transfer of the Development Property or Minimum Improvements in violation of Article VIII or that is not consented to by the City;

(c) Failure by the Developer to timely pay (before delinquency) any ad valorem taxes levied on the Development Property and Minimum Improvements;

(d) The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default by Developer under the applicable Mortgage documents and such foreclosure proceedings are not dismissed within sixty (60) days of filing;

(e) Failure by the Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;

(f) The Developer shall:

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

(ii) make an assignment for the benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer or part thereof, shall be appointed in any proceedings brought against the Developer and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment; or

(g) Any representation or warranty made by the Developer in this Agreement, or made by the Developer in any written statement or certificate furnished by the Developer

pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

Section 9.1(B). City 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 in reference to City defaults, and any one or more of the following events:

(a) Any representation or warranty made by the City in this Agreement shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance; or

(b) The City fails to pay to the Economic Development Grant in accordance with Section 4.1 and all of the condition precedents set forth in Section 4.3 have occurred or been satisfied as set forth in Section 4.3; or

(c) Failure by the City to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

Section 9.2. City's Remedies on Default. Whenever any Event of Default referred to in Section 9.1(A) (a-g) of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsections (d) or (f) of said Section 9.1 which shall not require a cure period) the giving of sixty (60) days written notice by the City to the Developer and the holder of the Mortgage (but only to the extent the City has been informed in writing of the existence of a Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured within said thirty sixty (60) days, or if the Event of Default cannot reasonably be cured within sixty (60) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

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

(b) The City may terminate this Agreement;

(c) The City shall be entitled to recover, and the Developer shall pay to the City, an amount equal to the present value of the remaining principal and interest payments due on the City Bonds calculated as of the date of the City's notice to Developer of the Event of Default (as reasonably determined by the City) through the date of the earliest possible redemption date of the City Bonds; or

(d) The City may take any other action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.4. Developer's Remedies on Default. Whenever any City Event of Default occurs by the City, the Developer may terminate this Agreement, and the Developer may take any legal action it considers necessary to recover damages from the City or to enforce this Agreement, subject to a 120 day written notice to the City with an opportunity for the City to cure the Event of Default during the 120 day notice period and the City does not cure the default during the cure period and does not provide assurances reasonably satisfactory to the Developer that the Event of Default will be cured as soon as reasonably possible. The Developer may take any other action, including legal, equitable or administrative action, including specific performance, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the City under this Agreement.

Section 9.5. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by the Developer and thereafter waived by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.6. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and either party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the other party, the non-prevailing party shall pay to the prevailing party its reasonable attorneys' fees and costs.

ARTICLE X MISCELLANEOUS

Section 10.1. Conflict of Interest. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Development Property during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Development Property, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Development Property, or in any activity, or benefit therefrom, which is part of the Development Property at any time during or after such person's tenure.

Section 10.2. Notices. Any notice, demand, or other communication under this Agreement by either party to the other shall be effective upon receipt or refusal of receipt to the following addresses:

(a) in the case of Developer, is addressed or delivered personally to Developer at:

Microsoft Corporation
One Microsoft Way
Redmond, WA 99052
Attention: General Manager, Cloud Infrastructure, Strategy and
Architecture, MCIO
Attention: Sr. Director, Land Development Organization CO+I

with a copy to:
Microsoft Corporation
Corporate, External and Legal Affairs
One Microsoft Way
Redmond, WA 98052
Attention: MCIO CELA

(b) in the case of City, is addressed or delivered personally to City at:

City of West Des Moines, Iowa
4200 Mills Civic Parkway
P.O. Box 65320
West Des Moines, Iowa 50265-0320
Attn: City Clerk

Any party may change the address for notices to be delivered to it, and copies thereof to any address other than a post office box by serving not less than ten (10) days prior written notice to the other party in accordance with the provisions contained in this paragraph.

Section 10.3. Governing Law. The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Iowa applicable to contracts wholly to be performed therein. The parties agree that any action, suit or proceeding based upon any matter, claim or controversy arising hereunder or relating hereto shall be brought solely in the state or federal courts located in Polk County, Iowa. The parties irrevocably waive objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum.

Section 10.4. Entire Agreement. This Agreement and exhibits attached constitute the entire agreement of the parties and supersedes all prior offers, agreements, arrangements and contracts, whether oral or written, concerning the subject matter hereof.

Section 10.5. Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby and the parties shall thereupon amend this Agreement to legally and most closely embody the spirit and intent of the invalid provisions.

Section 10.6. Performance by City. Developer acknowledges and agrees that all of the obligations of the City under this Agreement shall be subject to, and performed by the City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with the City's lawful authority.

Section 10.7. No Third-Party Beneficiaries. No rights or privileges of any party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

Section 10.8. Interpretation. Section headings are for convenience of reference only and are in no way intended to interpret, define or limit the scope or content of this Agreement or any provision hereof and shall be given no legal effect in the interpretation of this Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that the City and Developer and their respective attorneys, have contributed substantially and materially to the preparation of each and every provision of this Agreement.

Section 10.9. Amendment; Waiver. This Agreement may not be amended, waived or modified in any respect unless the same shall be in writing and signed by all parties. No waiver by a party of any default by another party shall constitute a waiver of any other breach or default by another party, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give another party any contractual right by custom, estoppel, or otherwise.

Section 10.10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the City and Developer and their affiliates, and their respective permitted successors and assigns, including any and all covenants and conditions contained in this Agreement.

Section 10.11. Agreement. The parties may agree to record a Memorandum of Development Agreement in the form attached as Exhibit F, or in a form and content to be mutually agreed upon by the parties, and such Memorandum may be recorded in lieu of recording this Agreement. If no such memorandum can be mutually agreed upon, then this Agreement may be recorded in its entirety.

Section 10.12. Termination Date. Unless this Agreement has been terminated in accordance with the terms and conditions of this Agreement, this Agreement will terminate on the Termination Date defined in Section 1 of the Assessment Agreement (Exhibit D).

Section 10.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.14. Chapter 22. The parties acknowledge that documents provided to the City related to the Project will be subject to Code Chapter 22, and the parties will act in accordance with Code Chapter 22 in response to any third-party request for the disclosure of such documents.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its names and on behalf by its authorized representatives, all on or as of the day first above written (the Effective Date).

[The remainder of this page was intentionally left blank. Signatures begin on next page.]

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor
Date: _____, 2022

ATTEST:

Ryan T. Jacobson
City Clerk
Date: _____, 2022

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2022, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

THE PROPERTY DESCRIBED IN THE WARRANTY DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15961, PAGE 875, BEING LOCATED IN THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 10.48 ACRES (456,397 S.F.).

AND

THE PROPERTY DESCRIBED IN THE QUIT CLAIM DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15939, PAGE 284, BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 0.57 ACRES (24,803 S.F.).

AND

THE PROPERTY PLATTED AS PARCEL 2020-125 (POS-004818-2020) OF THE NORTHEAST 1/4 OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AS SHOWN ON THE PLAT OF SURVEY AND RESOLUTION RECORDED IN BOOK 18065, PAGE 789 AND CONTAINING 0.97 ACRES (42,233 S.F.).

AND

PARCEL 2017-20 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 BEING A PART OF THE FORMER RAILROAD RIGHT-OF-WAY AS DESCRIBED IN THE WARRANTY DEED IN BOOK 6826, PAGE 857 AND BEING A PART OF PARCEL 'A' AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 8630, PAGE 836 AND ALL BEING IN THE NORTH HALF OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

AND

THAT PART OF A TRACT OF LAND AS SHOWN ON THE RETRACEMENT SURVEY RECORDED IN BOOK 9183, PAGE 332 IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, LYING SOUTH OF PARCEL 2017-19 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 IN THE NORTH HALF OF THE SOUTH HALF OF SAID SECTION 34 AND LYING NORTHWESTERLY OF PARCEL 2017-20 AS SHOWN ON SAID PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 AND LYING NORTHEASTERLY OF THE ROAD RIGHT-OF-WAY FOR SE MAFFITT LAKE ROAD AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 15961, PAGE 871.

AND

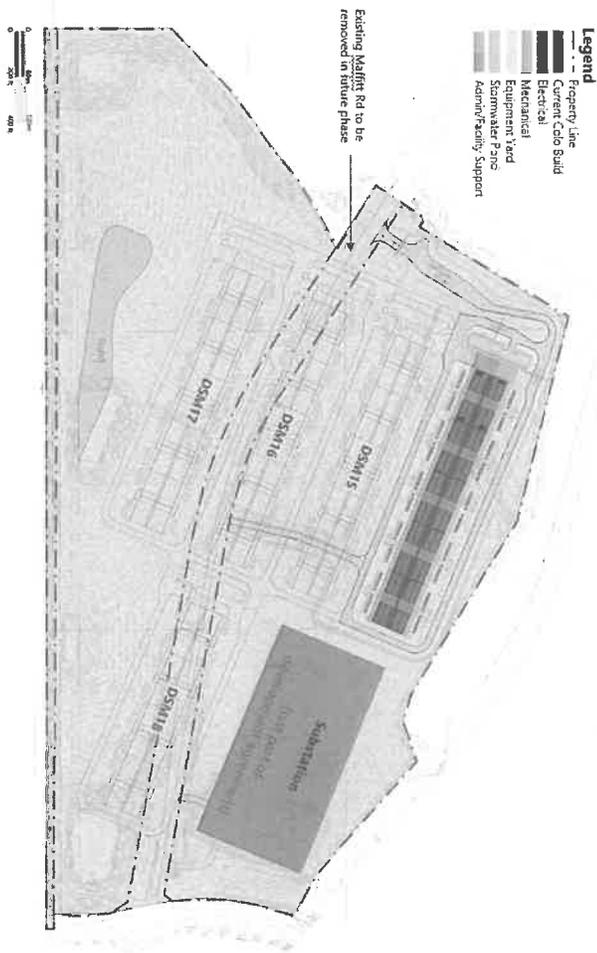
PARCEL 'B' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 9533, PAGE 479 BEING ALL OF LOT 10 IN BRUBAKER ESTATE, AN OFFICIAL PLAT, AND A PART OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

PROPERTY CONTAINS 146.86 ACRES (6,397,060 SQUARE FEET).

PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

EXHIBIT B CONCEPTUAL SITE PLAN

DSM14-18 | Site Test Fit



Microsoft Content: 11

Execute Site Test Fit Plan
Microsoft

EXHIBIT C
MINIMUM IMPROVEMENTS

The Minimum Improvements shall consist of a regional data center containing approximately 250,000 square feet of space to house servers and computer equipment to operate large scale web portal services (labeled in Exhibit B as DSM14), and associated support infrastructure, with an expected investment of approximately \$315,000,000 and 20 jobs created as set forth in Section 6.1(g). The Minimum Improvements are anticipated to be completed by July 31, 2024.

EXHIBIT D

Type of Document: **MINIMUM ASSESSMENT AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND MICROSOFT CORPORATION**

Return Document to: **Ryan T. Jacobson
City of West Des Moines
4200 Mills Civic Parkway, Suite 1A
West Des Moines, IA 50265**

Preparer Information: **Nathan J. Overberg
Ahlers & Cooney, P.C.
100 Court Ave., Ste. #600
Des Moines, IA 50309
(515) 243-7611**

Taxpayer Information: **N/A**

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION: See first two pages of Minimum Assessment Agreement

**Minimum Assessment Agreement between the City of West Des Moines
and Microsoft Corporation (Ginger East)**

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement"), is dated as of the ___ day of _____ 2022, by and between the CITY OF WEST DES MOINES, IOWA (the "City"), an Iowa municipal corporation, acting under the authorization of Chapter 403 of the Code of Iowa, 2021, as amended, and MICROSOFT CORPORATION, a Washington corporation, having an office for the transaction of business at One Microsoft Way, Redmond, Washington ("Developer").

RECITALS

WHEREAS, the City and Developer have entered into a Development Agreement dated as of ___ day of _____ 2022 ("Agreement" or "Development Agreement") regarding certain real property located in the City, which is legally described as follows:

THE PROPERTY DESCRIBED IN THE WARRANTY DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15961, PAGE 875, BEING LOCATED IN THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 10.48 ACRES (456,397 S.F.).

AND

THE PROPERTY DESCRIBED IN THE QUIT CLAIM DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15939, PAGE 284, BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 0.57 ACRES (24,803 S.F.).

AND

THE PROPERTY PLATTED AS PARCEL 2020-125 (POS-004818-2020) OF THE NORTHEAST 1/4 OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AS SHOWN ON THE PLAT OF SURVEY AND RESOLUTION RECORDED IN BOOK 18065, PAGE 789 AND CONTAINING 0.97 ACRES (42,233 S.F.).

AND

PARCEL 2017-20 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 BEING A PART OF THE FORMER RAILROAD RIGHT-OF-WAY AS DESCRIBED IN THE WARRANTY DEED IN BOOK 6826, PAGE 857 AND BEING A PART OF PARCEL 'A' AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 8630, PAGE 836 AND ALL BEING IN THE NORTH HALF OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

AND

THAT PART OF A TRACT OF LAND AS SHOWN ON THE RETRACEMENT SURVEY RECORDED IN BOOK 9183, PAGE 332 IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, LYING SOUTH OF PARCEL 2017-19 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 IN THE NORTH HALF OF THE SOUTH HALF OF SAID

SECTION 34 AND LYING NORTHWESTERLY OF PARCEL 2017-20 AS SHOWN ON SAID PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 AND LYING NORTHEASTERLY OF THE ROAD RIGHT-OF-WAY FOR SE MAFFITT LAKE ROAD AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 15961, PAGE 871.

AND

PARCEL 'B' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 9533, PAGE 479 BEING ALL OF LOT 10 IN BRUBAKER ESTATE, AN OFFICIAL PLAT, AND A PART OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

PROPERTY CONTAINS 146.86 ACRES (6,397,060 SQUARE FEET).

PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

(the "Development Property");

WHEREAS, the defined terms in the Development Agreement will also apply to this Minimum Assessment Agreement; and

WHEREAS, it is contemplated that Developer undertake the construction of certain building improvements (as described in the Development Agreement) (together, the "Minimum Improvements") on the Development Property, as provided in the Development Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish a minimum actual value for the Minimum Improvements to be constructed on the Development Property by Developer pursuant to the Development Agreement; and

WHEREAS, the City and the County Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed; and

WHEREAS, the City expects to authorize the issuance of general obligation bonds (the "City Bonds") the proceeds of which will be used to fund an Economic Development Grant in accordance with the terms of Article IV of the Development Agreement and the construction of Public Use Improvements; the principal and interest on which City Bonds are expected to be paid from the real property taxes paid with respect to the Development Property and the Minimum Improvements located thereon.

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

1. Upon substantial completion of construction of the above-referenced Minimum Improvements, but no later than January 1, 2025, the minimum actual value, which shall be fixed for assessment purposes for the Minimum Improvements on the Development Property (building and land), shall be not less than \$242,000,000 (herein referred to as the "Minimum Actual Value.") The Minimum Actual Value is the value before commercial rollback.

The Minimum Actual Value shall continue to be effective from the date of this Assessment Agreement and shall terminate and be of no further force or effect upon the earlier of (i) the end of the last fiscal year the City can legally collect incremental taxes from the Alluvion Urban Renewal Area (to be clear, this terminating event shall not occur so long as the City can collect incremental taxes from any portion of the Alluvion Urban Renewal Area); and (ii) the date that the City has received tax increment reimbursement from the Development Property and/or payments from Developer under Section 6.2(d) of the Agreement sufficient to retire all remaining Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements ("Termination Date"). Upon the occurrence of the Termination Date, the City shall certify to the Polk County Assessor and to the Developer that the Termination Date has occurred and this Minimum Assessment Agreement shall no longer control the assessment of the Development Property.

The Minimum Actual Value shall be maintained until the Termination Date regardless of (a) any failure to complete the Minimum Improvements; (b) destruction of all or any portion of the Minimum Improvements; (c) diminution in value of the Development Property or the Minimum Improvements; or (d) any other circumstance, whether known or unknown and whether now existing or hereafter occurring.

Notwithstanding the foregoing:

- a. If no City Bonds are issued before July 31, 2024 (the "Outside Issuance Date"), then the Termination Date shall occur on the Outside Issuance Date, unless the parties agree in writing to extend such date;
- b. If some but not all City Bonds necessary to fund the Public Use Improvements and/or Economic Development Grant are issued and as a result the City does not have the funding necessary to complete the Public Use Improvements and fund the Economic Development Grant as contemplated in the Development Agreement, then the Minimum Actual Value shall be reduced to be an amount sufficient to generate the Tax Increment necessary to pay the Debt Service on the City Bonds that were issued. In such event, the parties shall execute an amendment to this Minimum Assessment Agreement to document the new Minimum Actual Value; and
- c. If some but not all City Bonds necessary to fund the Public Use Improvements and/or Economic Development Grant are issued but the City is not authorized to or does not proceed with some or all of the Public Use Improvements or make the Economic Development Grant as contemplated in the Development Agreement, and such failure to proceed by the City is not due to an Event of Default by the Developer, then the Minimum Assessment shall be reduced to be an amount sufficient to generate the Tax Increment necessary to pay the Debt Service on the City Bonds that were issued and actually used to fund Public Use Improvements and/or make the Economic Development Grant as contemplated in the Development Agreement. In such event, the parties shall execute an amendment to this Minimum Assessment Agreement to document the new Minimum Actual Value.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the Development Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements.

3. Developer agrees that its obligations to make the tax payments required hereby, to pay the other sums provided for herein, and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any abatement or diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason whatsoever.

4. Developer agrees that, prior to the termination of this Assessment Agreement, it will not:

(a) seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained as a part of the Development Property or the Minimum Improvements determined by any tax official to be applicable to the Development Property or the Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

(b) seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local, City, or State law or regulation, of the taxation of real property, including improvements and fixtures thereon, contained on the Development Property or the Minimum Improvements; or

(c) request any Assessor to reduce the Minimum Actual Value; or

(d) appeal to the board of review of Polk County, State, District Court, or to the Director of Revenue of the State to reduce the Minimum Actual Value; or

(e) cause a reduction in the actual value or the Minimum Actual Value through any other proceedings.

5. The parties agree that the Minimum Actual Value set forth in this Assessment Agreement takes into account the expectation that Developer will avail itself of the property tax exemptions provided by the State of Iowa's web search portal exemption (Iowa Code Sections 423.3(92) and 427.1(35)), and that such exemptions shall not reduce the property tax assessments for the Development Property and Minimum Improvements (land and buildings) below the

Minimum Actual Value set forth herein. In order to allow Developer to do so, Developer agrees not to claim the exemption provided by Section 1.10A-3 of the Municipal Code of the City (regarding Industrial Tax Abatement).

6. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Polk County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

7. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

8. This Minimum Assessment Agreement shall not be assignable without the written consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

9. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Polk Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Value established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

10. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

11. The Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Termination Date set forth in Section 1 above.

12. Developer has provided a title opinion or lien or title search/certificate to City listing all lienholders of record for the Development Property as of the date of this Assessment Agreement and all such lienholders have signed a consent to this Assessment Agreement substantially in the form of the Lienholder Consent set forth in this Exhibit D, which consents are attached hereto and made a part hereof.

Remainder of this page is blank. Signatures start on the next page.

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2022, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

**EXHIBIT D (Cont.)
CERTIFICATION OF POLK COUNTY ASSESSOR**

The undersigned, having reviewed the plans and specifications for the Minimum Improvements already constructed or to be constructed and the market value assigned to the land upon which the Minimum Improvements are constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the land and Minimum Improvements located in Polk County upon completion, but no later than January 1, 2025, shall be at least \$242,000,000, until the Termination Date contained in Section 1 of the Assessment Agreement. The Minimum Actual Value is the value before commercial rollback.

Assessor for the County of Polk, Iowa

Date

STATE OF IOWA)
) ss
COUNTY OF POLK)

Subscribed and sworn to before me by _____, Assessor for the County of Polk, Iowa on this ____ day of _____, 2022.

Notary Public for the State of Iowa

EXHIBIT D (cont.)

Consistent with Iowa Code §403.6(19)(b), filed with this assessor certification is a copy of subsection 19 as follows:

19. a. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

EXHIBIT F

Type of Document: **MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF WEST DES MOINES AND MICROSOFT CORPORATION**

Return Document to: **Ryan T. Jacobson
City of West Des Moines
4200 Mills Civic Parkway, Suite 1A
West Des Moines, IA 50265**

Preparer Information: **Nathan J. Overberg
Ahlers & Cooney, P.C.
100 Court Ave., Ste. #600
Des Moines, IA 50309
(515) 243-7611**

Taxpayer Information: **N/A**

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION: See first two pages of Memorandum of Agreement

MEMORANDUM OF AGREEMENT

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation, a Washington corporation ("Developer"), did on or about the _____ day of _____, 2022, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Alluvion Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within the Alluvion Urban Renewal Area.

The Development Property is described as follows:

THE PROPERTY DESCRIBED IN THE WARRANTY DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15961, PAGE 875, BEING LOCATED IN THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 10.48 ACRES (456,397 S.F.).

AND

THE PROPERTY DESCRIBED IN THE QUIT CLAIM DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15939, PAGE 284, BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 0.57 ACRES (24,803 S.F.).

AND

THE PROPERTY PLATTED AS PARCEL 2020-125 (POS-004818-2020) OF THE NORTHEAST 1/4 OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AS SHOWN ON THE PLAT OF SURVEY AND RESOLUTION RECORDED IN BOOK 18065, PAGE 789 AND CONTAINING 0.97 ACRES (42,233 S.F.).

AND

PARCEL 2017-20 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 BEING A PART OF THE FORMER RAILROAD RIGHT-OF-WAY AS DESCRIBED IN THE WARRANTY DEED IN BOOK 6826, PAGE 857 AND BEING A PART OF PARCEL 'A' AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 8630, PAGE 836 AND ALL BEING IN THE NORTH HALF OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

AND

THAT PART OF A TRACT OF LAND AS SHOWN ON THE RETRACEMENT SURVEY RECORDED IN BOOK 9183, PAGE 332 IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, LYING SOUTH OF PARCEL 2017-19 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 IN THE NORTH HALF OF THE SOUTH HALF OF SAID SECTION 34 AND LYING NORTHWESTERLY OF PARCEL 2017-20 AS SHOWN ON SAID PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 AND LYING NORTHEASTERLY OF THE ROAD RIGHT-OF-WAY FOR SE MAFFITT LAKE ROAD AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 15961, PAGE 871.

AND

PARCEL 'B' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 9533, PAGE 479 BEING ALL OF LOT 10 IN BRUBAKER ESTATE, AN OFFICIAL PLAT, AND A PART OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

PROPERTY CONTAINS 146.86 ACRES (6,397,060 SQUARE FEET).

PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

(the "Development Property"); and

WHEREAS, the Agreement contains a Minimum Assessment Agreement at Exhibit "D", wherein the term of the Agreement is identified as effective from the date of the Minimum Assessment Agreement and will terminate upon the earlier of (i) the end of the last fiscal year the City can legally collect incremental taxes from the Alluvion Urban Renewal Area, or (ii) the date that the City has received tax increment reimbursement of all remaining Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements; or (iii) if no City Bonds (as defined in the Agreement) have been issued by July 31, 2024, then on July 31, 2024; and

WHEREAS, the City and Developer desire to record a Memorandum of Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.
2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.
3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, West Des Moines, Iowa.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement on the _____ day of _____, 20__.

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2022, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

EXHIBIT G
PUBLIC USE IMPROVEMENTS

Project in URP	Estimated Completion Date
Extend Water main south on SE Soteria to SE County Line Road and extend water main along SE County Line Road to Veteran's Parkway	November 2022
Throttling Valve	August 2022
SE County Line Road realignment and reconstruction to an urban street - Veterans Pkwy to SE Soteria Ave. Activities include right-of-way acquisition, utilities, street lights, grading, paving 2-3 lanes, underpass and related work to Great Western Trail, multi-use trail, cul-de-sac, fiber conduit and modifications to existing County Line Road near Veterans Pkwy, and site restoration.	May 2023

EXHIBIT H
DEVELOPER ANNUAL CERTIFICATION

(due annually on or before October 15th, beginning October 15, 2025 and ending at Termination Date, as required under terms of Development Agreement)

The Developer certifies the following (as of October 1):

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

(i) All ad valorem taxes on the Development Property then owned by the Developer in the Urban Renewal Area have been paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) The Minimum Improvements (buildings and land) were assessed on January 1, 20__ (most recent January 1st), at an assessment value of \$ _____;

(iii) The number of Full-Time Equivalent Jobs employed at the Minimum Improvements as of October 1, 20__ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__ : _____	April 1, 20__ : _____
September 1, 20__ : _____	March 1, 20__ : _____
August 1, 20__ : _____	February 1, 20__ : _____
July 1, 20__ : _____	January 1, 20__ : _____
June 1, 20__ : _____	December 1, 20__ : _____
May 1, 20__ : _____	November 1, 20__ : _____

The "Monthly Average" means the total of the Full-Time Equivalent Jobs as of the 1st of each of the 12 months divided by 12. The Monthly Average as of the date of this Certification is _____; and

(iv) Developer has a credit rating, as determined by Standard & Poor's Financial Services, LLC (S&P) (or the equivalent rating schedule if an alternative rating agency is utilized in the future), of: _____.

(v) The undersigned representative of Developer has re-examined the terms and provisions of this Development Agreement and that at the date of such certificate, and during the preceding twelve (12) months, certifies that the Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Development Agreement and that no Event of Default is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said representative shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20__.

MICROSOFT CORPORATION

By: _____

By: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

This record was acknowledged before me on _____, 20__, by _____ as _____ of Microsoft Corporation, a Washington corporation, on behalf of whom the record was executed.

Notary Public in and for said State

Attachment: (a) Proof of payment of taxes

EXHIBIT I
CERTIFICATE OF COMPLETION

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation (the "Developer"), did on or about the ____ day of _____, 2022, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

THE PROPERTY DESCRIBED IN THE WARRANTY DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15961, PAGE 875, BEING LOCATED IN THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 10.48 ACRES (456,397 S.F.).

AND

THE PROPERTY DESCRIBED IN THE QUIT CLAIM DEED TO CITY OF WEST DES MOINES RECORDED IN BOOK 15939, PAGE 284, BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AND CONTAINING 0.57 ACRES (24,803 S.F.).

AND

THE PROPERTY PLATTED AS PARCEL 2020-125 (POS-004818-2020) OF THE NORTHEAST 1/4 OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES, POLK COUNTY, IOWA AS SHOWN ON THE PLAT OF SURVEY AND RESOLUTION RECORDED IN BOOK 18065, PAGE 789 AND CONTAINING 0.97 ACRES (42,233 S.F.).

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PARCEL 2017-20 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 BEING A PART OF THE FORMER RAILROAD RIGHT-OF-WAY AS DESCRIBED IN THE WARRANTY DEED IN BOOK 6826, PAGE 857 AND BEING A PART OF PARCEL 'A' AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 8630, PAGE 836 AND ALL BEING IN THE NORTH HALF OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

AND

THAT PART OF A TRACT OF LAND AS SHOWN ON THE RETRACEMENT SURVEY RECORDED IN BOOK 9183, PAGE 332 IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, LYING SOUTH OF PARCEL 2017-19 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 IN THE NORTH HALF OF THE SOUTH HALF OF SAID SECTION 34 AND LYING NORTHWESTERLY OF PARCEL 2017-20 AS SHOWN ON SAID PLAT OF SURVEY RECORDED IN BOOK 16625, PAGE 757 AND LYING NORTHEASTERLY OF THE ROAD RIGHT-OF-WAY FOR SE MAFFITT LAKE ROAD AS SHOWN ON THE ACQUISITION PLAT RECORDED IN BOOK 15961, PAGE 871.

AND

PARCEL 'B' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 9533, PAGE 479 BEING ALL OF LOT 10 IN BRUBAKER ESTATE, AN OFFICIAL PLAT, AND A PART OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

PROPERTY CONTAINS 146.86 ACRES (6,397,060 SQUARE FEET).

PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated Developer to cause the construction of certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

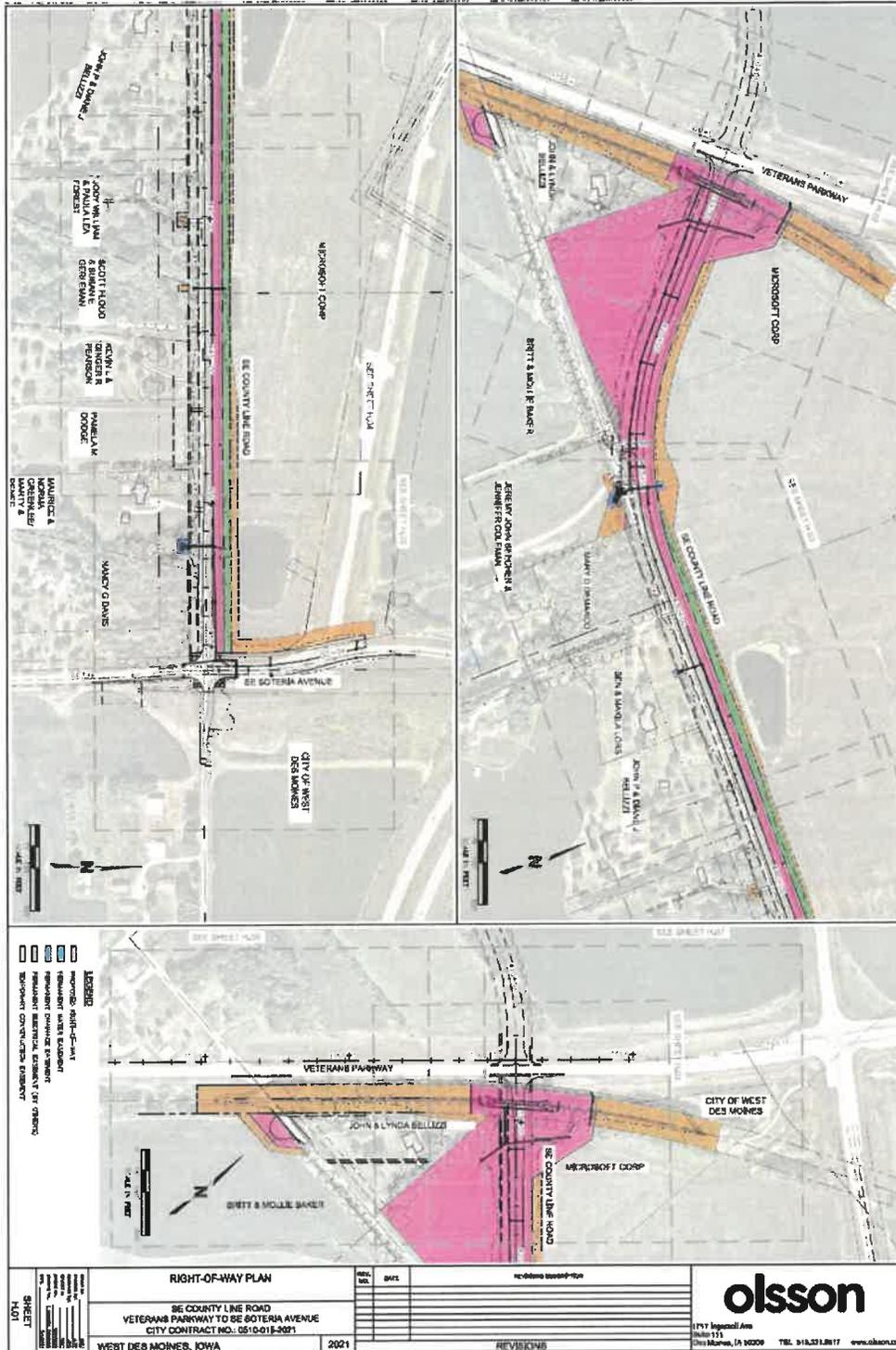
WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction (or contracting for construction) of said Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section 3.5 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the 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 is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfaction of the covenants and conditions of said Agreement with respect to the Developer's obligation to construct the 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.

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EXHIBIT J DEPICTION OF PLANNED RIGHT OF WAY DEDICATIONS AND EASEMENTS



01885210-1\11333-367

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING
EXECUTION OF A DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF WEST DES MOINES AND
MICROSOFT CORPORATION (GINGER EAST PROJECT)

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, is on file or will be filed 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 of West Des Moines ("City") and Microsoft Corporation ("Developer") propose to enter into a Development Agreement ("Agreement"), pursuant to which Agreement the Developer would construct a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services, and when completed the data center building will include at least 250,000 square feet ("Project"); and

WHEREAS, the Developer estimates that the investment for the Project will total \$315,000,000 and the Project is expected to be completed by July 31, 2024; and

WHEREAS, one of the obligations of Developer under the Agreement relates to employment retention and/or creation; and

WHEREAS, the Agreement obligates the City to make an Economic Development Grant in the amount of \$1,705,000, and construct Public Use Improvements related to the Project, including but not limited to roads, utility projects and other public facilities; and

WHEREAS, pursuant to the terms of the Agreement, the Developer would be obligated to construct the Project, employ employees, and agree to a Minimum Assessment Agreement on the land and new buildings, which Minimum Assessment Agreement provides that the Project will be assessed at not less than \$242,000,000, beginning no later than January 1, 2025; and

WHEREAS, the City anticipates that the Tax Increment (specific property taxes under the provisions of Iowa Code Chapter 403) generated by the construction of the Project will be used to pay the debt service on general obligation City Bonds proposed to be issued to fund the Economic Development Grant and the Public Use Improvements, which City Bonds have an estimated, aggregate face value of \$11,000,000, not including issuance or interest costs (the ultimate costs of indebtedness will depend on the cost of the Public Use Improvements, timing of sales, sales terms, tax rates, and other factors); and

WHEREAS, Chapters 15A and 403, Code of Iowa, authorize cities to make grants, issue bonds, and construct public improvements for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403, 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:

That the performance by the City of its obligations under the Agreement, including but not limited to making of grants to the Developer and constructing the Public Use Improvements in connection with the development of the Development Property under the terms set forth in the Agreement, be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and

objectives of the City within the meaning of Chapters 15A and 403, Code of Iowa, taking into account the factors set forth therein.

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 18th day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

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

ITEM: Agreement for Private Development-Jordan Creek Mixed Use Project-
Jordan Creek Associates, LLC

DATE: January 18, 2022

RESOLUTION: Approval of Development Agreement

FINANCIAL IMPACT: Based on the approved Ashworth Corridor Urban Renewal Plan Amendments No. 5, and the attached Development Agreement with Jordan Creek Associates, LLC, the City anticipates providing incentives in the form of public infrastructure and an economic development grant, all totaling no more than \$3,160,813. These costs will be funded by incremental property tax revenues generated by the project. Jordan Creek Associates, LLC intends to undertake approximately \$29.2 million in improvements to their project site located on an approximately 7.18-acre site within the Dallas County portion of West Des Moines on the southwest corner of Jordan Creek Parkway and Ashworth Road. The Development Agreement includes a Minimum Assessment Agreement with an assessed value of \$19.6 million on the project. In total there will be one phase to the development.

BACKGROUND: On November 1, 2021, City Council approved Ashworth Corridor Urban Renewal Area Amendment No. 5 to allow tax increment funds to be dispersed for eligible projects and an economic development grant. The Development Agreement outlines those actions required of each party. As part of the development agreement the City is agreeing to sell a remanent parcel of land adjacent to the project site.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution approving the Development Agreement and authorizing the Mayor to sign the Agreement on behalf of the City.

Lead Staff Member: Clyde E. Evans, AICP, Planner

STAFF REVIEWS

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

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Date(s) Published	January 7, 2022
Letter sent to surrounding property owners	N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	F&A
Date Reviewed	August 19, 2020
Recommendation	<input checked="" type="checkbox"/> Yes No <input type="checkbox"/> Split <input type="checkbox"/>

ATTACHMENTS:

- Exhibit I - Development Agreement
- Exhibit II - Resolution

AGREEMENT FOR PRIVATE DEVELOPMENT

BY AND BETWEEN

CITY OF WEST DES MOINES

AND

JORDAN CREEK ASSOCIATES, LLC

THIS AGREEMENT FOR PRIVATE DEVELOPMENT (this "Agreement") is made as of this ____ day of _____, 2022, by and between the CITY OF WEST DES MOINES, IOWA, a municipality ("City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2021, as amended (the "Urban Renewal Act") and JORDAN CREEK ASSOCIATES, LLC, an Indiana limited liability company with its principal place of business located at 805 City Center Drive, Suite 160, Carmel, Indiana 46032 ("Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, City has undertaken a program for economic development within its corporate limits and, in connection therewith adopted the Ashworth Corridor Urban Renewal Plan (the "Urban Renewal Plan") for purposes of carrying out urban renewal activities in an area known as the Ashworth Corridor Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, a copy of the Urban Renewal Plan, as subsequently amended, has been recorded among the land records in the office of the Recorder of Dallas County; and

WHEREAS, Developer has entered into purchase agreements to acquire title to certain real property located within the Urban Renewal Area (the "Development Property," as legally defined in Exhibit A attached hereto), upon which Developer intends to develop the Project (as hereafter defined), which will include the construction of certain Minimum Improvements and related improvements, and the creation of new employment opportunities within the City and Urban Renewal Area; and

WHEREAS, City is willing to provide certain economic development incentives to Developer, as described further herein, in consideration for Developer's development of the Development Property with the Project and performance of other obligations set forth in this Agreement; and

WHEREAS, Developer would not have agreed to pursue the development of the Development Property with the Project without the benefit of, and City's agreement to provide, the economic incentives set forth in this Agreement; and

WHEREAS, City believes that the development of the Development Property with the Project pursuant to this Agreement and the parties' fulfillment generally of this Agreement are in the vital and best interests of City and in accord with the public purposes and provisions of the applicable State and local laws and requirements.

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-A. CONDITIONS PRECEDENT

1. Conditions Precedent to this Agreement. The following are conditions precedent to any rights or obligations of any party to this Agreement:

a. Developer acquiring fee simple title to the Development Property on or before May 1, 2022; and

b. Execution of the Minimum Assessment Agreement, as further described in Section 4.2, by all applicable parties, lienholders, and the County Assessor, and the recording of the Minimum Assessment Agreement with the Dallas County Recorder within fifteen (15) days after Developer acquires fee simple title to the Development Property.

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 hereto, as the same may be modified, amended, or supplemented in accordance with the terms hereof.

Ashworth Corridor Urban Renewal Tax Increment Revenue Fund means the special fund of the City created under the authority of Section 403.19(2) of the Code and the Ordinance, which fund will be created for the sole purpose of paying the principal of and interest on loans, monies advanced to or indebtedness, whether funded, refunded, assumed or otherwise, including bonds or other obligations issued under the authority of Chapters 15A, 403 or 384 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

Bonds or City Bonds mean the general obligation bonds to be issued by the City for the sole purpose of financing the Public Improvements.

Building Fees means the building permit fees, plan review fees, and development application and traffic study fees, Fire Department building permit review and inspection fees, water connection fees, sewer connection fees, and sewer capital charges incurred by Developer and related to the Minimum Improvements and/or Development Property.

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, 2021, as amended.

Construction Plans means the plans, specifications, drawings, and related documents for the Project on the Development Property; the Construction Plans shall be as detailed as plans, specifications, drawings, and related documents which are submitted to the building inspector of City as required by applicable City codes for permit approval.

County means Dallas County, Iowa.

Debt Service means the scheduled principal and interest payments (including capitalized interest) related to the Bonds. Exhibit H contains a proposed schedule for the payment of the City Bonds, but such schedule will vary based on actual sale costs, refinancing, if applicable, and other factors. Exhibit H shall be updated with actual debt service for City Bonds and if any refinancing for City Bonds occurs. When updated, such updated Exhibit H shall be substituted for and become Exhibit H to this Agreement.

Detention Basin means a regional underground detention basin for the Development Property and surrounding property to be constructed on the Development Property and maintained by the Developer, as more particularly described in Exhibit B-1 and depicted in Exhibit B-2.

Developer means Jordan Creek Associates, LLC, an Indiana limited liability company, and its successors and assigns.

Development Property means that portion of the Urban Renewal Area described on Exhibit A attached hereto and incorporated herein.

Economic Development Grants means the payments to be made by the City to Developer under Article IX of this Agreement.

Electric Improvements means certain improvements initiated by Developer and constructed by MidAmerican Energy Company, including the undergrounding of power line along the south side of Ashworth Road from east side of 76th Street to Jordan Creek Parkway and the installation of public street lights along the west side of 76th Street from Ashworth Road to current terminus of 76th Street, east-west public street from Jordan Creek Parkway to 76th Street; and if necessary along Jordan Creek Parkway from Ashworth Road to the southern boundary of the Development Property, and Ashworth Road from Jordan Creek Parkway to east side of 76th Street.

Event of Default means any of the events described in Section 10.1 of this Agreement.

Full Time Equivalent Employee means either (i) a “full time” employee who works at least 40 hours per week or 2,000 hours per year or (ii) any combination of “part time” employees, who, in the aggregate, work at least 2,000 hours per year.

Infrastructure Improvements means the improvements to be completed by the Developer in the Urban Renewal Area and planned to be dedicated to the City for ownership as public infrastructure, including a public sidewalk paving along the east side of 76th Street from Ashworth Road to current terminus of 76th Street, along the south side of Ashworth Road from east side of 76th Street to Jordan Creek Parkway, along the west side of Jordan Creek Parkway from Ashworth Road to southern boundary of the Development Property, as more particularly described in Exhibit B-1 and depicted in Exhibit B-2.

Jordan Creek Associates, LLC TIF Account means a separate account within the Ashworth Corridor Urban Renewal Tax Increment Revenue Fund of the City in which Tax Increments received by the City with respect to the Minimum Improvements and the Development Property shall be deposited.

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.

Minimum Improvements means a mixed-use project consisting of approximately 199 multi-family residential units, an approximately 288-stall parking garage, and approximately 20,000 square feet of commercial space (including an approximately 14,000 square foot two-story restaurant), as more particularly described in Exhibit B-1 and Exhibit B-2.

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 under a policy or policies of insurance required to be provided and maintained by Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Ordinance means the Ordinances of the City under which the taxes levied on the taxable property in the Area shall be divided and a portion paid into the Ashworth Corridor Urban Renewal Area Tax Increment Revenue Fund for the Project under Section 403.19 of the Code.

Private Drive means an east-west connector private drive across the Development Property between Jordan Creek Parkway and 76th Street (“Private Drive”) and a sidewalk along the Private Drive, as more particularly described in Exhibit B-1 and depicted in Exhibit B-2.

Project means the construction of the Minimum Improvements, Detention Basin, Electric Improvements, Private Drive, and Infrastructure Improvements by the Developer, and the operation of the Minimum Improvements thereafter.

Public Improvements means the infrastructure improvements to be completed by the City in the Urban Renewal Area, including: 76th Street from Ashworth Road southerly to its current terminus (including paving, curbs, water main, storm sewer, and sanitary sewer as appropriate), all as more particularly described in Exhibit B-1 and depicted in Exhibit B-3.

Qualified Costs and Expenses means the following costs and expenses incurred by Developer:

- (i) the Building Fees up to a combined maximum of \$565,311; and
- (ii) the Electric Improvements completed in accordance with the terms of this Agreement up to a maximum of \$432,500; and
- (iii) the costs of constructing the Detention Basin completed in accordance with the terms of this Agreement up to a maximum of \$600,000; and/or
- (iv) the costs of constructing the Private Drive and Infrastructure Improvements completed in accordance with the terms of this Agreement up to a maximum of \$781,501.

With respect to items (iii) and (iv), costs of construction are limited to product and labor costs.

State means the State of Iowa.

Tax Increments means the property tax revenues derived from that portion of the assessed value of the Minimum Improvements and the Development Property above the January 1, 2021 assessed value of \$1,800,140, divided and made available to the City for deposit in Jordan Creek Associates, LLC TIF Account of the Ashworth Corridor Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Termination Date means the date of termination of this Agreement, as established in Section 11.11 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, materials shortages, delays in transportation or delivery of material or equipment, litigation commenced by third parties, government-mandated shutdowns for pandemics, epidemics, or otherwise, or any other acts of any federal, State, or local governmental unit (other than the City).

ARTICLE II. REPRESENTATIONS AND WARRANTIES

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

a. 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 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 City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of City only, and not of any governing body member, officer, agent, servant, or employee of City in the individual capacity thereof.

Section 2.2. Representations, Warranties, and Covenants of Developer. Developer makes the following representations and warranties and covenants to City as follows:

a. Developer is an Indiana limited liability company duly organized and validly existing as a limited liability company under the laws of the State of Indiana and duly registered to do business in the State of Iowa, and 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 this Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution and delivery by 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 will cause the Project to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

f. Developer will use its best efforts to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

g. 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 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.

h. Developer would not undertake its obligations under this Agreement without the City's prior agreement to construct the Public Improvements, which may not be unreasonably withheld, and to provide the Economic Development Grants pursuant to this Agreement.

ARTICLE III. CONSTRUCTION BY DEVELOPER

Section 3.1. Construction of Minimum Improvements.

a. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to City. Developer agrees that the scope and scale of the Project as detailed and outlined in the Construction Plans shall be substantially similar to the scope and scale of the Minimum Improvements, as more particularly described in Exhibit B-1, and shall require a total investment of not less than \$29,200,000. Developer agrees to pay all Building Fees required for the Project.

b. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be completed: (i) on or before March 31, 2024; 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.

c. 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 shall permit designated representatives of 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 in a manner and with such frequency as is consistent with routine City practices.

Section 3.2. Construction Plans. Developer shall cause Construction Plans to be provided for the Minimum Improvements, which shall be subject to approval by City's building official and/or economic development staff as provided in this Section 3.2, which approval shall not be unreasonably withheld. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable federal, State, and local laws and regulations. City's building official shall approve the Construction Plans in writing and issue all required permits 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; provided, however, that any such approval of the Construction Plans pursuant to this Section 3.2 shall constitute approval for the purposes of this Agreement only and 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 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, nor shall approval of the Construction Plans by the City be deemed to constitute a waiver of any Event of Default.

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. City and Developer shall use reasonable efforts to cooperate with each other in connection with all permits and other approvals required for the Minimum Improvements.

Section 3.3. Construction and Dedication of Infrastructure Improvements: Bonding.

a. Subject to Unavoidable Delays, the Developer shall cause construction of the Infrastructure Improvements to be undertaken and completed (i) on or before March 31, 2024; 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.

b. Upon completion of the Infrastructure Improvements, Developer shall notify City of such completion and the City shall inspect the Infrastructure Improvements. If (i) the Infrastructure Improvements have been completed in conformance with all applicable federal, State, and local laws and regulations, including all City ordinances and land use requirements, and (ii) the City is in receipt of copies of the maintenance bonds required by Section 3.3(c) for such improvements, then the City shall accept dedication of the conforming Infrastructure Improvements from the Developer.

c. Developer shall obtain, or require each of its general contractors to obtain, one or more bonds that guarantee the faithful performance of the construction of, in the aggregate, the anticipated full value of the completed Infrastructure Improvements and that further guarantee the prompt payment of all materials and labor. The performance bond(s) for the Infrastructure Improvements shall remain in effect until construction of such improvements are completed, at which time a four-year maintenance bond, or similar instrument, guaranteeing the full replacement cost of the applicable improvement(s), shall be substituted for each performance bond. The bonds shall clearly specify the Developer and City as joint obligees.

d. Developer recognizes and agrees, with respect to any portion of the Infrastructure Improvements which Developer dedicates to the City and the City accepts, the Infrastructure Improvements thereafter shall be owned by the City and that Developer shall not retain any special legal entitlements or other rights not held by members of the general public with respect to ownership, sufficiency for any particular purpose, or use of the Infrastructure Improvements.

e. Developer shall certify to the City the amount of those expenses which are Qualified Costs and Expenses for those Infrastructure Improvements dedicated to and accepted by the City, and that such amounts are true and correct, as further described in Section 9.3.

Section 3.4. Certificate of Completion. Upon written request of Developer after issuance of an occupancy permit for the Minimum Improvements, City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit C attached hereto and incorporated herein. 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 proper office for the recordation of deeds and other instruments pertaining to the Development Property at Developer's sole expense. If City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.4, City shall, within twenty (20) days after written request by Developer provide a written statement indicating in adequate detail 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 City, for Developer to take or perform in order to obtain such Certificate of Completion.

Issuance by City of the Certificate of Completion pursuant to this Section 3.4 is solely for the purposes of this Agreement and shall not constitute approval for any other City purpose, nor shall it subject City to any liability for the Development Property or the Project as constructed.

Section 3.5. Developer Completion Guarantee. By signing this Agreement, but subject to the conditions precedent in Article 1-A hereof, Developer hereby guarantees to City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (i) construction of the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure Improvements shall commence and be completed within the time limits set forth herein; (ii) the Minimum Improvements shall be constructed in accordance with the Construction Plans; (iii) the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens, and equitable liens; and (iv) all costs of constructing the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure Improvements shall be paid when due.

Section 3.6. Electric Improvements. Developer shall cause construction of the Electric Improvements to be undertaken and completed (i) on or before March 31, 2024; 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. Developer shall cause the Electric Improvements to be constructed in conformity with all applicable federal, State, and local laws, ordinances, rules, and regulations, and City permit requirements. Developer shall certify to the City the amount of those expenses which are Qualified Costs and Expenses for the Electric Improvements, and that such amounts are true and correct, as further described in Section 9.3.

Section 3.7. Detention Basin.

a. Developer shall cause construction of the Detention Basin to be undertaken and completed (i) on or before August 1, 2023; 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. Developer shall cause the Detention Basin to be constructed in conformity with all applicable federal, State, and local laws, ordinances, rules, and regulations, and City permit requirements. Developer shall certify to the City the amount of those expenses which are Qualified Costs and Expenses for the Detention Basin, and that such amounts are true and correct, as further described in Section 9.3.

b. The Detention Basin must be designed and constructed so as to serve not only the Development Property but also stormwater from any properties contiguous to the Development Property which would not require a lift station to reach the Detention Basin. Developer shall maintain the Detention Basin 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 so that the Detention Basin continues to effectively serve as a regional detention basis for the

Development Property and contiguous properties through the Termination Date. Developer shall annually certify to the City that it remains in compliance with this Section 3.7(b) as provided in Developer's annual certification attached as Exhibit D.

Section 3.8. Private Drive. Subject to Unavoidable Delays, the Developer shall cause construction of the Private Drive to be undertaken and completed (i) on or before March 31, 2024; 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. Developer shall cause the Private Drive to be constructed in conformity with all applicable federal, State, and local laws, ordinances, rules, and regulations, and City permit requirements. Developer shall certify to the City the amount of those expenses which are Qualified Costs and Expenses for the Private Drive, and that such amounts are true and correct, as further described in Section 9.3.

ARTICLE IV. PROPERTY TAXES, MINIMUM ASSESSMENT AGREEMENT, AND SHORTFALL PAYMENTS

Section 4.1. Real Property Taxes. Developer, or its successors, 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 acquired and owned by them and pursuant to the provisions of this Agreement. Until Developer's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Developer shall be solely responsible for all assessments and taxes.

Developer, and its successors, agree that prior to the Termination Date:

a. Without limiting Developer's rights in Section 4.2, they 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. They 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 between the date of execution of this Agreement and the Termination Date.

Section 4.2. Minimum Assessment Agreement and Short Fall Payments.

a. As further consideration for this Agreement, Developer shall execute and cause any lienholders to execute, contemporaneous with the closing of its acquisition of the Development Property, 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 \$19,600,000 upon completion of the Minimum Improvements, but in no event no later than January 1, 2025, 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".

b. 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, 2034 (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) (2021) 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.

Section 4.3. Shortfall Payments.

a. In the event that for any reason whatsoever, including but not limited to, a change in the tax laws of the State or to the Urban Renewal Act (for example, a change in commercial rollback to determine taxable value or a change in the manner in which incremental taxes are calculated or the duration of such collection under Code Section 403.19), the Tax Increment forecast to be received by the City from the County in each upcoming fiscal year generated from the Development Property and the Minimum Improvements, pursuant to Code Section 403.19, is not sufficient to fully pay the upcoming fiscal year's annual Debt Service for the Bonds, Developer agrees to promptly make a payment to the City equal to the difference between the amount of the available Tax Increment and the upcoming fiscal year's annual Debt Service for the Bonds (the "Shortfall Payment"). The intent of this provision is to ensure if, for any reason, the Tax Increment is not sufficient to make the annual Debt Service payments on the Bonds, the Developer shall promptly make a Shortfall Payment to the City so that it can make all Debt Service payments when due. Further:

b. The City shall give reasonable notice of Developer's obligation to pay a Shortfall Payment, in which case Developer shall pay the Shortfall Payment to the City no later than 45 days after the City's written request. If the Shortfall Payment is not made when due, interest at a rate of Prime Rate plus 1% per annum shall accrue from the due date of the Shortfall Payment. The City shall notify the Developer by the March 31 before the fiscal year in which the City forecasts that a Shortfall Payment may become due. The City shall send a written request for payment to the Developer not less than 90 days before the date the City's semi-annual Debt Service payment is due. Such notice by the City shall be deemed reasonable notice. For example, assume the City's

Debt Service payments are due December 1, 2026 and June 1, 2027 (semi-annually). If the City forecasts that the Tax Increment will be insufficient to fully fund the Debt Service schedule, the City shall notify the Developer no later than March 31, 2026 of the amount of the Shortfall Payment. In this case, for the Debt Service Payment due December 1, 2026, the City shall send a written request for the Shortfall Payment by September 1, 2026 and Developer shall make the Shortfall Payment no later than October 15, 2026. Likewise, for the Debt Service Payment due June 1, 2027, the City shall send a written request for a Shortfall Payment by March 1, 2027 and Developer shall make the payment no later than April 15, 2027.

ARTICLE V. INSURANCE

Section 5.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements, Electric Improvements, Detention Basin, Private Drive, and Infrastructure Improvements (and, from time to time at the request of City, furnish City with proof of coverage of 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 one hundred percent (100%) of the insurable value of the Minimum Improvements, Electric Improvements, Detention Basin, Private Drive, and Infrastructure Improvements at the date of completion, 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. City shall be named as an additional insured for City's liability or loss arising out of or in any way associated with the Minimum Improvements, Electric Improvements, Detention Basin, Private Drive, and Infrastructure Improvements and arising out of any act, error, or omission of Developer, its directors, officers, shareholders, members, contractors, and subcontractors or anyone else for whose acts City may be held responsible (with coverage to 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 City.

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

b. Upon completion of construction of the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure Improvements and at all times prior to the Termination Date (except, with respect to the Infrastructure Improvements, only until such time as the Infrastructure Improvements have been dedicated to and accepted by the City), Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of 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, Detention Basin, Private Drive, and Infrastructure Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting 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, Detention Basin, Private Drive, and Infrastructure Improvements, but any such policy may have a deductible amount of not more than \$50,000 or self-insurance up to not more than \$1,000,000. 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 coinsurance provisions or otherwise, without the prior consent thereto in writing by City. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure 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 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 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 V 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 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 V, each policy shall contain a provision that the insurer shall not cancel or modify it without giving written notice to Developer and City at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, Developer shall furnish City evidence satisfactory to City that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, Developer may maintain or cause to be maintained 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 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 City immediately in the case of damage exceeding \$250,000 in amount to, or destruction of, the Minimum Improvements, Detention Basin, Private

Drive, or Infrastructure Improvements, or any portion thereof, resulting from fire or other casualty (except, with respect to the Infrastructure Improvements, only until such time as the Infrastructure Improvements have been dedicated to and accepted by the City). Net Proceeds of any such insurance shall be paid directly to Developer, and Developer will forthwith repair, reconstruct, and restore the Minimum Improvements, Detention Basin, Private Drive, or Infrastructure Improvements (except, with respect to the Infrastructure Improvements, only until such time as the Infrastructure Improvements have been dedicated to and accepted by the City) 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, Detention Basin, Private Drive, or Infrastructure Improvements (except, with respect to the Infrastructure Improvements, only until such time as the Infrastructure Improvements have been dedicated to and accepted by the City) that may be required prior to the date the Debt Service on the Bonds is fully redeemed/paid off, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

ARTICLE VI. FURTHER COVENANTS OF DEVELOPER

Section 6.1. Maintenance of Properties. Through the Termination Date, Developer shall maintain, preserve, and keep its properties within City (whether owned in fee or a leasehold interest), including but not limited to the Development Property and the Minimum Improvements, Detention Basin, and Private Drive, 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 to keep the Development Property and Minimum Improvements, Detention Basin, and Private Drive in compliance with City Code and the site plans..

Section 6.2. Reserved.

Section 6.3. Compliance with Laws. Developer shall comply with all federal, State, and local laws, rules, and regulations relating to the Development Property, Minimum Improvements, and the Project.

Section 6.4. Non-Discrimination. In the construction and operation of the Project, Developer shall not discriminate against any applicant, employee, tenant, or customer because of age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status.

Section 6.5. Available Information. Upon request, Developer shall promptly provide City with copies of information reasonably requested by City that are related to this Agreement so that City can determine compliance with this Agreement.

Section 6.6. Employment. Developer is constructing the Minimum Improvements with the anticipation that the commercial space in the Minimum Improvements will be occupied by retail and

commercial enterprises that will be employing individuals therein at least until the Termination Date of this Agreement. Additionally, from within 30 days after Developer's receipt of a certificate of occupancy for the Minimum Improvements and until the Termination Date, a total Monthly Average of at least 5 Full Time Equivalent Employees will be employed at the Development Property. The Annual Certifications submitted by the Developer pursuant to Section 6.7, starting with the Certification due on October 15, 2023 and continuing until the Termination Date, shall show that a Monthly Average of the number of Full Time Equivalent Employees has been maintained by Developer on the Development Property in accordance with the terms of this Section 6.6. "Monthly Average" means the average number of Full Time Equivalent Employees employed by Developer on the Development Property as of October 1 of each year and as of the first day of each of the preceding eleven (11) months as shown on the Annual Certifications, provided however that the first Annual Certification shall be prorated. Developer shall provide information as reasonably requested by the City to determine compliance with the foregoing employment obligations.

Section 6.7. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer hereunder, a duly authorized officer of Developer shall provide Annual Certifications to the City. Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been timely paid for the prior fiscal year and for the current fiscal year as of the date of certification (if due and payable); (ii) the date of the first full assessment of the Minimum Improvements and the fully assessed value; (iii) certification of the number of Full Time Equivalent Employees employed by Developer on the Development Property as of October 1 and as of the first day of each of the preceding eleven (11) months; (iv) certification of maintenance of Detention Basin; and (v) certification that the signing officer has re-examined the terms and provisions of this Agreement and that to Developer's actual knowledge at the date of such certification, and during the preceding twelve (12) months, Developer is not, and was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that Developer is not aware of any Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) which is occurring or has occurred as of the date of such certification or during such period, or if the signer is aware of any such default, event or 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 certificate from Developer shall be in the form of Exhibit D and shall be provided not later than October 15 of each year, commencing October 15, 2023 through the Termination Date. Developer shall provide any supporting information for the Annual Certifications in Developer's possession and control upon reasonable request of the City.

Section 6.8. Release and Indemnification Covenants.

a. Developer releases City and the governing body members, officers, agents, servants, and employees thereof (hereinafter, for purposes of this Section 6.8, the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend, and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements, Detention Basin, Private Drive, or Development Property.

b. Except for any willful misrepresentation 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 person or 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 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, Detention Basin, or Private Drive; 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, Detention Basin, Private Drive, 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. All covenants, stipulations, promises, agreements, and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of City, and not of any governing body member, officer, agent, servant, or employee of City in the individual capacity thereof.

e. The provisions of this Section 6.8 shall survive the termination of this Agreement.

ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. 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 an Indiana limited liability company and will not wind up or otherwise dispose of all or substantially all of its assets or terminate, transfer, or assign its interest in the Minimum Improvements, Detention Basin, Private Drive, or this Agreement to any other party unless: (i) the Developer and the transferee partnership, corporation, limited liability company, or individual agree in writing which party is assuming the rights and obligations of Developer under this Agreement; and (ii) City consents thereto in writing in advance thereof which consent shall not be unreasonably withheld.

In the event that Developer wishes to assign this Agreement, including its rights and duties hereunder, Developer and the transferee individual or entity shall request that City consent to an amendment of this Agreement to accommodate the transfer and to provide for the assumption of all Developer obligations under this Agreement. Such transfer shall not be effective unless and until City and Developer consent in writing to an amendment of this Agreement authorizing the transfer.

Section 7.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, the Developer, and its successors or assigns, agree that the Development Property (with the exception of the Infrastructure Improvements which will be

dedicated to the City) 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 VIII. CONSTRUCTION OF PUBLIC IMPROVEMENTS BY CITY AND TRANSFER OF PROPERTY REMNANT

Section 8.1. Public Improvements. For and in consideration of the Developer's obligations under this Agreement, the City agrees to construct the Public Improvements subject to the terms and conditions of this Agreement.

a. Conditions Precedent to Construction of Public Improvements. It is recognized and agreed that the ability of the City to perform the obligations described in this Agreement with respect to construction of the Public Improvements, is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings, and subject to each of the following conditions precedent:

i. The City shall have completed all applicable public bidding requirements for the Public Improvements in the City's sole discretion and shall have awarded a contract for the Public Improvements acceptable to the City in its sole discretion;

ii. The Developer working in good faith with the City to provide the City with all necessary easements for the Public Improvements, if any, over and through the Development Property, at no cost to the City;

iii. The completion and satisfaction of certain separate City Council actions and all required legal proceedings relating to the Bonds necessary for the construction of the Public Improvements, if any (in the sole judgment of bond counsel for the City);

iv. The City shall have secured financing for the construction of the Public Improvements, in the form of the Bonds, on such terms and conditions as it shall deem necessary or desirable in its sole discretion;

v. The Developer shall be in material compliance with all of the terms and provisions of this Agreement.

b. Construction of the Public Improvements. Contingent on the Developer's compliance with the terms of this Agreement and contingent upon satisfaction of the Conditions Precedent in Section 8.1(a) of this Agreement, the City intends to fund and then construct the Public Improvements. The City's obligation to construct the Public Improvements as described in this Article shall be subject in all respects to Unavoidable Delays, the provisions of this Section

8.1, and to the satisfaction of all conditions and procedures required (in the judgment of bond counsel for the City) by Chapters 384 and 403 of the Code including the holding of all required public hearings relating to the same.

c. Completion of the Public Improvements. Subject to Unavoidable Delays, the City shall cause construction of the Public Improvements to be undertaken and completed not later than March 31, 2023. 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. The City shall cause the Public Improvements to be constructed in conformity with (i) the terms and conditions of this Agreement, and (ii) all applicable federal, State, and local laws, ordinances, rules, and regulations and permit requirements.

d. No Special Legal Entitlements. Developer recognizes and agrees that the Public Improvements shall be owned and maintained by the City and that nothing in this Agreement grants Developer any special legal entitlements or other rights not held by members of the general public with respect to ownership, maintenance, or use of the Public Improvements. The parties agree that the City and other Indemnified Parties (as defined in Section 6.8) are not responsible for and will have no liability to Developer associated with the specifications, design, plans, quality of construction, or sufficiency of the Public Improvements for any particular purpose.

Section 8.2. Transfer of Remnant. For and in consideration of the Developer's obligations under this Agreement and other valuable consideration, the City agrees to transfer a remnant of property to Developer pursuant to the Purchase Agreement attached hereto as Exhibit I.

ARTICLE IX. ECONOMIC DEVELOPMENT GRANTS

Section 9.1. Economic Development Grants.

a. Amount of Grants. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement, to make consecutive annual payments of Economic Development Grants to Developer comprised of each fiscal year's Tax Increments (or a portion thereof) under the terms and conditions of this Article IX, up to an aggregate total amount not to exceed the lesser of: (i) Two Million Three Hundred Seventy Nine Thousand Three Hundred Twelve Dollars (\$2,379,312) or (ii) the Developer's certified Qualified Costs and Expenses, submitted to and approved by the City pursuant to Section 9.3 ("Aggregate Maximum Amount").

b. Schedule of Grants. Assuming completion of the Minimum Improvements by March 31, 2024, full assessment of the Minimum Improvements on January 1, 2025, and debt certification to the Auditor by the City prior to December 1, 2025, such that the first fiscal year in which Tax Increments are available will be Fiscal Year 2026-2027. Beginning in Fiscal Year 2026-2027, the City shall collect the Tax Increments to be used first by City to pay the Debt Service for the Bonds, and any remaining Tax Increments shall then be used by City to make the annual

Economic Development Grants to Developer on each June 1st. Once the Debt Service is completely paid off (i.e., the Debt Service is \$0), then the City shall make annual Economic Development Grants on each June 1st to the Developer using 100% of the Tax Increments (without regard to any averaging that may otherwise be utilized under Iowa Code Section 403.19 and excluding any interest that may accrue thereon prior to payment to the Developer) during the preceding twelve-month period, but subject to limitation and adjustment as provided in this Article. The Economic Development Grants shall end after the earlier of: (i) the Termination Date; (ii) on June 1 of the last fiscal year in which the City may collect Tax Increments from the Development Property and Minimum Improvements under the provisions of Iowa Code Section 403.19, as may be amended; or (iii) as of the date the Developer has received the Aggregate Maximum Amount of Economic Development Grants.

c. Calculation of Grants. Each annual payment shall be in amounts calculated pursuant to the above apportionment of the Tax Increments collected by the City under the terms of the Ordinance and deposited into the Jordan Creek Associates, LLC TIF Account (without regard to any averaging that may otherwise be utilized under Iowa Code Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve-month period in respect of the Development Property and the Minimum Improvements, but subject to limitation and adjustment as provided in this Article (such payments being referred to collectively as the “Economic Development Grants”).

d. Limitation to Minimum Improvements. The Economic Development Grants are only derived from the increase in assessed value to the Development Property above the January 1, 2021 assessed value caused by the completion of the Project described in this Agreement and not any expansions or improvements not included within the definition of the Project which, to be eligible for Economic Development Grants, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

Section 9.2. Conditions Precedent. Notwithstanding the provisions of Section 9.1 above, the obligation of the City to make an Economic Development Grant in any year shall be subject to and conditioned upon the following:

a. Developer’s compliance with the terms of this Agreement including, but not limited to, completion of the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure Improvements, satisfaction of the employment obligations in Section 6.6 of this Agreement, and payment of property taxes for the Development Property;

b. Timely filing by Developer of the Annual Certification required under Section 6.7 hereof and the Council’s approval thereof;

c. Timely filing by Developer of the Certification of Qualified Costs and Expenses required under Section 9.3 hereof and the Council’s approval thereof;

d. Developer’s continual use of the Development Property and Minimum Improvements as set forth herein; and

e. The Parties' execution and delivery of the Minimum Assessment Agreement, the Dallas County Assessor's execution and delivery of a certification thereto, and the executed consent of every existing lienholder to the Development Property, each in the form as provided on Exhibit G.

In the event that an Event of Default occurs or any certification filed by Developer under Section 6.7 (or other information) discloses the existence of an Event of Default that was not cured or cannot reasonably be cured within the applicable cure period, the City shall have the remedies set forth in Section 10.2.

Each Annual Certification filed by Developer under Section 6.7 hereof shall be considered separately in determining whether the City shall make an Economic Development Grant payment available to Developer under this Section. Under no circumstances shall the failure by Developer to qualify Developer for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Developer fully complies with the provisions hereof and the Developer becomes entitled thereto, up to the maximum aggregate amount set forth in Section 9.1(a).

Section 9.3. Certification of Qualified Costs and Expenses. In order to be eligible for any Grants under Article IX of this Agreement, the Developer shall certify to the City the amount of all Qualified Costs and Expenses submitted for reimbursement as Economic Development Grants and that such amounts are true and correct. See Exhibit E for the form of Certification. Such Certification shall be provided not later than October 15, 2024. Along with its Certification, Developer shall attach documentation showing substantiation of Qualified Costs and Expenses and any applicable lien waivers. Developer shall provide additional supporting information for its Certification upon the reasonable request of the City to the extent such information is in Developer's possession and control.

Within twenty (20) days of receipt of the Developer's Certification and substantiating documentation, City staff shall review the submitted costs and expenses and notify the Developer if any submitted costs and expenses are not approved as Qualified Costs and Expenses. If the City does not approve any submitted costs and expenses as Qualified Costs and Expenses, then the City shall provide a written statement indicating in adequate detail in what respects such costs and expenses failed to qualify as Qualified Costs and Expenses, and what measures or acts may be available, in the opinion of City, for Developer to take or perform in order to have such costs and expenses approved.

Section 9.4. Source of Grant Funds Limited.

a. The Economic Development Grants shall be payable from and secured solely and only by amounts deposited and held in the Jordan Creek Associates, LLC TIF Account of the Ashworth Corridor Urban Renewal Tax Increment Revenue Fund of the City to the extent such funds are not necessary to pay the City's Debt Service on the Bonds. The City hereby covenants and agrees to maintain the Ordinance in force on the Development Property during the term hereof

and to apply the appropriate portion of Tax Increments collected in respect of the Development Property and Minimum Improvements and allocated to the Jordan Creek Associates, LLC TIF Account to pay the Economic Development Grants, as and to the extent set forth in this Article. The Economic Development Grants shall not be payable in any manner by other tax increment revenues or by general taxation or from any other City funds. Any commercial and industrial property tax replacement monies that may be received under chapter 441.21A shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible, and any monies received back under chapter 426C relating to the Business Property Tax Credit shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible.

b. Each Economic Development Grant is subject to annual appropriation by the City Council. The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Grants shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no Event of Default by the City shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

c. Notwithstanding the provisions of Section 9.1 hereof, the City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof the City fails to appropriate funds for payment, the City's ability to collect Tax Increment from the Development Property terminates under Iowa Code chapter 403, as may be amended, or the City receives an opinion from its legal counsel to the effect that the use of Tax Increments resulting from the Development Property and Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Section 9.1, is not, based on a change in applicable law or its interpretation since the date of this Agreement, authorized or otherwise an appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa Court having jurisdiction over the subject matter hereof. Upon receipt of any such legal opinion, non-appropriation, or termination of the ability to collect Tax Increment, the City shall promptly forward notice of the same to Developer. If the non-appropriation or circumstances or legal constraints giving rise to the decision continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer under the terms of Section 9.1, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

Section 9.5. Use of Other Tax Increments. The City shall be free to use any and all Tax Increments above and beyond the amount to be given to Developer in this Agreement, or any

available Tax Increments resulting from the termination of the Economic Development Grants as provided in this Agreement, for any purpose for which the Tax Increments may lawfully be used pursuant to the provisions of the Urban Renewal Act (including an allocation of all or any portion thereof to the reduction of any eligible City costs), and the City shall have no obligations to Developer with respect to the use thereof.

ARTICLE X. EVENTS OF DEFAULT AND 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, Electric Improvements, Detention Basin, Private Drive, or Infrastructure Improvements to be completed pursuant to the terms and conditions of this Agreement;

b. Transfer of Developer’s interests in the Development Property, Minimum Improvements, Detention Basin, Private Drive, or this Agreement in violation of the provisions of this Agreement;

c. Failure by Developer to timely pay ad valorem taxes on the Development Property and Minimum Improvements;

d. 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 or the Minimum Assessment Agreement;

e. 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; or

f. 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 a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and

such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of 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; or

g. 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.

Section 10.2. City's Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, City may take any one or more of the following actions after giving thirty (30) days' written notice to Developer of the Event of Default (except in the case of an Event of Default under Section 10.1(e), (f) or (g) which do not require a notice and cure period), but only if the Event of Default has not been cured to the satisfaction of City within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days ("Cure Period") and Developer does not provide assurances reasonably satisfactory to City that the Event of Default will be cured as soon as reasonably possible:

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

b. City may forfeit or terminate this Agreement;

c. City may withhold the Certificate of Completion, but only for material Events of Default under Section 10.1(a);

d. 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; and

e. The City will have no obligation to make payment of Economic Development Grants to Developer subsequent to the Event of Default and shall be entitled to recover from Developer, and Developer shall repay to the City, an amount equal to the full amount of the Economic Development Grants previously made to Developer under Article IX hereof, with interest thereon at the highest rate permitted by State law. The City may take any action, including any legal action it deems necessary, to recover such amounts from Developer.

Section 10.3. No City 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. No delay or failure by Developer or the City to enforce any of the covenants, conditions, reservations and rights contained in this Article X, or to invoke any available remedy with respect to an Event of Default by Developer or the City pursuant to this Article X shall under any circumstances be deemed or held to be a waiver by Developer or the City of the right to do so thereafter, or an estoppel of Developer or of the City to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder.

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses. Developer shall reimburse to the City an amount equal to the actual costs incurred by the City in connection with the negotiation, drafting, and approval 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. Developer shall pay such amount within thirty (30) days of receiving an invoice from the City for the same.

Section 10.6. Default by City: Remedies of Developer. It shall be an Event of Default by City if the City fails to perform or observe any term or condition of this Agreement to be performed or observed by City after notice from Developer and such failure is not cured within thirty (30) days after such notice to the City. Whenever an Event of Default occurs on the part of the City, Developer may take whatever actions at law or in equity are necessary or appropriate to: (a) collect any payments due under this Agreement; (b) protect the rights granted to Developer under this Agreement; (c) enforce the performance or observance by the City of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (d) cure, for the account of the City, any failure of the City to perform or observe a material term or condition of this Agreement to be performed or observed by City.

ARTICLE XI. 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 and deemed delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, sent by national overnight delivery service, or delivered personally, and

a. In the case of Developer, is addressed or delivered personally to Jordan Creek Associates, LLC, 805 City Center Drive, Suite 160, Carmel, Indiana 46032, Attn: Grant E. Chapman, Director.

b. In the case of the City, is addressed to or delivered personally to City at City Hall, 4200 Mills Civic Parkway, P.O. Box 65320, West Des Moines, Iowa 50265-0320; Attn: 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. Unless otherwise specified, references in this Agreement to (i) "Section ___" shall be deemed to refer to the Section of this Agreement bearing the number so specified, (ii) "Exhibit ___" shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this "Agreement" shall mean this Agreement and any exhibits, attachments and addendums hereto.

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. Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby and the parties shall thereupon amend this Agreement to legally and most closely embody the spirit and intent of the invalid provisions.

Section 11.9. 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.

Section 11.10. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit F, 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 11.11. Termination Date. This Agreement shall terminate and be of no further force or effect on and after the December 31 immediately following the later of: (1) the date the Bonds have been fully paid off; or (2) the last fiscal year the Developer is eligible for an Economic Development Grant under this Agreement (which may be the last fiscal year in which the City may collect Tax Increments from the Development Property and Minimum Improvements under the provisions of Iowa Code Section 403.19), unless the Agreement is terminated earlier by the other terms of this Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representatives, all on or as of the day first above written.

(Signatures Appear on the Following Pages)

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2022, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

Land that will be platted as Lot 1 The Village on Jordan Creek Plat 2:

A parcel of land in the Northeast Quarter of the Northeast Quarter of Section 11, Township 78 North, Range 26 West of the 5th P.M., City of West Des Moines, Dallas County, Iowa, that is more particularly described as follows: Commencing as a point of reference at the northeast corner of said Section 11; thence S00°43'20"W along the east line of said Northeast Quarter of the Northeast Quarter, a distance of 561.01 feet; thence N89°16'40"W, a distance of 82.50 feet to a point on the west Right of Way line of Jordan Creek Parkway as it is presently established and recorded in Book 2003, Page 13188 at the Dallas County Recorder's office and the Point of Beginning; thence southwesterly along a 25.00 foot radius curve concave northwesterly, a distance of 39.27 feet, said curve having a chord bearing of S45°43'20"W and a chord length of 35.36 feet; thence N89°16'40"W, a distance of 308.78 feet; thence southwesterly along a 277.00 foot radius curve concave southerly, a distance of 59.89 feet, said curve having a chord bearing of S84°31'43"W and a chord length of 59.77 feet; thence S78°20'05"W, a distance of 123.61 feet; thence northwesterly along a 25.00 foot radius curve concave northeasterly, a distance of 36.11 feet, said curve having a chord bearing of N60°17'14"W and a chord length of 33.05 feet; thence northwesterly along a 435.00 foot radius curve concave southwesterly, a distance of 141.81 feet, said curve having a chord bearing of N28°14'56"W and a chord length of 141.19 feet; thence N37°35'18"W, a distance of 45.93 feet; thence northwesterly along a 365.00 foot radius curve concave northeasterly, a distance of 200.90 feet, said curve having a chord bearing of N21°49'13"W and a chord length of 198.38 feet; thence N06°03'07"W, a distance of 79.21 feet; thence northeasterly along a 25.00 foot radius curve concave southeasterly, a distance of 39.27 feet to the south Right of Way line of Ashworth Road as it is presently established, said curve having a chord bearing of N38°56'53"E and a chord length of 35.36 feet; thence N83°56'53"E along said south Right of Way line, a distance of 271.33 feet; thence N87°43'27"E along said south Right of Way line, a distance of 303.69 feet; thence N83°56'53"E along said south Right of Way line, a distance of 96.40 feet; thence S47°39'34"E along said south Right of Way line, a distance of 46.53 feet to the west Right of Way line of said Jordan Creek Parkway; thence S00°43'20"W along said west Right of Way line, a distance of 435.62 feet to the Point of Beginning.

Subject to and together with any and all easements and restrictions of record.

Containing 313,062 Square Feet (7.18 Acres)

EXHIBIT B-1
MINIMUM IMPROVEMENTS, INFRASTRUCTURE IMPROVEMENTS,
DETENTION BASIN, PRIVATE DRIVE, AND PUBLIC IMPROVEMENTS

Minimum Improvements means a mixed-use project consisting of approximately 203 multi-family residential units, an approximately 337-stall parking garage, and 22,000 square feet of commercial space (including a 14,000 square foot two-story restaurant). The construction of the Minimum Improvements is expected to be completed by December 1, 2023. Construction costs for the Minimum Improvements are expected to be no less than \$29,200,000.

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 \$19,600,000 pursuant to the Minimum Assessment Agreement entered into by and among the City, Developer, and the Dallas County Assessor.

Infrastructure Improvements means the following improvements to be constructed by the Developer and dedicated to the City: public sidewalk paving along the east side of 76th Street from Ashworth Road to current terminus of 76th Street, along the south side of Ashworth Road from east side of 76th Street to Jordan Creek Parkway, along the west side of Jordan Creek Parkway from Ashworth Road to southern project boundary, as depicted in Exhibit B-2.

Private Drive means an east-west connector private drive across the Development Property between Jordan Creek Parkway and 76th Street and a sidewalk along the Private Drive, as depicted in Exhibit B-2.

Detention Basin means a regional underground detention basin for the Development Property and surrounding property to be constructed on the Development Property and maintained by the Developer, as depicted in Exhibit B-2.

Preliminary site plans for the Minimum Improvements, Detention Basin, Private Drive, and Infrastructure Improvements are attached as Exhibit B-2.

Public Improvements means the following improvements to the public infrastructure to be completed by the City in the Urban Renewal Area: 76th Street from Ashworth Road southerly to its current terminus (including paving/curbs/water main/storm sewer/sanitary sewer as appropriate), following the general path depicted in Exhibit B-3.

EXHIBIT B-2
MINIMUM IMPROVEMENTS, DETENTION BASIN, PRIVATE DRIVE, AND
INFRASTRUCTURE IMPROVEMENTS PRELIMINARY SITE PLAN(S)

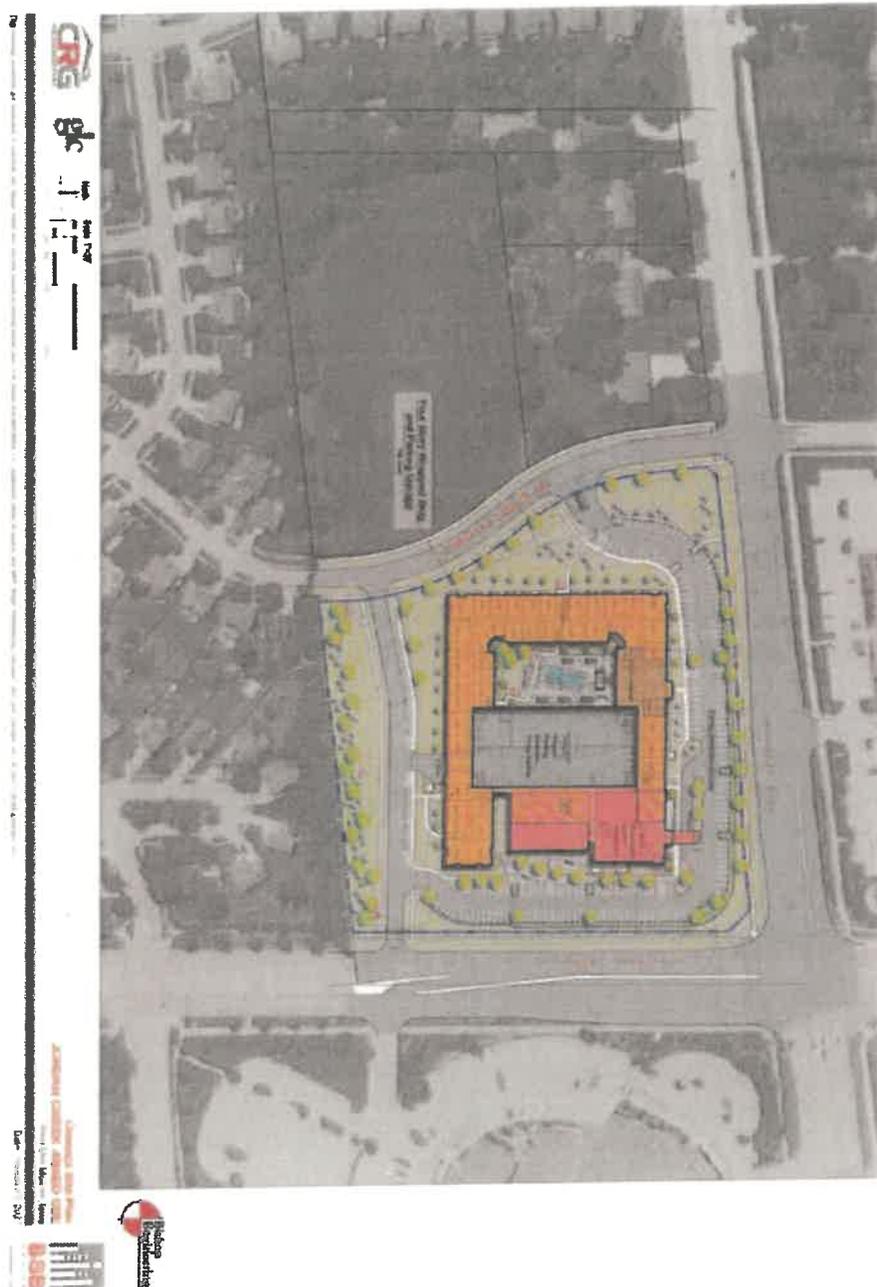


EXHIBIT B-3
PUBLIC IMPROVEMENTS DEPICTION

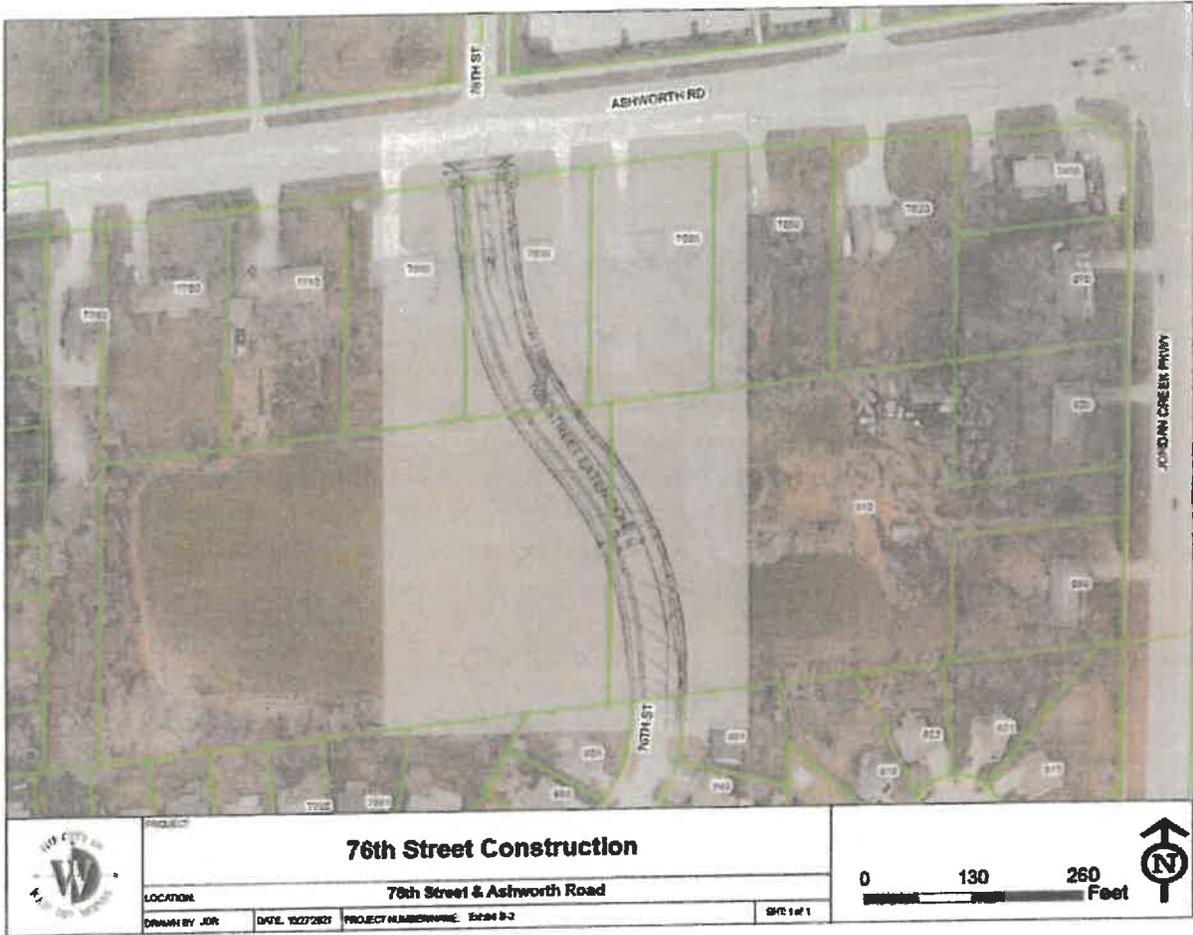


EXHIBIT C
CERTIFICATE OF COMPLETION

WHEREAS, the City of West Des Moines, Iowa ("City") and Jordan Creek Associates, LLC, an Indiana limited liability company ("Developer") did on or about the _____ day of _____, 2022, 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, to develop and maintain certain real property located within City and as more particularly described as follows:

Land that will be platted as Lot 1 The Village on Jordan Creek Plat 2:

A parcel of land in the Northeast Quarter of the Northeast Quarter of Section 11, Township 78 North, Range 26 West of the 5th P.M., City of West Des Moines, Dallas County, Iowa, that is more particularly described as follows: Commencing as a point of reference at the northeast corner of said Section 11; thence S00°43'20"W along the east line of said Northeast Quarter of the Northeast Quarter, a distance of 561.01 feet; thence N89°16'40"W, a distance of 82.50 feet to a point on the west Right of Way line of Jordan Creek Parkway as it is presently established and recorded in Book 2003, Page 13188 at the Dallas County Recorder's office and the Point of Beginning; thence southwesterly along a 25.00 foot radius curve concave northwesterly, a distance of 39.27 feet, said curve having a chord bearing of S45°43'20"W and a chord length of 35.36 feet; thence N89°16'40"W, a distance of 308.78 feet; thence southwesterly along a 277.00 foot radius curve concave southerly, a distance of 59.89 feet, said curve having a chord bearing of S84°31'43"W and a chord length of 59.77 feet; thence S78°20'05"W, a distance of 123.61 feet; thence northwesterly along a 25.00 foot radius curve concave northeasterly, a distance of 36.11 feet, said curve having a chord bearing of N60°17'14"W and a chord length of 33.05 feet; thence northwesterly along a 435.00 foot radius curve concave southwesterly, a distance of 141.81 feet, said curve having a chord bearing of N28°14'56"W and a chord length of 141.19 feet; thence N37°35'18"W, a distance of 45.93 feet; thence northwesterly along a 365.00 foot radius curve concave northeasterly, a distance of 200.90 feet, said curve having a chord bearing of N21°49'13"W and a chord length of 198.38 feet; thence N06°03'07"W, a distance of 79.21 feet; thence northeasterly along a 25.00 foot radius curve concave southeasterly, a distance of 39.27 feet to the south Right of Way line of Ashworth Road as it is presently established, said curve having a chord bearing of N38°56'53"E and a chord length of 35.36 feet; thence N83°56'53"E along said south Right of Way line, a distance of 271.33 feet; thence N87°43'27"E along said south Right of Way line, a distance of 303.69 feet; thence N83°56'53"E along said south Right of Way line, a distance of 96.40 feet; thence S47°39'34"E along said south Right of Way line, a distance of 46.53 feet to the west Right of Way line of said Jordan Creek Parkway; thence S00°43'20"W along said west Right of Way line, a distance of 435.62 feet to the Point of Beginning.

Subject to and together with any and all easements and restrictions of record.
Containing 313,062 Square Feet (7.18 Acres)

(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 the 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 the Minimum Improvements in a manner deemed by 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 and its permitted successors and assigns to construct the Minimum Improvements on the Development Property have been completed and performed by Developer and such obligations are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Dallas 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.

(Signatures Appear on the Following Page)

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 20____, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 20____, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

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

Developer hereby certifies the following:

During the time period covered by this Certification, Developer is and was in compliance with Section 6.7 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, 20___, at a full assessment value of \$_____, and the assessed value of the Development Property and Minimum Improvements as of the date of this certification is \$_____.

(iii) The number of Full Time Equivalent Employees employed by Developer at the Development Property as of October 1, 20___ and as of the first day of each of the preceding eleven (11) months were as follows:

October 1, 20__ : _____	April 1, 20__ : _____
September 1, 20__ : _____	March 1, 20__ : _____
August 1, 20__ : _____	February 1, 20__ : _____
July 1, 20__ : _____	January 1, 20__ : _____
June 1, 20__ : _____	December 1, 20__ : _____
May 1, 20__ : _____	November 1, 20__ : _____

(iv) The Detention Basin remains in good repair and working order.

(v) The undersigned officer of Developer has re-examined the terms and provisions of this Agreement and certifies, that at the date of such certification and during the preceding twelve (12) months, 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 signer is aware of any such Event of Default, said officer has 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.

[signatures on next page]

Attachments: (a) Proof of payment of taxes

EXHIBIT E
DEVELOPER CERTIFICATION OF COSTS

Jordan Creek Associates, LLC (the “Developer”) certifies that the expenses shown on the table below were/are the actual expenses incurred by the Developer for (i) the Building Fees, (ii) the Electric Improvements, (iii) construction of Detention Basin; (iv) construction of the Private Drive; and/or (v) construction of the Infrastructure Improvements that are the subject of a Development Agreement entered into the ____ day of _____, 2022 between the City of West Des Moines, Iowa and the Developer (the “Agreement”).

Project Cost Category	Building Fees	Electrical Improvements	Construction Costs for Detention Basin	Construction Costs for Private Drive	Construction Costs for Infrastructure Improvements
Invoice description and cost					
Invoice description and cost					
Invoice description and cost					
Invoice description and cost					
Invoice description and cost					
Invoice description and cost					
Total Cost per category					

If you need additional space please attach another table.
Attach actual receipts and invoices and any applicable lien waivers.

[signatures on next page]

EXHIBIT F

Type of Document: **MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF WEST DES MOINES AND JORDAN CREEK ASSOCIATES, LLC**

Return Document to: **Ryan T. Jacobson
City of West Des Moines
4200 Mills Civic Parkway, Suite 1A
West Des Moines, IA 50265**

Preparer Information: **Nathan J. Overberg
Ahlers & Cooney, P.C.
100 Court Ave., Ste. #600
Des Moines, IA 50309
(515) 243-7611**

Taxpayer Information : **N/A**

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION: See Page F-2 of Memorandum of Agreement

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of West Des Moines, Iowa ("City") and Jordan Creek Associates, LLC, an Indiana limited liability company ("Developer") did on or about the ____ day of _____, 2022, 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, to develop and maintain certain real property located within City and as more particularly described as follows:

Land that will be platted as Lot 1 The Village on Jordan Creek Plat 2:

A parcel of land in the Northeast Quarter of the Northeast Quarter of Section 11, Township 78 North, Range 26 West of the 5th P.M., City of West Des Moines, Dallas County, Iowa, that is more particularly described as follows: Commencing as a point of reference at the northeast corner of said Section 11; thence S00°43'20"W along the east line of said Northeast Quarter of the Northeast Quarter, a distance of 561.01 feet; thence N89°16'40"W, a distance of 82.50 feet to a point on the west Right of Way line of Jordan Creek Parkway as it is presently established and recorded in Book 2003, Page 13188 at the Dallas County Recorder's office and the Point of Beginning; thence southwesterly along a 25.00 foot radius curve concave northwesterly, a distance of 39.27 feet, said curve having a chord bearing of S45°43'20"W and a chord length of 35.36 feet; thence N89°16'40"W, a distance of 308.78 feet; thence southwesterly along a 277.00 foot radius curve concave southerly, a distance of 59.89 feet, said curve having a chord bearing of S84°31'43"W and a chord length of 59.77 feet; thence S78°20'05"W, a distance of 123.61 feet; thence northwesterly along a 25.00 foot radius curve concave northeasterly, a distance of 36.11 feet, said curve having a chord bearing of N60°17'14"W and a chord length of 33.05 feet; thence northwesterly along a 435.00 foot radius curve concave southwesterly, a distance of 141.81 feet, said curve having a chord bearing of N28°14'56"W and a chord length of 141.19 feet; thence N37°35'18"W, a distance of 45.93 feet; thence northwesterly along a 365.00 foot radius curve concave northeasterly, a distance of 200.90 feet, said curve having a chord bearing of N21°49'13"W and a chord length of 198.38 feet; thence N06°03'07"W, a distance of 79.21 feet; thence northeasterly along a 25.00 foot radius curve concave southeasterly, a distance of 39.27 feet to the south Right of Way line of Ashworth Road as it is presently established, said curve having a chord bearing of N38°56'53"E and a chord length of 35.36 feet; thence N83°56'53"E along said south Right of Way line, a distance of 271.33 feet; thence N87°43'27"E along said south Right of Way line, a distance of 303.69 feet; thence N83°56'53"E along said south Right of Way line, a distance of 96.40 feet; thence S47°39'34"E along said south Right of Way line, a distance of 46.53 feet to the west Right of Way line of said Jordan Creek Parkway; thence S00°43'20"W along said west Right of Way line, a distance of 435.62 feet to the Point of Beginning.

Subject to and together with any and all easements and restrictions of record.
Containing 313,062 Square Feet (7.18 Acres)

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2022 and terminates 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 the _____ day of _____, 2022.

[Signatures Start on Next Page]

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2022, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

EXHIBIT G

Type of Document: **MINIMUM ASSESSMENT AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND JORDAN CREEK ASSOCIATES, LLC**

Return Document to: **Ryan T. Jacobson
City of West Des Moines
4200 Mills Civic Parkway, Suite 1A
West Des Moines, IA 50265**

Preparer Information: **Nathan J. Overberg
Ahlers & Cooney, P.C.
100 Court Ave., Ste. #600
Des Moines, IA 50309
(515) 243-7611**

Taxpayer Information : **N/A**

GRANTORS: **N/A**

GRANTEES: **N/A**

LEGAL DESCRIPTION: **See Page G-2 of Minimum Assessment Agreement**

MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT (“Minimum Assessment Agreement” or “Assessment Agreement”), is dated as of the ___ day of _____ 2022, by and between the City of West Des Moines (the “City”), an Iowa municipal corporation, acting under the authorization of Chapter 403 of the Code of Iowa, 2021, as amended, and Jordan Creek Associates, LLC, an Indiana limited liability company having offices for the transaction of business at 805 City Center Drive, Suite 160, Carmel, Indiana 46032 (the “Developer”).

RECITALS

WHEREAS, the City and Developer have entered into an Agreement for Private Development dated as of ___ day of _____ 2022 (“Agreement” or “Development Agreement”) regarding certain real property to be located in the City, which is legally described as follows:

Land that will be platted as Lot 1 The Village on Jordan Creek Plat 2:

A parcel of land in the Northeast Quarter of the Northeast Quarter of Section 11, Township 78 North, Range 26 West of the 5th P.M., City of West Des Moines, Dallas County, Iowa, that is more particularly described as follows: Commencing as a point of reference at the northeast corner of said Section 11; thence S00°43’20”W along the east line of said Northeast Quarter of the Northeast Quarter, a distance of 561.01 feet; thence N89°16’40”W, a distance of 82.50 feet to a point on the west Right of Way line of Jordan Creek Parkway as it is presently established and recorded in Book 2003, Page 13188 at the Dallas County Recorder’s office and the Point of Beginning; thence southwesterly along a 25.00 foot radius curve concave northwesterly, a distance of 39.27 feet, said curve having a chord bearing of S45°43’20”W and a chord length of 35.36 feet; thence N89°16’40”W, a distance of 308.78 feet; thence southwesterly along a 277.00 foot radius curve concave southerly, a distance of 59.89 feet, said curve having a chord bearing of S84°31’43”W and a chord length of 59.77 feet; thence S78°20’05”W, a distance of 123.61 feet; thence northwesterly along a 25.00 foot radius curve concave northeasterly, a distance of 36.11 feet, said curve having a chord bearing of N60°17’14”W and a chord length of 33.05 feet; thence northwesterly along a 435.00 foot radius curve concave southwesterly, a distance of 141.81 feet, said curve having a chord bearing of N28°14’56”W and a chord length of 141.19 feet; thence N37°35’18”W, a distance of 45.93 feet; thence northwesterly along a 365.00 foot radius curve concave northeasterly, a distance of 200.90 feet, said curve having a chord bearing of N21°49’13”W and a chord length of 198.38 feet; thence N06°03’07”W, a distance of 79.21 feet; thence northeasterly along a 25.00 foot radius curve concave southeasterly, a distance of 39.27 feet to the south Right of Way line of Ashworth Road as it is presently established, said curve having a chord bearing of N38°56’53”E and a chord length of 35.36 feet; thence N83°56’53”E along said south Right of Way line, a distance of 271.33 feet; thence N87°43’27”E along said south Right of Way line, a distance of 303.69 feet; thence N83°56’53”E along said south Right of Way line, a distance of 96.40 feet; thence S47°39’34”E along said south Right of Way line, a distance of 46.53 feet to the west Right of Way line of said Jordan Creek Parkway; thence S00°43’20”W along said west Right of Way line, a distance of 435.62 feet to the Point of Beginning.

Subject to and together with any and all easements and restrictions of record.
Containing 313,062 Square Feet (7.18 Acres)

(the "Development Property");

WHEREAS, the defined terms in the Development Agreement will also apply to this Minimum Assessment Agreement; and

WHEREAS, it is contemplated that Developer will undertake the construction of Minimum Improvements (as described in the Development Agreement) on the Development Property, as provided in the Development Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City, and Developer desire to establish a Minimum Actual Value for the Development Property following completion of the Minimum Improvements by Developer pursuant to the Development Agreement; and

WHEREAS, the City and the Dallas County Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed; and

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

1. Upon substantial completion of construction of the Minimum Improvements, but in any event not later than January 1, 2025, the Minimum Actual Value fixed for assessment purposes for the Development Property and Minimum Improvements in the aggregate shall be not less than Nineteen Million Six Hundred Thousand Dollars (\$19,600,000). The Minimum Actual Value is the value before rollback. The Minimum Actual Value shall terminate and be of no further force or effect as of December 31, 2034 ("Assessment Termination Date"). Upon the Assessment Termination Date, this Minimum Assessment Agreement shall no longer control the assessment of the Development Property.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the Development Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements.

3. Developer agrees that its obligations to make the tax payments required hereby, to pay the other sums provided for herein, and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional

obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason.

4. Developer agrees that, prior to the termination of this Assessment Agreement, it will not:

(a) seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of the Development Property determined by any tax official to be applicable to the Development Property, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

(b) seek any tax exemption, deferral, or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local, City, or State law or regulation, of the taxation of the Development Property; or

(c) request the Assessor to reduce the Minimum Actual Value for the Development Property; or

(d) appeal to the board of review of the County, State, District Court, or to the Director of Revenue of the State to reduce the Minimum Actual Value for the Development Property; or

(e) cause a reduction in the Minimum Actual Value for the Development Property through any other proceedings.

5. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Dallas County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

6. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

7. This Minimum Assessment Agreement shall not be assignable without the written consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

8. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Values established herein during the term of this Agreement. This Minimum Assessment Agreement

may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

9. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity, or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

10. The Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate pursuant to the Assessment Termination Date set forth in Section 1 above.

11. Developer has provided a title opinion or lien or title search/certificate to City listing all lienholders of record as of the date of this Assessment Agreement and all such lienholders have signed a consent to this Assessment Agreement substantially in the form of the Lienholder Consent set forth in this Exhibit G, which consents are attached hereto and made a part hereof.

[Signatures Start on Next Page]

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor

ATTEST:

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2022, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

**EXHIBIT G (Cont.)
CERTIFICATION OF ASSESSOR**

The undersigned, having reviewed the plans and specifications for the Minimum Improvements to be constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Minimum Improvements on the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the Development Property, including the Minimum Improvements on the Development Property (building and land value) in the aggregate upon substantial completion of the Minimum Improvements, but no later than January 1, 2025, shall be at least Nineteen Million Six Hundred Thousand Dollars (\$19,600,000) until the Assessment Termination Date contained in Section 1 of the Assessment Agreement.

The Minimum Actual Value is the value before rollback.

Assessor for the County of Dallas, Iowa

Date

STATE OF IOWA)
) SS
COUNTY OF DALLAS)

Subscribed and sworn to before me by _____, Assessor for the County of Dallas, Iowa on this ____ day of _____, 2022.

Notary Public for the State of Iowa

EXHIBIT G (cont.)

Consistent with Iowa Code §403.6(19)(b), filed with this assessor certification is a copy of subsection 19 as follows:

19. a. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

EXHIBIT H ESTIMATED DEBT SERVICE SCHEDULE

Bond issuance costs will change due to a variety of factors, including but not limited to, actual project costs, interest rates and other changes associated with the actual sales terms of the City Bonds. Per the Agreement, this projection shall be updated upon the issuance or refinancing of City Bonds. See definition of City Bonds.

City of West Des Moines, Iowa
General Obligation Urban Renewal Bonds, Series 2023x
Intermodal Corridor URA

EXHIBIT AC-1

SOURCES & USES		DEBT SERVICE SCHEDULE						
		Date	Principal	Coupon	Interest	Debt Service	Capitalized Interest	Annual Debt Service
SOURCES								
Par Amount of Bonds	690,000.00							
Accrued Interest	0.00							
Premium/Discount	0.00							
Total Sources	690,000.00							
USES								
Deposit to Construction Account	640,000.00	1.1			7,141	7,141	(7,141)	
Debt Service Reserve Fund					6,121	6,121	(6,121)	
Capitalized Interest Account	19,383.96				6,121	6,121	(6,121)	
Municipal Bond Insurance	0.00							
Underwriters' Discount (\$10.00 per bond)	6,800.00	2.1		0.920%	6,121	6,121		6,121
Costs of Issuance	19,509.00	3.1		1.020%	6,121	6,121		12,243
Accrued Interest	0.00				6,121	6,121		
Resolving Amount	4,216.04				6,121	6,121		
Total Uses	690,000.00							
ASSUMPTIONS								
Term Date	5/1/2023	4.1	80,000	1.280%	6,121	94,121		92,243
Delivery Date	5/1/2023	5.1	85,000	1.420%	5,609	96,609		96,219
First Interest Date	12/1/2023	6.1	85,000	1.580%	5,086	5,086		95,812
		7.1	85,000	1.740%	4,334	4,334		93,669
		8.1	85,000	1.830%	3,595	3,595		92,180
		9.1	90,000	1.940%	2,817	2,817		95,634
		10.1	90,000	2.070%	1,926	1,926		93,852
		11.1	90,000	2.210%	995	995		91,980
		12.1		2.320%				
		13.1		2.380%				
		14.1		2.450%				
		15.1		2.520%				
		16.1		2.600%				
		17.1		2.690%				
		18.1		2.740%				
		19.1		2.770%				
		20.1						
			690,000		94,553	788,553	(19,384)	769,169
YIELD CALCULATIONS								
Average Yield	1.46639%							
IPC	1.68827%							
AIC	2.01287%							
Average Life	7.66 Years							
PROJECTS								
76th Street Construction	\$640,000							
Reserved	0							
Reserved	0							
Reserved	0							
	\$640,000							

Scale: 12-21-2021 Ass MMD + Ass/Non-BQ pricing + 75 bps tuning

Prepared by PFM Financial Advisors LLC

Date: 12/22/2021

EXHIBIT I

OFFER TO PURCHASE AND AGREEMENT

THIS OFFER TO PURCHASE AND AGREEMENT is made this ___ day of _____, 20___ by and between the City of West Des Moines, Iowa ("Seller") and Jordan Creek Associates, LLC, an Indiana limited liability company ("Buyer") for the property legally-described as:

Lot 3, The Village on Jordan Creek Parkway Plat 1, an Official Plat in the City of West Des Moines, Dallas County, Iowa, subject to any and all easements of record ("Premises").

1. Seller agrees to sell and furnish to Buyer a Special Warranty Deed on form(s) furnished by Seller and Buyer agrees to buy the Premises described above, which includes all estates, rights, title and interests, including all easements. Seller acknowledges full settlement and payment from Buyer for all claims per the terms of this Agreement.
2. Possession of the Premises is the essence of this Agreement and Buyer may enter and assume full use and enjoyment of the Premises per the terms of this Agreement. Seller grants Buyer the immediate right to enter the Premises for the purpose of gathering survey and soil data.
3. Buyer agrees to pay and Seller agrees to grant the right of possession, convey title and surrender physical possession of the Premises as shown on or before the dates listed below.

PAYMENT AMOUNT

\$ 20,945.00 on possession and conveyance

PERFORMANCE DATE

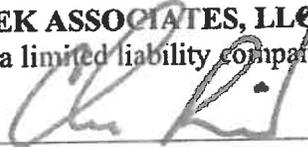
30 days after Parties approval of Development Agreement referenced in Paragraph 8, below.

\$20,945.00 **TOTAL LUMP SUM**

4. Seller warrants that there are no tenants on the Premises holding under lease.
5. At the option of the Buyer, Seller shall provide an abstract of title to Buyer prior to the closing date for the Premises, continued to the date of this Agreement. Buyer retains the further option of creating a new abstract, at Buyer's expense, from the existing abstract of title, which includes property in addition to the Premises. The existing abstract shall remain the property of the Seller.
6. Seller agrees to pay all liens and assessments against the Premises, including all taxes and special assessments payable until surrender of possession as required by the Code of Iowa, and agrees to warrant good and sufficient title.

7. The Premises is being sold "AS-IS" and Seller makes no representation or warranty regarding the environmental condition of the Premises.
8. The Premises is being acquired in conjunction with the Agreement for Private Development between the City of West Des Moines and Jordan Creek Associates, LLC, and sale of the Premises is contingent upon approval by the Seller and Buyer of the Development Agreement.
9. This written Agreement constitutes the entire Agreement between Buyer and Seller regarding the sale of the Premises and is made in conjunction with the Development Agreement referenced above.
10. Each page and each attachment of this Agreement is by this reference made part hereof and the entire agreement consists of three pages.

JORDAN CREEK ASSOCIATES, LLC,
 an Indiana limited liability company

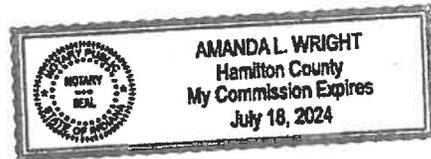


STATE OF Indiana)
) ss
 COUNTY OF Hamilton)

This record was acknowledged before me on the 12 day of January 2022 by Christopher D. Reid, on behalf of Jordan Creek Associates, LLC an Indiana limited liability company, on behalf of whom the record was executed.



 Notary



CITY OF WEST DES MOINES, IOWA

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this _____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared **Russ Trimble 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 municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Resolution No. ____, passed on the _____ day of _____, 2022 and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

Notary, State of Iowa

01837258-1\11333-375

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING
EXECUTION OF A DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF WEST DES MOINES AND JORDAN
CREEK ASSOCIATES, LLC

WHEREAS, by Resolution No. 09-11-02-10, adopted November 2, 2009, 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 Ashworth Corridor Urban Renewal Plan for the Ashworth Corridor Urban Renewal Area (the "Area" or "Urban Renewal Area") described therein, which Plan has been subsequently amended several times, most recently by Amendment No. 5 to the Plan adopted November 1, 2021, and which Plan, as amended, is on file in the office of the Dallas County Recorder; 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 Jordan Creek Associates, LLC (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, Detention Basin, Private Drive, and Infrastructure Improvements (as those terms are defined in the Agreement) on certain real property located within the Ashworth Corridor Urban Renewal Area, as defined and legally described in the Agreement (the "Development Property"), which improvements include construction of a mixed-use project consisting of approximately 203 multi-family residential units, an approximately 337-stall parking garage, and 22,000 square feet of commercial space on the Development Property, sidewalks planned to be dedicated to the City as public infrastructure, and all related site improvements, under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, the Agreement obligates to City to construct certain Public Improvements (as defined in the Agreement), consisting of improvements to 76th Street from Ashworth Road southerly to its current terminus; and

WHEREAS, pursuant to the terms and conditions of a purchase agreement that is an exhibit to the Agreement, the City would also agree to transfer a remanent piece of property currently owned by the City to the Developer for a purchase price of \$20,945.00, which remanent piece of property is described as Lot 3, The Village on Jordan Creek Parkway Plat 1, an Official Plat in the City of West Des Moines, Dallas County, Iowa; and

WHEREAS, the Agreement further proposes that the City will make consecutive annual payments of Economic Development Grants to Developer consisting of the Tax Increments generated by the construction of the Minimum Improvements under Section 403.19 of the Code of Iowa and remaining after the Tax Increments are used to pay the City's Debt Service related to the bonds to finance the Public Improvements (as further defined and described in the Agreement). The cumulative total for all such payments shall not exceed the lesser of (i) the Developer's

certified Qualified Costs and Expenses for the various improvements advancing commercial development being constructed by Developer (as further defined in the Agreement), or (ii) \$2,379,312, under the terms and following satisfaction of the conditions set forth in the Agreement. The Economic Development Grants shall end after the earlier of: (i) the Termination Date; (ii) on June 1 of the last fiscal year in which the City may collect Tax Increments from the Development Property and Minimum Improvements; or (iii) as of the date the Developer has received the maximum amount of Economic Development Grants; and

WHEREAS, the Agreement would also require the Developer to make "Shortfall Payments" to the City for any fiscal year in which the Tax Increment forecast to be received by the City generated from the Development Property and the Minimum Improvements, pursuant to Code Section 403.19, is insufficient to fully pay the annual amount of Debt Service related to the Bonds to finance the Public Improvements, under the terms and conditions of the Agreement; and

WHEREAS, the Agreement also proposes that Developer 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 \$19,600,000; and

WHEREAS, the Agreement imposes obligations on the Developer related to employment retention and/or creation by retail and commercial tenants in the commercial space in the Minimum Improvements; and

WHEREAS, Chapters 15A and 403, Code of Iowa, authorize cities to construct public improvements and make grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403, 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:

That the performance by the City of its obligations under the Agreement, including but not limited to constructing the Public Improvements and making grants to the Developer in connection with the development of the Development Property under the terms set forth in the Agreement, be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403, Code of Iowa, taking into account the factors set forth therein.

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 _____ day of _____, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

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

DATE: January 18, 2022

ITEM:

Public Hearing (5:35 p.m.)
Grand Avenue West Segment 3 Sewer Extension

FINANCIAL IMPACT:

The Engineering Estimate of Construction Cost was estimated to be \$278,741.00 for the Grand Avenue West Segment 3 Sewer Extension. There were three (3) bids submitted with the low bid of \$262,998.00 being submitted by On Track Construction, LLC of Nevada, Iowa. Payments will be made from account no. 640.000.000.5250.490 with the ultimate funding intended to come from Sewer Revenue.

BACKGROUND:

The Grand Avenue West Segment 3 Sewer Extension project lies north of Booneville Road between South Jordan Creek Parkway and South 88th Street and includes approximately 1,377 linear feet of 12-inch sewer in open cut, excavation, backfill, connections to existing sewers, surface restoration, traffic control, and miscellaneous associated work. The Grand Avenue West Segment 3 Sewer Extension will provide sewer service to the proposed Super Block development that is currently being planned in between South Jordan Creek Parkway and South 88th Street from Stagecoach Drive to Booneville Road. The project is anticipated to be completed by July 31, 2022.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Resolution adopting Plans, Specifications, Form of Contract, and Estimate of Costs for the Grand Avenue West Segment 3 Sewer Extension;
- Motion receiving and filing Report of Bids;
- Resolution awarding the construction contract to On Track Construction, LLC.

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	January 7, 2022

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

**RESOLUTION APPROVING ADOPTING PLANS, SPECIFICATIONS, FORM OF CONTRACT,
AND ESTIMATE OF COST**

WHEREAS, on December 20, 2021, Plans, Specifications, Form of Contract, and Estimate of Cost were filed with the City Clerk for the following described public improvement:

**Grand Avenue West Segment 3 Sewer Extension
Project No. 0510-072-2021**

and,

WHEREAS, notice of hearing on Plans, Specifications, Form of Contract, and Estimate of Cost for said public improvements were published as required by law.

therefore,

THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, that the Plans, Specifications, Form of Contract, and Estimate of Costs for said Public Improvement are hereby approved.

PASSED AND APPROVED on this 18th day of January, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

RESOLUTION APPROVING THE AWARDING OF A CONTRACT

WHEREAS, the City Council of the City of West Des Moines has heretofore directed advertisement for bids for the following described public improvement:

**Grand Avenue West Segment 3 Sewer Extension
Project No. 0510-072-2021**

and,

WHEREAS, bids have been received and opened by the City Clerk and placed on file by the City Council; and

WHEREAS, the bid of On Track Construction, LLC in the amount of \$262,998.00 was the lowest responsible bid received for said public improvement;

therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that a contract for the Grand Avenue West Segment 3 Sewer Extension is hereby awarded to On Track Construction, LLC in the amount of \$262,998.00 and the bond of said bidder for the project is hereby fixed in the same amount.

BE IT FURTHER RESOLVED that the City Engineer is authorized and directed to return bid bond(s) and/or check(s) to any unsuccessful bidder.

BE IT FURTHER RESOLVED that work on said project may commence as soon as the final contract and bond have been approved by the City Engineer and have been signed by the City Clerk and after the contractor is given a written notice to proceed by the City Engineer.

PASSED AND ADOPTED on this **18th** day of **January, 2022**.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

**BID TABULATION
WEST DES MOINES, IOWA
GRAND AVENUE WEST SEGMENT 3 SEWER EXTENSION PROJECT**

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	Engineer's Estimate		On Track Construction, LLC 1316 6th Street, Suite 109 Nevada, Iowa 50201		Rognes Corporation 720 SW Goodwin Street Ankeny, Iowa 50023		Correll Contractor Inc. 1300 Lincoln Street West Des Moines, Iowa 50265	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	Sanitary Sewer in Place - 12"	LF	1,377	\$ 130.00	\$ 179,010.00	\$ 142.00	\$ 195,534.00	\$ 142.00	\$ 195,534.00	\$ 112.00	\$ 154,224.00
2	Connection to Existing Sewer	EA	1	30,000.00	30,000.00	9,780.00	9,780.00	5,000.00	5,000.00	41,500.00	41,500.00
3	Manhole - Type SW 301 - 48"	EA	4	7,500.00	30,000.00	5,500.00	22,000.00	5,700.00	22,800.00	8,000.00	32,000.00
4	Video Inspection of Sewer	LF	1,377	3.00	4,131.00	2.00	2,754.00	2.00	2,754.00	6.00	8,262.00
5	Field Tile - 6" and Smaller	LF	20	50.00	1,000.00	100.00	2,000.00	35.00	700.00	20.00	400.00
6	Silt Fence	LF	1,700	3.00	5,100.00	1.80	3,060.00	1.75	2,975.00	1.85	3,145.00
7	Erosion Control	LS	1	1,000.00	1,000.00	8,200.00	8,200.00	8,100.00	8,100.00	7,100.00	7,100.00
8	Traffic Control	LS	1	2,500.00	2,500.00	3,505.00	3,505.00	3,500.00	3,500.00	1,650.00	1,650.00
9	Fence Removal and Replacement	LF	500	10.00	5,000.00	12.00	6,000.00	30.00	15,000.00	16.50	8,250.00
10	Gate - 16'	EA	1	3,000.00	3,000.00	685.00	685.00	675.00	675.00	2,500.00	2,500.00
11	Seeding - SUDAS Type 2	ACRE	3.2	2,500.00	8,000.00	1,400.00	4,480.00	1,300.00	4,160.00	2,100.00	6,720.00
12	Construction Staking	LS	1	10,000.00	10,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,500.00	5,500.00
TOTAL BID (Items 1-12)					\$278,741.00		\$262,998.00		\$266,198.00		\$271,251.00

I hereby certify that this is a true tabulation of bids received on January 12, 2022 by the City of West Des Moines, Iowa.

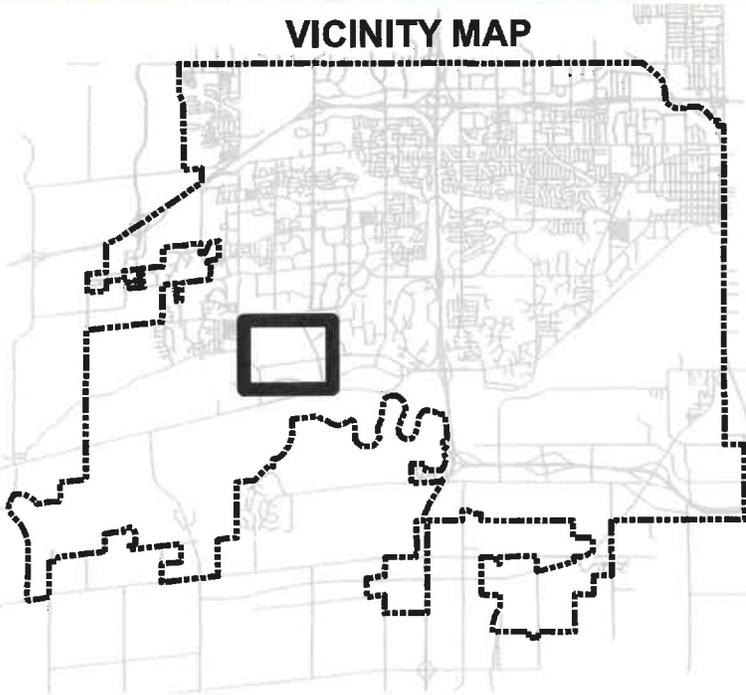
H. Robert Veenstra Jr.

H. Robert Veenstra Jr., P.E.
Iowa License No. 9037





VICINITY MAP



LEGEND

PROJECT LOCATION



PROPOSED SEWER



EXISTING SEWER



PROJECT:

Grand Avenue West Segment 3 Sewer Extension

LOCATION:

Exhibit "A"

DRAWN BY: JPM

DATE: 12/6/2021

PROJECT NUMBER/NAME: 0510-072-2021

SHT. 1 of 1

**CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION**

Meeting Date: January 18, 2022

ITEM: Manchester Village Townhomes Plat 1, 9076 Lindas Lane – Approve Final Plat to create 37 footprint lots for townhome development, 3 outlots and 1 street lot – Stanbros Development, L.L.C. – FP-005353-2021

RESOLUTION: Acceptance of Surety and Approval and Release of Final Plat

Background: Jared Murray with Civil Design Advantage, on behalf of the applicant and property owner, Stanbros Development, L.L.C., requests approval of a Final Plat for the approximately 8-acre property generally located at 9076 Lindas Lane. The applicant proposes to subdivide the property into thirty-seven (37) lots for multi-family residential development, two (2) outlots for common area, one (1) outlot for future development, and one (1) street lot for dedication to the City.

Staff Review & Comment:

- **Financial Impact:** There is no City funding of this project; however, there is staff time for processing of development application and inspections during construction.
- **Key Development Aspects:**
 - **Phasing:** The Manchester Village Townhomes Plat 1 will be the first phase of the development of this site. Plat 1 will include the southern 37 lots along with two outlots reserved for common areas (private streets and open space). The northern portion of the property will be reserved as an outlot for future development of the remaining 31 lots and outlots as shown on the 2021 approved preliminary plat for the site. If the future development of phase 2 (Outlot X) is consistent with this approved preliminary plat, only an additional final plat will be required. If the future development of phase 2 is not consistent with the 2021 approved preliminary plat, as determined by the City, a revised preliminary plat will need to be submitted for review and approval by the City. Staff recommends a condition of approval that no building permits be issued for any structures within Outlot X until such time that the outlot is final platted in accordance with the 2021 approved preliminary plat, or a revised and approved Manchester Village Townhomes Preliminary Plat.
 - **91st Street:** The development of this site will result in 91st Street being extended north through the development. Eventually, this stub of 91st Street will be extended to connect with 91st Street north of EP True Parkway. The proposed location of 91st Street through the Robel property to the north has been coordinated with the Robel's and they are in agreement with the proposed street alignment.
 - **Trail Connections:** An 8' trail will be installed on the western side of this property that will connect this property to a proposed greenway trail within the Pavilion Park development to the west.

- Traffic Analysis Findings: Traffic Impact Studies are not conducted for Final Plats but instead are completed at the time of the associated Preliminary Plat. Per that study, the proposed development is expected to generate less traffic than previously planned for the site. Therefore, there is no additional loading on the planned roadway system.
- Plat Validity: Per City Code, the Final Plat must be presented to the City Council for approval within 12 months of the approval of the associated Preliminary Plat if surety is being posted for Public Improvements; or, within 18 months if Public Improvements are being constructed prior to Final Plat consideration. This Final Plat complies with the timelines stated in City Code.

Outstanding Issues: There are no outstanding issues.

Staff would note that as part of this approval, the Council is approving and accepting the following:

- Surety in lieu of public improvements associated with the construction of 91st Street including sanitary sewer, storm sewer, pavement, and all appurtenances associated with said improvements.
- A deed for Lot A to be dedicated as public street right-of-way.
- Legal documents to establish public easements for Buffer, Ingress/Egress, Public Utility, Sanitary Sewer, Storm Sewer, and Temporary Turnaround.
- Parkland Dedication Agreement which specifies improvements required of the development.
- Storm Water Management Maintenance Facility Covenant and Permanent Easement Agreement for this property.

Recommendation: Approve the Final Plat, subject to the applicant meeting all City Code requirements and the following condition of approval:

1. The applicant acknowledging that no building permits will be issued for construction of any structures within Outlot X until such time that a final plat is approved for the Outlot X parcel.

Lead Staff Member: Brian Portz

Approval Meeting Dates:

Plan and Zoning Commission	n/a
City Council	January 18, 2022

Staff Report Reviews:

City Council	<input checked="" type="checkbox"/> Director	<input checked="" type="checkbox"/> Legal Department
	<input type="checkbox"/> Appropriations/Finance	<input checked="" type="checkbox"/> Agenda Acceptance 

Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	n/a
Date(s) of Mailed Notices	n/a

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning
Date Reviewed	10/18/21
Recommendation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Split

Location Map



MANCHESTER VILLAGE TOWNHOMES PLAT 1

FINAL PLAT

INDEX LEGEND
LOCATION: LOT D, IRREG SURVEY
 NE 1/4 SE 1/4
 SEC 10-78-28 EX. E. 198'
 WEST DES MOINES
 DALLAS COUNTY, IOWA
REQUESTOR: ELEMENT 119
PROPRIETOR: STANBROS DEVELOPMENT, LLC
 10888 HICKMAN RD, SUITE 3B
 CLIVE IA 50325
SURVEYOR: MICHAEL A. BROONER
SURVEYOR COMPANY: CIVIL DESIGN ADVANTAGE
PREPARED BY & RETURN TO: CIVIL DESIGN ADVANTAGE
 3405 SE CROSSROADS DRIVE
 SUITE 0
 GRIMES, IOWA 50111
 PH: 515-369-4400

ENGINEER / SURVEYOR CIVIL DESIGN ADVANTAGE 3405 SE CROSSROADS DRIVE, SUITE G GRIMES, IOWA 50111	OWNER / DEVELOPER STANBROS DEVELOPMENT, LLC CONTACT: BRAD STANBROUGH 10888 HICKMAN ROAD, SUITE 3B CLIVE, IOWA 50325 PH. (515)-202-3030	DATE OF SURVEY OCTOBER 6, 2021
---	--	--

PLAT DESCRIPTION
 LOT D OF IRREGULAR SURVEY OF NE 1/4 SE 1/4 SECTION 10, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES AS SHOWN IN BOOK 4, PAGE 230, IN THE OFFICE OF THE RECORDER OF DALLAS COUNTY, IOWA, EXCEPT THE EAST 198 FEET OF SAID LOT D.
 SAID PROPERTY CONTAINS 7.98 ACRES (347,527 SQUARE FEET) AND IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

ZONING
 RM: RESIDENTIAL MEDIUM DENSITY DISTRICT

BULK REGULATIONS
 SETBACK FROM DEVELOPMENT PERIMETER: 35'
 FRONT AND REAR SETBACK: 15' INTERNAL TO THE DEVELOPMENT; THE MINIMUM SETBACK FOR GARAGES FACING A STREET OR DRIVE IS 25' FROM SIDEWALK OR BACK OF CURB
 SIDE SETBACK: 7' INTERNAL TO THE DEVELOPMENT
 • MINIMUM SEPARATION BETWEEN BUILDINGS: 14'
 • MINIMUM SEPARATION BETWEEN ACCESSORY BUILDINGS OR STRUCTURES UNDER 1,500 SF AND ALL OTHER BUILDINGS: 10'; ACCESSORY BUILDINGS OVER ONE-THOUSAND, FIVE HUNDRED SQUARE FEET (1,500 SF) MUST MEET PRIMARY BUILDING SETBACKS AND SEPARATIONS, INCLUDING SETBACKS ADJUSTED FOR PRIMARY BUILDING HEIGHT

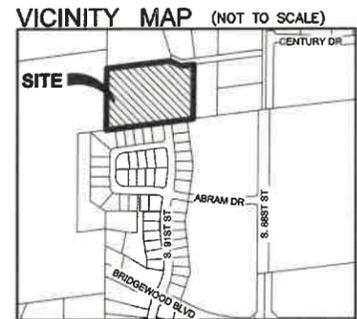
CURVE DATA

CURVE	DELTA	RADIUS	LENGTH	BEARING	CHORD
C1	4°27'18"	475.00'	36.93'	S4°37'47"E	36.92'
C2	15°52'14"	475.00'	131.57'	S5°31'59"W	131.15'
C3	20°19'32"	475.00'	168.51'	S3°18'19"W	167.62'
C4	20°19'32"	510.00'	180.92'	N3°18'19"E	179.97'
C5	20°19'32"	545.00'	193.34'	N3°18'19"E	192.33'
C6	16°26'37"	545.00'	156.41'	S5°14'47"W	155.88'
C7	7°37'32"	300.00'	39.93'	S3°02'41"E	39.90'
C8	6°38'42"	545.00'	63.21'	N10°08'44"E	63.17'
C9	4°34'49"	475.00'	37.97'	S11°10'41"W	37.96'
C10	15°52'14"	475.00'	131.57'	S5°31'59"W	131.15'
C11	3°09'42"	545.00'	30.07'	S2°58'26"E	30.07'
C12	2°18'10"	545.00'	21.90'	S5°42'22"E	21.90'
C13	0°40'21"	545.00'	6.40'	S6°31'16"E	6.40'
C14	0°46'18"	475.00'	6.40'	S6°28'18"E	6.40'
C15	12°35'41"	475.00'	104.41'	S7°10'15"W	104.20'

- NOTES**
- ANY SET MONUMENTATION SHOWN ON THIS PLAT WILL BE COMPLETED WITHIN ONE YEAR FROM THE DATE THIS PLAT WAS RECORDED.
 - LOTS MAY BE SUBJECT TO MINIMUM PROTECTION ELEVATIONS AND OTHER ELEVATION RESTRICTIONS NOT SHOWN ON THIS PLAT. REFER TO THE APPROVED PROJECT ENGINEERING DOCUMENTS FOR ANY ELEVATION RESTRICTIONS.
 - ALL BEARINGS ARE BASED ON AN ASSUMED MERIDIAN FOR COMPUTATION PURPOSES.
 - THE ALLOWABLE ERROR OF CLOSURE FOR THE BOUNDARY IS 1:10,000 AND THE ALLOWABLE ERROR OF CLOSURE FOR EACH LOT IS 1:5,000.
 - NO RAISED DECKS SHALL BE PERMITTED WITHIN THE 35' PERIMETER SETBACK

LEGEND

	FOUND	SET
SECTION CORNER AS NOTED	▲	△
1/2" REBAR, YELLOW PLASTIC CAP #15980 (UNLESS OTHERWISE NOTED)	●	○
MEASURED BEARING & DISTANCE	M	
RECORDED BEARING & DISTANCE	R	
DEEDED BEARING & DISTANCE	D	
PUBLIC UTILITY EASEMENT	P.U.E.	
CURVE ARC LENGTH	AL	
LOT ADDRESS	(1234)	
CENTERLINE	---	
SECTION LINE	----	
EASEMENT LINE	----	
BUILDING SETBACK LINE	----	
PLAT BOUNDARY	=====	



FILE: H:\2021\10888\DWG\10888-FINAL-PLAT1.DWG
 FILE DATE: 1/2/22
 PLOTTED BY: JESB
 COMMENT: DWG
 DATE PLOTTED: 1/2/2022 4:13 PM

REVISIONS	DATE
FOURTH SUBMITTAL	11/10/21
THIRD SUBMITTAL	11/03/21
SECOND SUBMITTAL	10/25/21
FIRST SUBMITTAL	10/08/21

3405 S.E. CROSSROADS DRIVE, SUITE G
 GRIMES, IOWA 50111
 PHONE: (515) 369-4400 FAX: (515) 369-4410
ENGINEER: MICHAEL A. BROONER
TECH: JAE
REVIEW:



MANCHESTER VILLAGE TOWNHOMES PLAT 1
FINAL PLAT
 WEST DES MOINES, IOWA

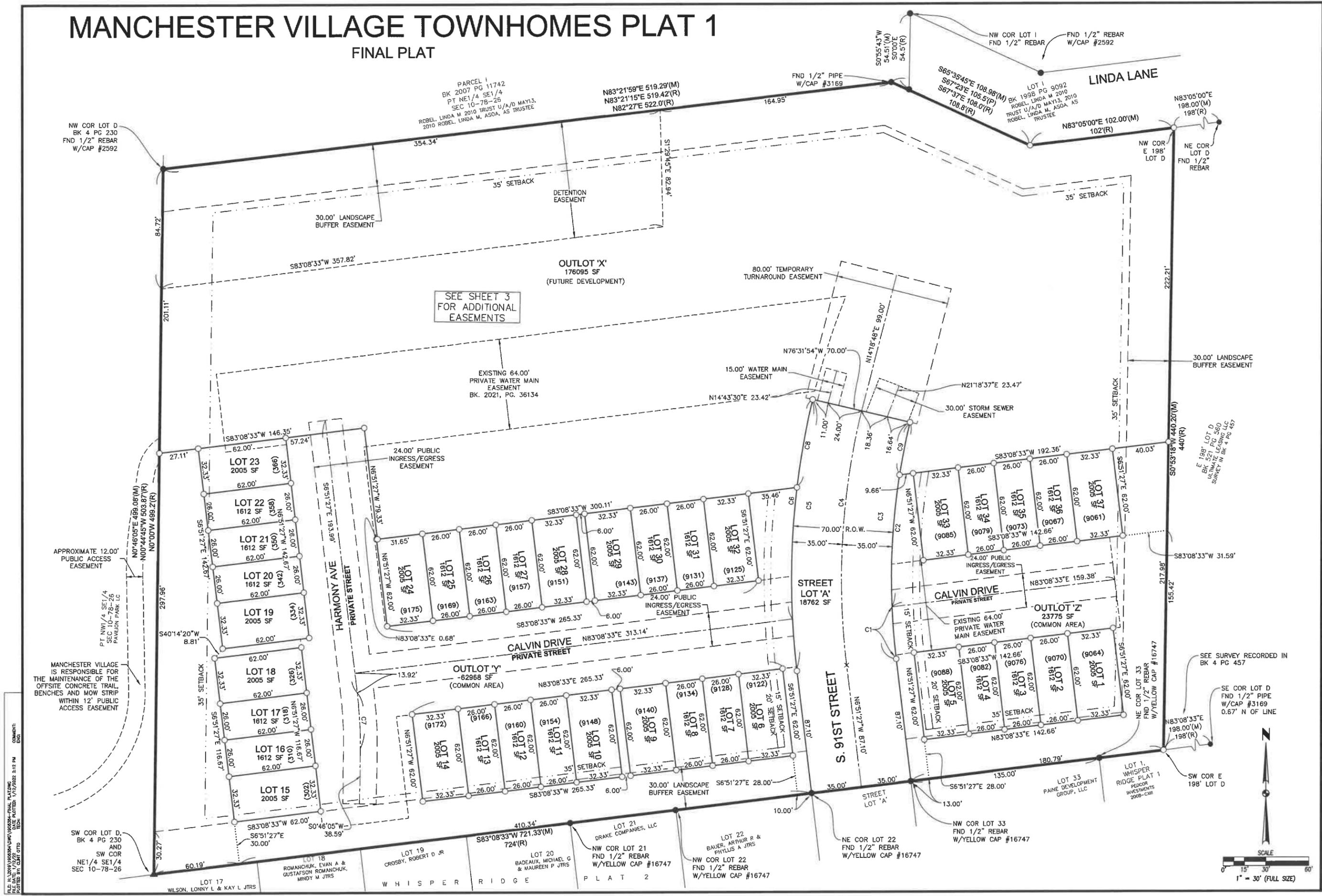
I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

Michael Brooner 01-03-2022
 MICHAEL A. BROONER, P.L.S. DATE

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2022
 PAGES OR SHEETS COVERED BY THIS SEAL:
 SHEETS 1 THROUGH 3

MANCHESTER VILLAGE TOWNHOMES PLAT 1

FINAL PLAT



SEE SHEET 3 FOR ADDITIONAL EASEMENTS

FILE: H:\2019\WORKSPACE\PROJECTS\PLAT 1\MANCHESTER_VILLAGE_TOWNHOMES_PLAT_1_FINAL_PLAT.DWG
 DATE PLOTTED: 1/12/2022 2:12 PM
 PLOTTED BY: CHM OTD
 COMMENT: ENG

DATE	REVISIONS
11/10/21	FOURTH SUBMITTAL
11/03/21	THIRD SUBMITTAL
10/25/21	SECOND SUBMITTAL
10/09/21	FIRST SUBMITTAL

3405 S.E. CROSSROADS DRIVE, SUITE G
 GRIMES, IOWA 50111
 PHONE: (515) 369-4400 FAX: (515) 369-4410
 ENGINEER: TECH: JAE REVIEW:



CIVIL DESIGN ADVANTAGE
 WEST DES MOINES, IOWA

MANCHESTER VILLAGE TOWNHOMES PLAT 1 FINAL PLAT

MANCHESTER VILLAGE TOWNHOMES PLAT 1

FINAL PLAT

PARCEL 1
BK 2007 PG 11742
PT NE1/4 SE1/4
SEC 10-78-26
ROBEL, LINDA M 2010 TRUST U/A/D MAY13, 2010
2010 ROBEL, LINDA M, ASDA, AS TRUSTEE

FND 1/2" PIPE
W/CAP #3169

NW COR LOT 1
FND 1/2" REBAR

LINDA LANE

LOT 1
BK 1998 PG 9092
ROBEL, LINDA M 2010
TRUST U/A/D MAY13, 2010
ROBEL, LINDA M, ASDA, AS TRUSTEE

N83°05'00"E 102.00'(M)
102'(R)

N83°05'00"E
198.00'(M)
198'(R)

NW COR
E 198'
LOT D

NE COR
LOT D
FND 1/2"
REBAR

NW COR LOT D
BK 4 PG 230
FND 1/2"
REBAR
W/CAP #2592

SEE SHEET 2
FOR ADDITIONAL
EASEMENTS

OUTLOT 'X'
176095 SF

EXISTING 64.00'
PRIVATE WATER MAIN
EASEMENT
BK. 2021, PG. 36134

N83°08'33"E 129.32'

S83°08'33"W 73.07'

LOT 23
2005 SF
(366)

LOT 22
1612 SF
(398)

LOT 21
1612 SF
(350)

LOT 20
1612 SF
(342)

LOT 19
2005 SF
(334)

LOT 18
2005 SF
(326)

LOT 17
1612 SF
(318)

LOT 16
1612 SF
(310)

LOT 15
2005 SF
(302)

10.00'
P.U.E.

N6°28'50"W 139.58'

LOT 24
2005 SF
(9175)

LOT 25
1612 SF
(9169)

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Prepared by: Brian Portz, City of West Des Moines Development Services Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620

When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION #

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, ACCEPTANCING SURETY AND APPROVING AND RELEASING THE MANCHESTER VILLAGE TOWNHOMES PLAT 1 FINAL PLAT FOR THE PURPOSE OF CREATING THIRTY-SEVEN (37) FOOTPRINT LOTS FOR MULTI-FAMILY RESIDENTIAL DEVELOPMENT, THREE (3) OUTLOTS AND ONE (1) STREET LOT

WHEREAS, pursuant to the provisions of Title 9, Zoning and Title 10, Subdivision Regulations, of the West Des Moines Municipal Code, the applicant and property owner, Stanbros Development, L.L.C., requests approval of a Final Plat for the approximately 8-acre property located at 9076 Lindas Lane and legally described in attached Exhibit 'B'. The applicant proposes to subdivide the property into thirty seven (37) lots for multi-family development, two (2) outlots for common area, one (1) outlot for future development, and one (1) street lot for dedication to the City; and

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, this Final Plat complies with Iowa Code Chapters 354 and 414, the Comprehensive Plan and City Code; and

WHEREAS, the West Des Moines Plan and Zoning Commission reviewed the associated Preliminary Plat and recommended approval on June 14, 2021; and

WHEREAS, this Final Plat has been reviewed and determined to be generally consistent with the associated Preliminary Plat that was approved by the City Council on June 21, 2021; and

WHEREAS, on this day the City Council held a duly noticed meeting to consider the Final Plat application; and

WHEREAS, the City Council is accepting surety in lieu of constructing public improvements associated with the construction of 91st Street, including pavement, public sanitary sewer, and public storm sewer within the plat boundaries; and

WHEREAS, the necessary easements have been established for Buffer, Ingress/Egress,

Public Utility, Sanitary Sewer, Storm Sewer, and Temporary Turnaround; and

WHEREAS, the applicant has supplied a warranty deed to the City of West Des Moines for Street Lot A to be dedicated as public street right-of-way; and

WHEREAS, the applicant has provided a Parkland Dedication Agreement which specifies improvements required of the development; and

WHEREAS, the City Council is accepting the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for this property; and

WHEREAS, the City Council approves of the following address assignments;

- Lot 1 = 9064 Calvin Drive
- Lot 2 = 9070 Calvin Drive
- Lot 3 = 9076 Calvin Drive
- Lot 4 = 9082 Calvin Drive
- Lot 5 = 9088 Calvin Drive
- Lot 6 = 9122 Calvin Drive
- Lot 7 = 9128 Calvin Drive
- Lot 8 = 9134 Calvin Drive
- Lot 9 = 9140 Calvin Drive
- Lot 10 = 9148 Calvin Drive
- Lot 11 = 9154 Calvin Drive
- Lot 12 = 9160 Calvin Drive
- Lot 13 = 9166 Calvin Drive
- Lot 14 = 9172 Calvin Drive
- Lot 15 = 302 Harmony Avenue
- Lot 16 = 310 Harmony Avenue
- Lot 17 = 318 Harmony Avenue
- Lot 18 = 326 Harmony Avenue
- Lot 19 = 334 Harmony Avenue
- Lot 20 = 342 Harmony Avenue
- Lot 21 = 350 Harmony Avenue
- Lot 22 = 358 Harmony Avenue
- Lot 23 = 366 Harmony Avenue
- Lot 24 = 9175 Calvin Drive
- Lot 25 = 9169 Calvin Drive
- Lot 26 = 9163 Calvin Drive
- Lot 27 = 9157 Calvin Drive
- Lot 28 = 9151 Calvin Drive
- Lot 29 = 9143 Calvin Drive
- Lot 30 = 9137 Calvin Drive
- Lot 31 = 9131 Calvin Drive
- Lot 32 = 9125 Calvin Drive
- Lot 33 = 9085 Calvin Drive
- Lot 34 = 9079 Calvin Drive
- Lot 35 = 9073 Calvin Drive
- Lot 36 = 9067 Calvin Drive
- Lot 37 = 9061 Calvin Drive

WHEREAS, property subject of this action is zoned Residential Medium Density (RM-12) and meets all requirements of the City's Zoning Code.

NOW, THEREFORE, the City Council does approve the Manchester Village Townhomes Plat 1 Final Plat (FP-005353-2021), subject to compliance with all of the conditions of approval, including any conditions added at the meeting, attached hereto as Exhibit "A". Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City. This resolution does release the Final Plat for recordation. The City Council of West Des Moines, Iowa directs the City Clerk to release said document for recordation.

PASSED AND ADOPTED on January 18, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan Jacobson, City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on January 18, 2022, by the following vote.

Exhibit A: Conditions of Approval

1. The applicant acknowledging that no building permits will be issued for construction of any structures within Outlot X until such time that a final plat is approved for the Outlot X parcel.

Exhibit B: Legal Description

LOT D OF IRREGULAR SURVEY OF NE 1/4 SE 1/4 SECTION 10, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE 5TH P.M., CITY OF WEST DES MOINES AS SHOWN IN BOOK 4, PAGE 230, IN THE OFFICE OF THE RECORDER OF DALLAS COUNTY, IOWA, EXCEPT THE EAST 198 FEET OF SAID LOT D.

SAID PROPERTY CONTAINS 7.98 ACRES (347,527 SQUARE FEET) AND IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

**CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION**

Meeting Date: January 18, 2022

ITEM: South Branch Business Park, southwest corner of SE 42nd Street and former SE Army Post Road – Approve a Preliminary Plat to create one (1) lot for General Industrial development, one (1) outlot for future development and one outlot for site access – PP-005326-2021

Resolution: Approval of Preliminary Plat

Background: Brad Kuehl, Bishop Engineering, on behalf of the applicant and property owners, SBBP JV21, L.L.C. and the City of West Des Moines, requests approval of a Preliminary Plat for the approximately 44.19-acre property generally located at the southwest corner of SE 42nd Street and SE Army Post Road. The applicant proposes to subdivide the property into one (1) lot for general industrial development one (1) outlot for future development, and one (1) outlot for a driveway only.

Staff Review & Comment:

- **Financial Impact:** The applicant and the City, including West Des Moines Water Works, are negotiating a Development Agreement to address the provision of water and sewer to the site. The Alluvion Urban Renewal Plan will be amended to include this area and the provision of water and payment of costs will be included in the Tax Increment Financing agreement, which is part of the urban renewal plan. A minimum assessment will be part of these agreements. Part of the agreement is for the transfer of City-owned property that the City no longer needs for a roadway (a portion of SE Army Post Road) to SBB JV21, L.L.C. and the dedication by SBBJ JV21, L.L.C. of fee district sewer easements in order to provide sanitary sewer to the property.
- **History:** This property is a remnant piece left over from the construction of Iowa Highway 5. The Comprehensive Plan Land Use designation of the property includes approximately 12 acres designated as General Industrial, with the balance being designated as Business Park. In May of 2021, the property was rezoned to the South Branch Business Park Planned Unit Development with underlying zoning of General Industrial on approximately the west 12 acres with the balance of the property designated as Business Park.
- **Key Development Aspects:**
 - City property that was formerly a part of the public street SE Army Post Road west of SE 42nd Street is being included in the preliminary plat. A Plat of Survey was approved by the City Council in December 2021 which created a parcel intended to be transferred to SBBP JV21, L.L.C. and used as their access to the site. The conveyance of the parcel will be completed upon resolution of provision of an easement for WDM Water Works and prior to the final plat being presented to the City Council.
- **Traffic Impact Study Findings:** No traffic study was conducted in concert with the preliminary plat; however, a traffic study was conducted with the establishment of the South Branch Business Park Planned Unit Development and the changed in zoning districts from Business Park and General Industrial. Traffic studies will be conducted with the review of each site plan for the property.

- Plat Validity: Per City Code, the associated Final Plat must be presented to the City Council for approval within 12 months of the approval of this Preliminary Plat if surety is being posted for Public Improvements; or, within 18 months if Public Improvements are being constructed prior to Final Plat consideration. It is the responsibility of the developer to be aware of these deadlines and request an extension of the Preliminary Plat approval prior to the Preliminary Plat expiration date.

Outstanding Issues: There are no outstanding issues.

Plan and Zoning Commission Action:

Date: January 10, 2022

Vote: 5-0, for approval with Commissioners Drake and Davis absent

Recommendation: Recommend to the City Council approval of the Preliminary Plat

Recommendation: Approve the Preliminary Plat subject to the applicant meeting all City Code requirements.

Lead Staff Member: Kara V. Tragesser, AICP

Approval Meeting Dates:

Plan and Zoning Commission	January 10, 2022
City Council	January 18, 2022

Staff Report Reviews:

Plan & Zoning Commission	<input checked="" type="checkbox"/> Development Coordinator (or) <input type="checkbox"/> Director	<input checked="" type="checkbox"/> Legal Department
City Council	<input checked="" type="checkbox"/> Director <input type="checkbox"/> Appropriations/Finance	<input checked="" type="checkbox"/> Legal Department <input checked="" type="checkbox"/> Agenda Acceptance <i>JP</i>

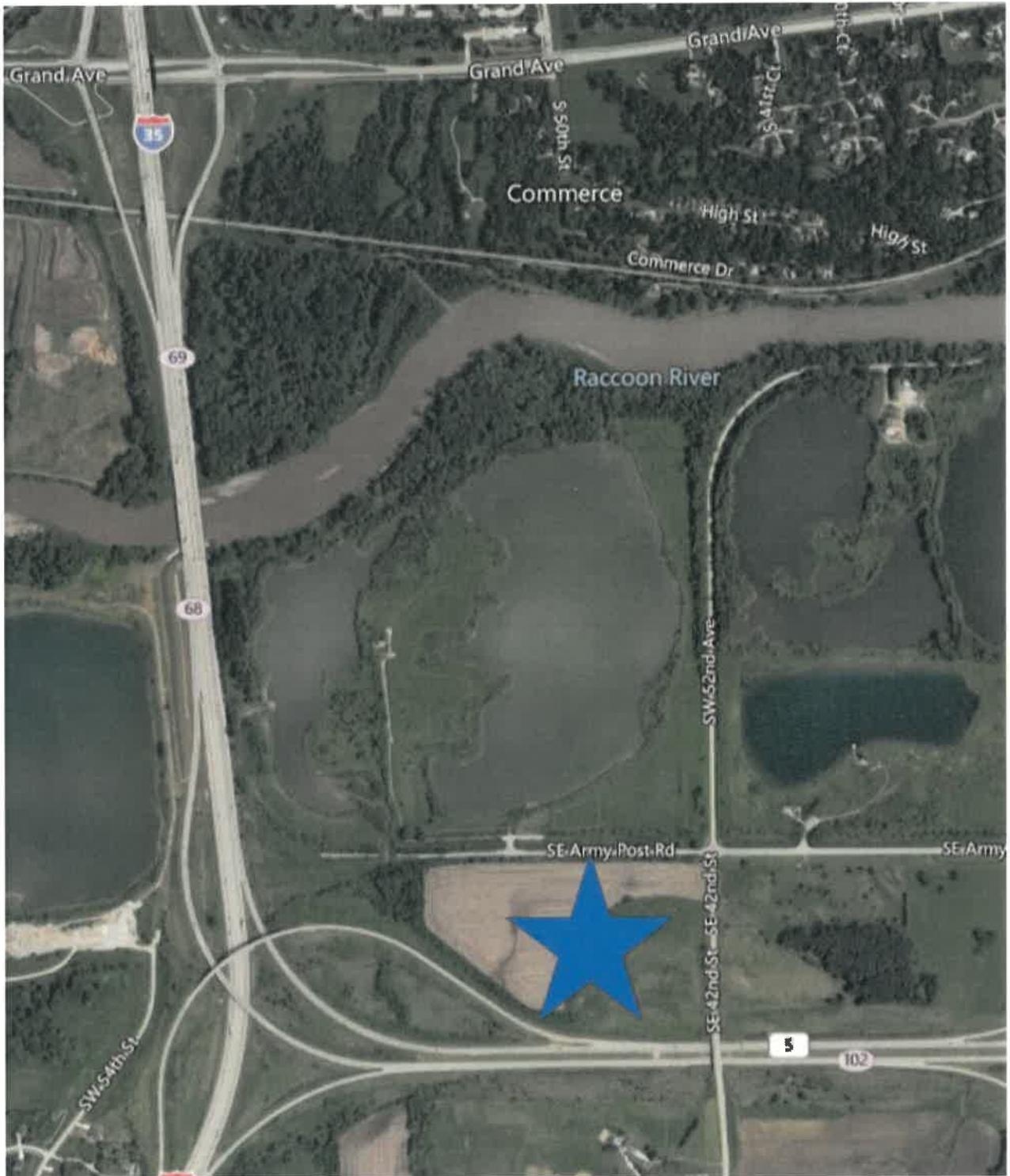
Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	n/a
Date(s) of Mailed Notices	n/a

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning
Date Reviewed	10/18/21
Recommendation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Split

Location Map



**A RESOLUTION OF THE PLAN AND ZONING COMMISSION
NO. PZC 22-004**

WHEREAS, pursuant to the provisions of Title 9, Zoning and Title 10, Subdivision Regulations of the West Des Moines Municipal Code, the applicant and property owners, SBBP JV21, L.L.C. and the City of West Des Moines, requests approval of the Preliminary Plat for the purpose of subdividing that approximately 44.19-acre property generally located at the southwest corner of SE 42nd Street and SE Army Post Road as depicted on the location map included in the staff report. The applicant proposes to subdivide the property into one (1) lot for general industrial development, one (1) outlot for future development, and one (1) outlot for access; and

WHEREAS, the Preliminary Plat complies with Iowa Code Chapters 354 and 414, the Comprehensive Plan and City Code.

NOW THEREFORE, the Plan and Zoning Commission of the City of West Des Moines recommends the City Council approve the Preliminary Plat (PP-005326 -2021) subject to compliance with all the conditions of approval as stated in the staff report, including conditions added at the meeting, and attached hereto as Exhibit "A", if applicable.

PASSED AND ADOPTED on January 10, 2022.



Erica Andersen, Chair
Plan and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting on January 10, 2022, by the following vote:

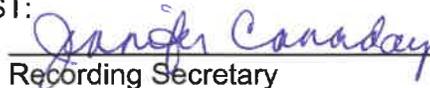
AYES: **ANDERSEN, CONLIN, COSTA, CROWLEY, HATFIELD**

NAYS:

ABSTENTIONS:

ABSENT: **DAVIS, DRAKE**

ATTEST:


Recording Secretary

Prepared by: Kara Tragesser, City of West Des Moines Development Services Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, APPROVING A PRELIMINARY PLAT TO CREATE ONE (1) LOT FOR GENERAL INDUSTRIAL DEVELOPMEN, ONE (1) OUTLOT FOR FUTURE DEVELOPMENT AND ONE (1) OUTLOT FOR ACCESS PURPOSES

WHEREAS, pursuant to the provisions of Title 9, Zoning and Title 10, Subdivision Regulations, of the West Des Moines Municipal Code, the applicant and property owners, SBBP JV21, L.L.C., an Iowa limited liability company and the City of West Des Moines, requests approval of the South Branch Business Park Preliminary Plat for that property generally located at southwest corner of SE 42nd Street and SE Army Post Road and legally described in attached Exhibit 'B' for the purpose of subdividing the 44.19-acre property into one (1) lot for general industrial development, one (1) outlot for future development, and one (1) outlot for a driveway only; and

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, the Preliminary Plat complies with Iowa Code Chapters 354 and 414, the comprehensive plan and city code; and

WHEREAS, on January 10, 2022, the Plan and Zoning Commission recommended to the City Council, by a 5-0 vote, for approval of the Preliminary Plat; and

WHEREAS, on this day the City Council held a duly noticed meeting to consider the application for the Preliminary Plat.

NOW, THEREFORE, The City Council does approve the South Branch Business Park Preliminary Plat (PP-005326-2021), subject to compliance with all of the conditions of approval, including any conditions added at the meeting, attached hereto as Exhibit "A". Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on January 18, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan Jacobson, City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on January 18, 2022, by the following vote.

Exhibit A: Conditions of Approval

None.

Exhibit B: Legal Description

(QUIT CLAIM DEED BOOK 16333, PAGE 168)

A PARCEL OF LAND PARTLY IN THE NW1/4 OF THE NW1/4 AND PARTLY IN THE NE1/4 OF THE NW1/4 OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA IDENTIFIED AS COUNTY AUDITOR PARCEL 2016-198 ON PLAT ON SURVEY EXHIBIT "A", ATTACHED HERETO, WHICH BY REFERENCE IS MADE A PART THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NW CORNER OF SAID SECTION 32; THENCE S00°14'46"E, 254.50 FEET ALONG THE WEST LINE OF SAID NW1/4; THENCE S86°45'43"E, 167.23 FEET TO THE POINT OF BEGINNING; THENCE S63°35'09"E 408.17 FEET; THENCE S51°28'22"E, 1079.81 FEET; THENCE N89°43'57"E, 1189.22 FEET; THENCE N00°04'23"W, 1005.03 FEET; THENCE N89°42'11"W, 1331.65 FEET; THENCE S85°42'10"W, 586.48 FEET; THENCE S78°36'38"W, 216.76 FEET; THENCE S74°12'20"W, 279.84 FEET TO THE POINT OF BEGINNING, CONTAINING 41.52 ACRES.

AND

PARCEL 2021-218 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 18910 AT PAGE 715, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., POLK COUNTY, IOWA; THENCE S89°26'00"E ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID

SECTION 32, 1201.03 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S89°26'00"E ALONG SAID NORTH LINE, 1365.08 FEET; THENCE S00°04'19"E, 82.05 FEET TO THE NORTHEAST CORNER OF PARCEL 2016-198, AS SHOWN ON THE PLAT OF SURVEY THEREOF RECORDED IN BOOK 16214 ON PAGE 28 IN THE POLK COUNTY RECORDER'S OFFICE; THENCE N89°43'17"W ALONG SAID NORTH LINE, 1331.49 FEET; THENCE S85°41'56"W ALONG SAID NORTH LINE, 33.62 FEET; THENCE N00°04'19"W, 91.59 FEET TO THE POINT OF BEGINNING. CONTAINING 2.68 ACRES.

ALL SUBJECT TO AND TOGETHER WITH ANY AND ALL EASEMENTS AND RESTRICTION OF RECORD.

SAID TRACT CONTAINS 44.19 ACRES (1,925,116 SQUARE FEET) MORE OR LESS.

SOUTH BRANCH BUSINESS PARK PRELIMINARY PLAT - EXISTING

PLANS INCLUDED ARE FOR ILLUSTRATIVE
PURPOSES ONLY - APPROVED PLANS ON FILE
WITH THE CITY

Bishop Engineering
"Planning Your Successful Development"

3501 104th Street
Des Moines, Iowa 50322-3895
Phone: (515) 276-4667 Fax: (515) 276-0317
Civil Engineering & Land Surveying
Established 1959

INDEX LEGEND

LOCATION:
NW1/4 - NW1/4 SECTION 32-78-25

OWNER / PREPARED FOR:
SBBP JV21 LLC
5485 MILLS CIVIC PARKWAY, SUITE 2235
WEST DES MOINES, IA 50266
RYAN WEDERSTEIN
515-654-4543

PREPARED BY:
LARRY HYLER PLS
BISHOP ENGINEERING
3501 104TH ST
URBANDALE, IA 50322

PROPERTY DESCRIPTION:

(QUIT CLAIM DEED BOOK 18333, PAGE 188)
A PARCEL OF LAND PARTLY IN THE NW1/4 AND PARTLY IN THE NE1/4 OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH P.M., NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA IDENTIFIED AS COUNTY AUDITOR PARCEL 2018-198 ON PLAT ON SURVEY EXHIBIT "A", ATTACHED HERETO, WHICH BY REFERENCE IS MADE A PART THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NW CORNER OF SAID SECTION 32; THENCE S01°14'40"E, 254.50 FEET ALONG THE WEST LINE OF SAID NW1/4; THENCE S89°45'43"E, 167.23 FEET TO THE POINT OF BEGINNING; THENCE S83°35'09"E, 408.17 FEET; THENCE S51°28'22"E, 1078.81 FEET; THENCE N89°43'57"E, 1189.22 FEET; THENCE N00°04'23"W, 1005.03 FEET; THENCE N89°42'11"W, 1331.65 FEET; THENCE S85°42'10"W, 588.48 FEET; THENCE S78°38'38"W, 216.70 FEET; THENCE S74°12'20"W, 279.84 FEET TO THE POINT OF BEGINNING, CONTAINING 41.52 ACRES.
AND
PARCEL 2021-218 AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 18810 AT PAGE 715, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., POLK COUNTY, IOWA; THENCE S89°28'02"E ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 32, 1201.03 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S89°28'02"E ALONG SAID NORTH LINE, 1385.08 FEET; THENCE S00°04'19"E, 82.05 FEET TO THE NORTHEAST CORNER OF PARCEL 2016-198, AS SHOWN ON THE PLAT OF SURVEY THEREOF RECORDED IN BOOK 16214 ON PAGE 28 IN THE POLK COUNTY RECORDERS OFFICE; THENCE N89°43'17"W ALONG SAID NORTH LINE, 1331.49 FEET; THENCE S85°41'56"W ALONG SAID NORTH LINE, 33.62 FEET; THENCE N00°04'19"W, 91.59 FEET TO THE POINT OF BEGINNING, CONTAINING 2.68 ACRES.
ALL SUBJECT TO AND TOGETHER WITH ANY AND ALL EASEMENTS AND RESTRICTION OF RECORD.
SAID TRACT CONTAINS 44.19 ACRES (1,825,116 SQUARE FEET) MORE OR LESS.

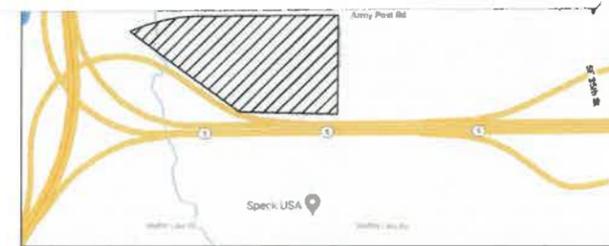
ADDRESS:
NO ADDRESS AT TIME OF SURVEY

OWNER:
SBBP JV21 LLC
5485 MILLS CIVIC PARKWAY, SUITE 2235
WEST DES MOINES, IOWA 50266

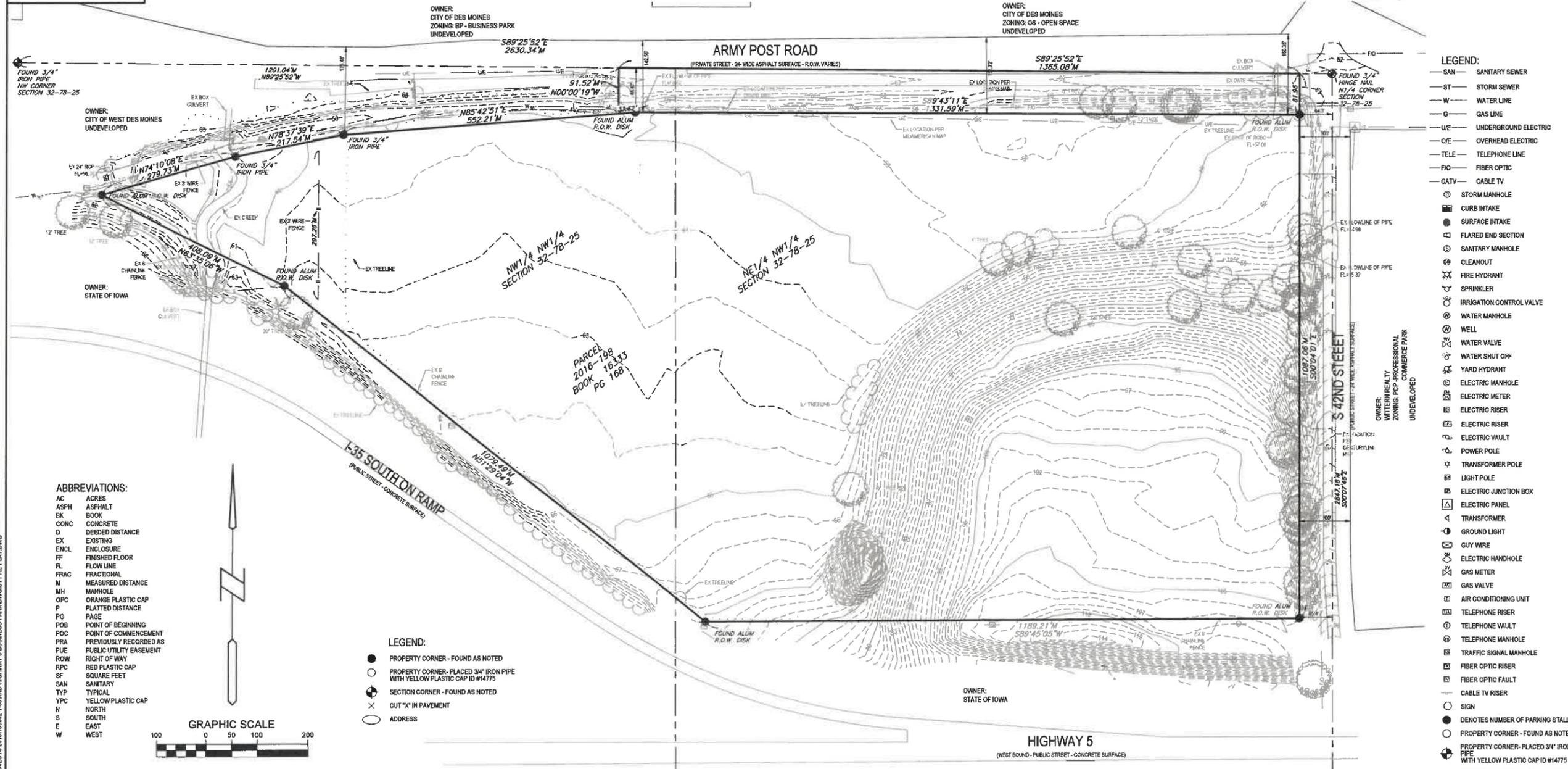
PREPARED FOR:
RYAN WEDERSTEIN

ZONING:
SOUTH BRANCH BUSINESS PARK PUD WITH
UNDERLYING BUSINESS PARK AND GENERAL
INDUSTRIAL ZONING

COMPREHENSIVE PLAN:
BP - BUSINESS PARK



VICINITY MAP
SCALE: 1" = 1,000'



- ### LEGEND:
- SAN - SANITARY SEWER
 - ST - STORM SEWER
 - W - WATER LINE
 - G - GAS LINE
 - UE - UNDERGROUND ELECTRIC
 - OE - OVERHEAD ELECTRIC
 - TELE - TELEPHONE LINE
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 - CATV - CABLE TV
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 - ⊠ - CURB INTAKE
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 - - DENOTES NUMBER OF PARKING STALLS
 - ⊙ - PROPERTY CORNER - FOUND AS NOTED
 - ⊙ - PROPERTY CORNER - PLACED 3/4" IRON PIPE WITH YELLOW PLASTIC CAP ID #14775
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 - ⊙ - CUT "X" IN PAVEMENT
 - ⊙ - ADDRESS

ABBREVIATIONS:

- AC - ACRES
- ASPH - ASPHALT
- BK - BOOK
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UTILITY NOTE:

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I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

SIGNED: *Larry D. Hyler* DATE: 1-13-2022
LARRY D. HYLER, P.L.S. 14775
LICENSE RENEWAL DATE: DEC. 31, 2022 1 AND 2
PAGES OR SHEETS COVERED BY THIS SEAL:

REFERENCE NUMBER:

DRAWN BY:
BK

CHECKED BY:
LH

REVISION DATE:
09-15-2021 CITY#1
10-25-2021 CITY#2
12-23-2021 CITY#3
01-10-2022 CITY#4

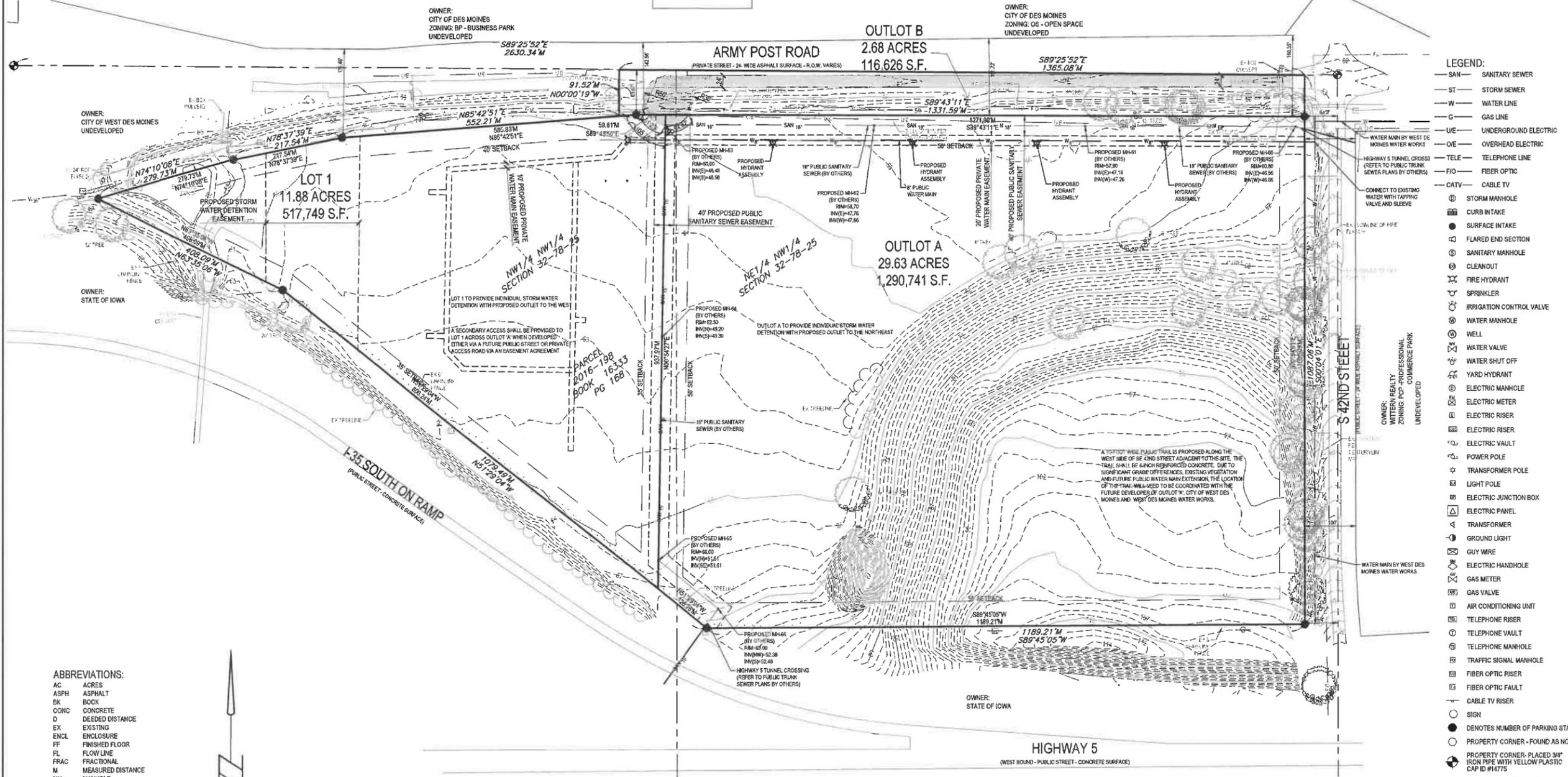
PROJECT NUMBER:
190562

SHEET NUMBER:
1 OF 2

SOUTH BRANCH BUSINESS PARK
SE 42ND STREET

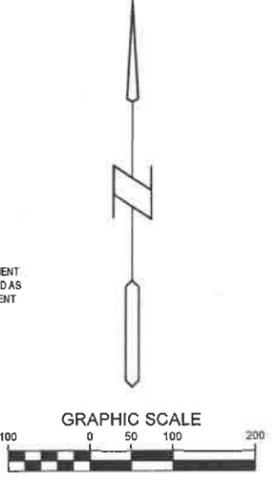
PRELIMINARY PLAT - EXISTING

SOUTH BRANCH BUSINESS PARK PRELIMINARY PLAT - PROPOSED



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SURVEY NOTES:
 THIS PLAT HAS AN ERROR OR CLOSURE OF LESS THAN 1.0 FEET IN 10,000.0 FEET. EACH LOT WITHIN THIS PLAT HAS AN ERROR OF CLOSURE OF LESS THAN 1.0 FEET IN 5,000.0 FEET.
 ALL CORNERS HAVE BEEN PLACED WITH A 3/4 INCH IRON PIPE UNLESS NOTED OTHERWISE. ALL CORNERS PLACED HAVE A YELLOW PLASTIC IDENTIFICATION CAP NO. 14775.
 ALL BEARINGS ARE BASED ON AN ASSUMED MERIDIAN FOR COMPUTATION PURPOSES.
 OUTLOT "A" IS UNBUILDABLE AND SHALL BE REPLATTED FOR FUTURE DEVELOPMENT BY THE OWNER/DEVELOPER.
 OUTLOT "B" IS UNBUILDABLE TO BE USED FOR STREET ACCESS (ARMY POST ROAD) TO THE DEVELOPMENT. OWNED BY THE CITY OF WEST DES MOINES.

ADDRESS:
 NO ADDRESS AT TIME OF SURVEY

OWNER:
 SBPP JV21 LLC
 5465 MILLS CIVIC PARKWAY, SUITE 235
 WEST DES MOINES, IOWA 50266

PREPARED FOR:
 RYAN WIEDERSTEIN

ZONING:
 SOUTH BRANCH BUSINESS PARK PUD WITH UNDERLYING BUSINESS PARK AND GENERAL INDUSTRIAL ZONING

COMPREHENSIVE PLAN:
 BP - BUSINESS PARK

BULK REGULATIONS:

SETBACKS - LOT 1 (GENERAL-INDUSTRIAL)	SETBACKS - OUTLOT A (BUSINESS PARK)
WEST, INTERSTATE 35 = 35 FEET	WEST AND INTERIOR = 50 FEET
NORTH, ARMY POST ROAD = 40 FEET	NORTH, ARMY POST ROAD = 50 FEET
EAST AND INTERIOR = 35 FEET	EAST, SE 42ND STREET = 50 FEET
SOUTH, HIGHWAY 5 = 35 FEET	SOUTH, HIGHWAY 5 = 50 FEET

UTILITY NOTE:
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Bishop Engineering
 "Planning Your Successful Development"
 3501 104th Street
 Des Moines, Iowa 50322-3825
 Phone: (515) 276-4467 Fax: (515) 276-0217
 Established 1959

**SOUTH BRANCH BUSINESS PARK
 SE 42ND STREET
 PRELIMINARY PLAT - PROPOSED**

REFERENCE NUMBER:	
DRAWN BY:	BK
CHECKED BY:	LH
REVISION DATE:	09-15-2021 CITY#1 10-25-2021 CITY#2 12-23-2021 CITY 01-10-2022 CITY
PROJECT NUMBER:	190562
SHEET NUMBER:	2 OF 2

1/12/2022 3:33:02 AM MILANO PROJECTS 2018\190562 I-35 AND HIGHWAY 5 BUSINESS PARK\DWG1 PRE PLAT.DWG

**CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION**

Meeting Date: January 18, 2022

ITEM: Microsoft DSM 40, 11100 Booneville Road – Approve Major Modification to Site Plan for a revised site logistics plan – Microsoft Corporation – MaM-005344-2021

Resolution: Approval of Major Modification to Site Plan

Background: Drew Heinzmann with Turner Construction, on behalf of the applicant, and property owner, Microsoft Corporation, requests approval of a Major Modification to Site Plan for the approximately 153-acre property located at 11100 Booneville Road. The applicant requests approval of a revised site logistics plan for the construction of Microsoft data center buildings on the site. The revision includes additional tents and a new location for the main construction offices on the west side of the site. Also, additional temporary roads were added to the plan.

Staff Review & Comment:

- **Financial Impact:** No City financial impacts related to this revised site logistics plan other than staff time to review the request.
- **History:** The site plan for development of the first data center building on this site was approved by the City Council on June 21, 2021. That approval included review of the site logistics plan for the site.
- **Key Development Aspects:**
 - **Access:** During construction of the data center site, access to the site will be from Booneville Road on the north and from Raccoon River Drive on the south, in the interim. When Grand Avenue is extended on the south side of the site, access to the site on the south side will then be from Grand Avenue. The City of West Des Moines has an agreement with Microsoft, in coordination with the railroad, to allow for construction traffic to cross the railroad north of Raccoon River Drive to access the site.
- **Traffic Impact Study Findings:** No traffic study was completed for this request.
- **Vesting of Entitlement:** Per City Code, entitlement (approval to construct or implement) shall remain in effect so long as substantial site work has progressed beyond grading and completion of structural foundations and twenty-five percent (25%) of the total building area has occurred above grade within twenty-four (24) months of the effective date of the approval, unless a greater time period is authorized at time of the original entitlement, or by approval of an extension of the original entitlement. It is the responsibility of the developer to be aware of this deadline and request an extension of the approval prior to the expiration date.

Outstanding Issues: There are no outstanding issues.

Recommendation: Approve the Major Modification to Site Plan.

Plan and Zoning Commission Action:

Date: January 10, 2022
 Vote: 5-0, for approval with Commissioners Drake and Davis absent
 Recommendation: Approval of Major Modification to Site Plan

Lead Staff Member: Brian Portz

Approval Meeting Dates:

Plan and Zoning Commission	January 10, 2022
City Council	January 18, 2022

Staff Report Reviews:

Plan & Zoning Commission	<input checked="" type="checkbox"/> Development Coordinator (or) <input checked="" type="checkbox"/> Director	<input checked="" type="checkbox"/> Legal Department
City Council	<input checked="" type="checkbox"/> Director <input type="checkbox"/> Appropriations/Finance	<input checked="" type="checkbox"/> Legal Department <input checked="" type="checkbox"/> Agenda Acceptance 

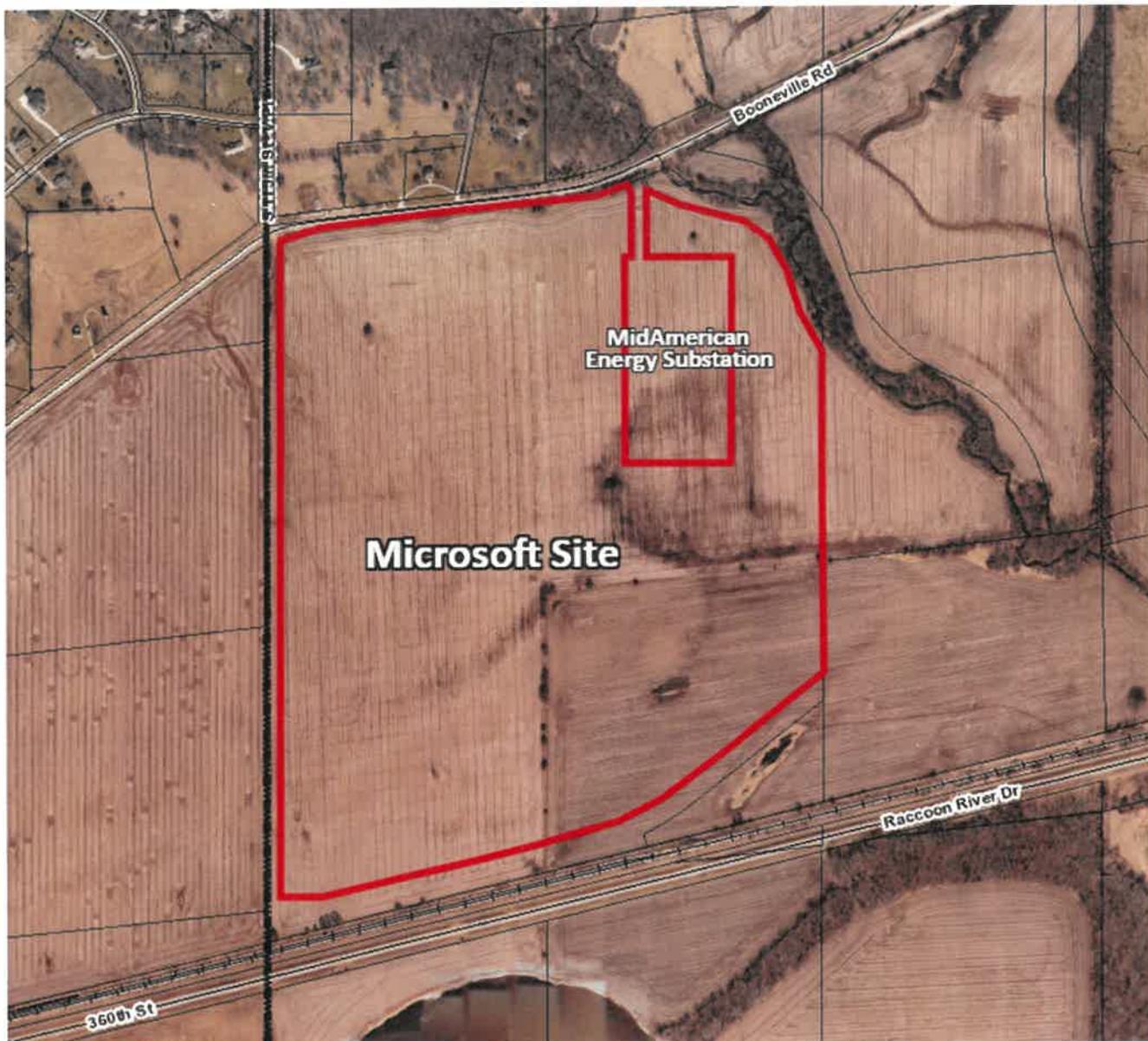
Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	n/a
Date(s) of Mailed Notices	n/a

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning
Date Reviewed	10/18/21
Recommendation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Split

Location Map



**A RESOLUTION OF THE PLAN AND ZONING COMMISSION
NO. PZC-22-007**

WHEREAS, pursuant to the provisions of Title 9, Zoning of the West Des Moines Municipal Code, the applicant and property owner, Microsoft Corporation, requests approval of a Major Modification to Site Plan for property located at 11100 Booneville Road as depicted on the location map included in the staff report. The applicant requests approval of a revised site logistics plan for construction of data center buildings on the site; and

WHEREAS, the Major Modification request complies with the findings stated in the applicable provisions of Title 9, the Comprehensive Plan and City Code.

NOW THEREFORE, the Plan and Zoning Commission of the City of West Des Moines recommends the City Council approve the Major Modification (MaM-005344-2021), subject to compliance with all the conditions of approval as stated in the staff report, including conditions added at the meeting, and attached hereto as Exhibit "A", if applicable.

PASSED AND ADOPTED on January 10, 2022.



Erica Andersen, Chair
Plan and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting on January 10, 2022, by the following vote:

AYES: ANDERSEN, CONLIN, COSTA, CROWLEY, HATFIELD

NAYS:

ABSTENTIONS:

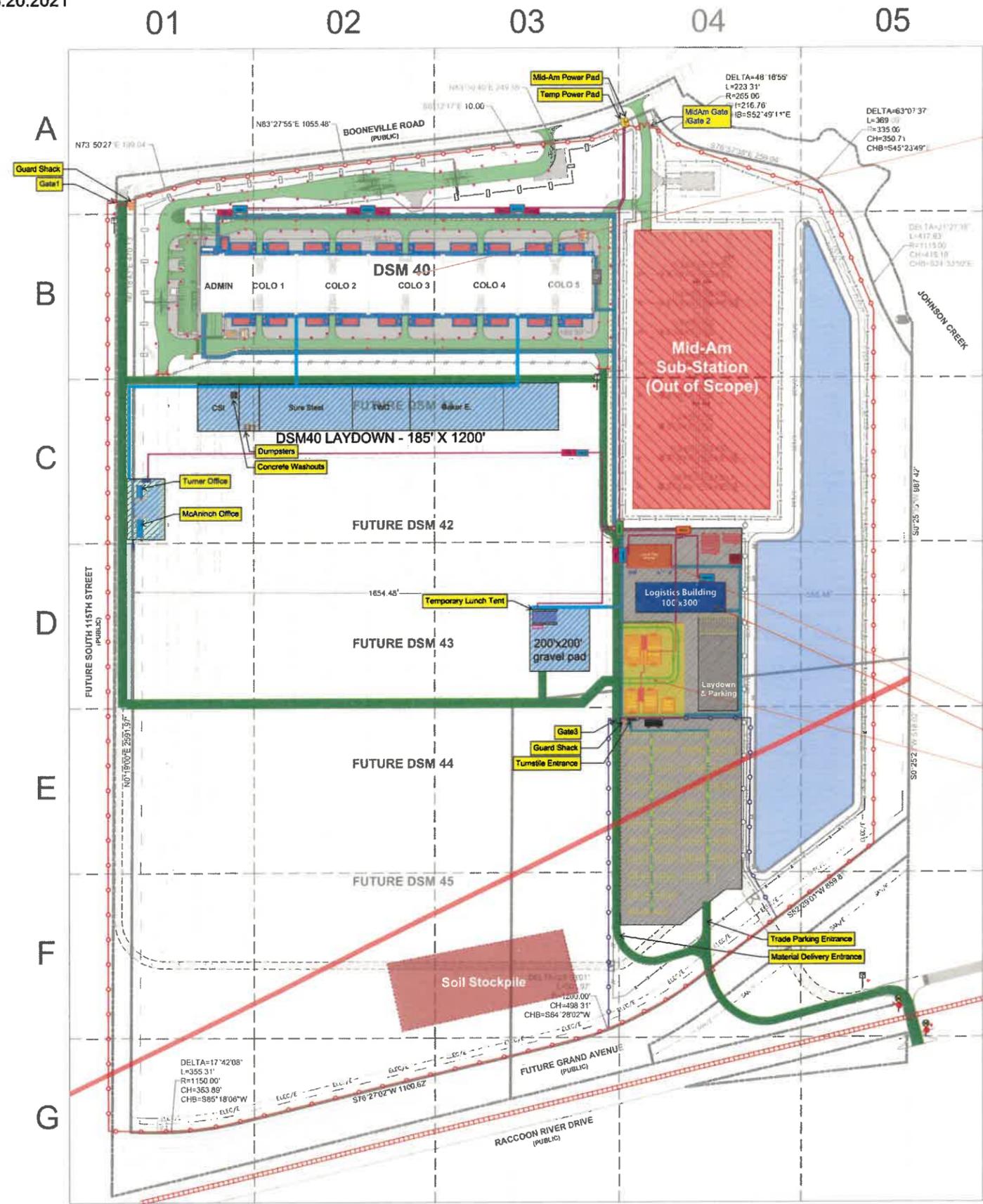
ABSENT: DAVIS, DRAKE

ATTEST:


Recording Secretary

TURNER DSM40 PHASE 1&2 LOGISTICS PLAN

08.20.2021



PLANS INCLUDED ARE FOR ILLUSTRATIVE PURPOSES ONLY – APPROVED PLANS ON FILE WITH THE CITY



LEGEND

- TEMP ROADS- 30' WIDE
- PHASE 1 WALKING PATH
- PHASE 2 WALKING PATH
- 200' X 200' GRAVEL PAD W/ 40' X 80' CONCRETE PAD FOR TEMP TENT
- EARLY TRADE PARKING
- SWPPP Fencing
- PHASE 1 TEMP CONSTRUCTION FENCE
- Barricades
- =Asphalt Paving
- =Stone Pad
- =Concrete Pad
- Temporary Tent
- Permanent Building
- Temporary Tents

BURNS MEDONNELL

9400 West Parkway
Kansas City, MO 64114
www.burnsmcd.com

DSM 40 DATA CENTER

11100 BOONEVILLE ROAD
WEST DES MOINES, IA

Design	MM / TC
Drawn	MM / TC
Checked	MM
Date	20 MAR 2021
MSD Project No.	12088
MSD Project No.	12088
U.S. Project No.	12088

MICROSOFT

DSM 40 DATA CENTER

11100 BOONEVILLE ROAD
WEST DES MOINES, IA

Design Manager	OSHO DEBNEY
Lead Designer	OSHO DEBNEY
Site Survey / Landmarks / Technical Lead	OSHO DEBNEY
Asphalt & Structural Technical Lead	OSHO DEBNEY
AutoCAD / Revit / Project / Technical Lead	OSHO DEBNEY
Building Information Systems / Technical Lead	OSHO DEBNEY
Structural Technical Lead	OSHO DEBNEY
Specialty Process Management / Technical Lead	OSHO DEBNEY
Construction Management / Technical Lead	OSHO DEBNEY
Security Design Manager	FRED HARRIS

DESIGN TEAM

Site Engineer	RYAN HANDELY / NAVIX ENGINEERING
Structural Engineer	BRYAN JEMAL / B&B
Architectural Lead	NEAL CLEMENTS / B&B
Mechanical Engineering Lead	OTIS GOSCH / B&B
Plumbing Engineering Lead	OSHO DEBNEY / B&B
Fire Protection Engineering Lead	ADAM GEORFF / B&B
MEP Engineering Lead	JAMES MCKENNA / B&B
Electrical Engineering Lead	OSHO DEBNEY / B&B
Instrumentation / Control Engineering Lead	OSHO DEBNEY / B&B
Security Systems Engineering Lead	DANIEL PUTNAM / ROSSBUR

No.	Date	Description
1	02.08.2021	ISSUED FOR REVIEW
2	03.02.2021	ISSUED FOR REVIEW
3	03.08.2021	ISSUED FOR PERMIT
4	03.15.2021	CITY OF WEST DES MOINES SUBMITTAL #1
5	03.22.2021	CITY OF WEST DES MOINES SUBMITTAL #2
6	03.29.2021	CITY OF WEST DES MOINES SUBMITTAL #3
7	04.05.2021	CITY OF WEST DES MOINES SUBMITTAL #4
8	04.12.2021	CITY OF WEST DES MOINES SUBMITTAL #5
9	04.19.2021	CITY OF WEST DES MOINES SUBMITTAL #6
10	04.26.2021	ISSUE FOR CONSTRUCTION

Section Key Plan

Star Code

CONFIDENTIAL - DO NOT DISCLOSE. This document is exempt from public disclosure under the Public Disclosure Act and Uniform Trade Secrets Act.

Package

CORE & SHELL

Sheet Title/Number

CIVIL SITE IMPROVEMENTS PLAN OVERALL

DSM40-C-C1-01

Prepared by: Brian Portz, City of West Des Moines Development Services Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620

When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, APPROVING A MAJOR MODIFICATION TO SITE PLAN FOR A REVISED SITE LOGISITICS PLAN

WHEREAS, pursuant to the provisions of Title 9, Zoning of the West Des Moines Municipal Code, applicant and property owner, Microsoft Corporation, requests approval of the Major Modification for that property located at 11100 Booneville Road and legally described in attached Exhibit 'B' to allow a revised site logistics plan for construction of data center buildings on the property; and

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, the Major Modification complies with findings stated in the applicable provisions of Title 9, Chapter 1, Subsection 8, the Comprehensive Plan and City Code; and

WHEREAS, on January 10, 2022, the Plan and Zoning Commission recommended to the City Council, by a 5-0 vote, for approval of the Major Modification to Site Plan; and

WHEREAS, on this day the City Council held a duly noticed meeting to consider the application for the Major Modification.

NOW, THEREFORE, The City Council does approve the Major Modification (MaM-005344-2021), subject to compliance with all of the conditions of approval, including any conditions added at the meeting, attached hereto as Exhibit "A". Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on January 18, 2022.

Russ Trimble, Mayor

ATTEST:

Ryan Jacobson, City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on January 18, 2022, by the following vote.

Exhibit A: Conditions of Approval

1. No conditions of approval

Exhibit B: Legal Description

LOT 1, GINGER WEST PLAT 1, AN OFFICIAL PLAT WITHIN
THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA