CITY OF WEST DES MOINES

COUNCIL AGENDA

date: April 1, 2024 **time:** 5:30 P.M.

CITY MANAGER......TOM HADDEN
CITY ATTORNEY.....GRETA TRUMAN
CITY CLERK....RYAN JACOBSON
DEPUTY CITY CLERK...JULIUS ARRINGTON

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: 770 046 515#

- 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. Neighborhood Finance Corporation Presentation
 - b. West Des Moines Chamber of Commerce Update
- 4. Consent Agenda
 - a. Motion Approval of Minutes of March 18, 2024 and March 26, 2024 Meetings
 - b. Motion Approval of Bill Lists
 - c. Motion Approval of Liquor Licenses:
 - T&K Ventures, LLC d/b/a Early Bird, 9250 University Avenue, Suite 107 - Class C Retail Alcohol License with Outdoor Service - Renewal
 - 2. El Rey Corporation d/b/a El Rey Burritos, 1310 Grand Avenue Class C Retail Alcohol License Renewal
 - Git-N-Go Convenience Stores, Inc. d/b/a Git-N-Go Convenience Store #4, 1325 Grand Avenue - Class B Retail Alcohol License - Renewal
 - 4. Historic Valley Junction Foundation d/b/a Historic Valley Junction Foundation, 137 5th Street Eight-Month Special Class C Retail Alcohol License with Outdoor Service New
 - LEROY'S PLACE, LLC d/b/a LeRoy's Place, 4825 EP True Parkway, Suite 112 - Class C Retail Alcohol License with Outdoor Service - Renewal

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6. Miranda Brothers Corporation d/b/a Mi Patria, 1410 22nd Street - Class C Retail Alcohol License - Renewal

- 7. Jai Jai, LLC d/b/a Mills Grocery & Liquor, 6630 Mills Civic Parkway, Suite 3110 Class E Retail Alcohol License Renewal
- West Tower Entertainment, LLC d/b/a Prime and Providence, 595 South 60th Street, Suite 100 - Class C Retail Alcohol License with Outdoor Service and Catering Privileges - New
- Tori's Angels Foundation d/b/a Tori's Angels Foundation,
 4000 Turnberry Drive Five Day Special Class C Retail
 Alcohol License for Private Event on April 11, 2024
- Wall to Wall, LLC d/b/a Wall to Wall Wine and Spirits, 375
 South Jordan Creek Parkway Class C Retail Alcohol License - New
- d. Motion Approval of Order for Violation of Alcohol Laws
- e. Motion Approval of Tobacco Permit
- f. Motion Approval of Extended Sound Permits Wellman's Pub & Rooftop, 597 Market Street
- g. Motion Approval of Parking on School Property Grass Valley High School Commencement Ceremony, May 26, 2024
- h. Motion Approval of Agreement with Trees Forever for Planting Trees on City Property
- i. Motion Approval of Artist Agreements 2024 Art on the Campus
- j. Motion Approval of Amendment No. 1 to Professional Services
 Agreement Prairie View Drive and Ashworth Road Intersection
 Improvements
- k. Motion Approval of Purchase of Stream Credits (McCorkle Stream Mitigation Bank) Mills Civic Parkway, South 91st Street to South Grand Prairie Parkway
- I. Resolution Approval of Interfund Transfers
- m. Resolution Approval of Revised Petty Cash Levels
- n. Resolution Establish Public Hearing 2024-25 FY Operating and Capital Budget
- o. Resolution Approval of Professional Services Agreement Fire Administration Building Exterior Improvements
- p. Resolution Approval of Resolutions of Support for Housing Tax Credit Program Applications to the Iowa Finance Authority:
 - 1. Hubbell Realty Company
 - Newbury Living
- q. Resolution Approval of Extension of Entitlement The Pines at Glen Oaks
- r. Resolution Approval and Acceptance of Property Interests:
 - 1. Mills Civic Parkway Widening, South 81st Street to South 88th Street
 - Valley Junction Alley Improvements, Phase 8
- s. Resolution Approval and Acceptance of Settlement Agreement Fredrick and Lynne Bell
- t. Proclamation Approval of Proclamations:
 - 1. Fair Housing Month, April 2024
 - 2. National Library Week, April 7-13, 2024
 - 3. National Public Safety Telecommunicators Week, April 14-20, 2024

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5. Old Business

a. Amendment to City Code - Title 9 (Zoning), Chapter 5 (Agricultural/Open Space and Residential Zoning District) and Chapter 6 (Commercial, Office, and Industrial Zoning District) - Modify Regulations Pertaining to Uses Permitted in the Open Space Zoning District and Amusement and Recreational Service Uses in Non-Residential Zoning Districts - City Initiated (Continued from October 16, 2023, November 20, 2023, December 4, 2023, January 16, 2024, February 5, 2024, and March 4, 2024)

1. Ordinance - Approval of Second Reading

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

- a. Eagle Brook, south of Veterans Parkway and east of SE 35th Street Amend the Zoning Map to Establish R-1 Single Family Residential Zoning Eagle Brook, LLC
 - 1. Ordinance Approval of First Reading
- Amendment to City Code Title 9 (Zoning), Chapter 6 (Commercial, Office and Industrial Zoning District) - Modify Land Uses Permitted in the Business Park, General Industrial, and Light Industrial Zoning Districts - Spraytec Fertilizers, LLC
 - 1. Ordinance Approval of First Reading
- Sale of City-Owned Property Locally Known as 1205 and 1207 Locust Street -City Initiated
 - 1. Resolution Approval of Sale of Property to Greater Des Moines Habitat for Humanity
- d. 2023 Parking Lot Repair Program City Initiated
 - 1. Resolution Approval of Plans and Specifications
 - 2. Motion Receive and File Report of Bids
 - 3. Resolution Award Contract
- e. Valley Junction Alley Improvements, Phase 8 City Initiated
 - 1. Resolution Approval of Plans and Specifications
 - 2. Motion Receive and File Report of Bids
 - 3. Resolution Award Contract
- f. 2023 Pavement Markings and On-Street Bike Markings Program City Initiated
 - 1. Resolution Approval of Plans and Specifications
 - 2. Motion Receive and File Report of Bids
 - 3. Resolution Award Contract

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7. New Business

 South Branch Business Park Plat 2, southwest corner of SE 42nd Street and SE Army Post Road - Acceptance of Surety and Approval of Final Plat to Create Three Lots for Industrial Development - SBBP JV21, LLC

- Resolution Acceptance of Surety and Approval and Release of Final Plat
- b. 2024-25 FY Hotel/Motel Tax Allocations City Initiated
 - 1. Motion Approval of Subcommittee Recommendation
- c. Amendment to City Code Title 6 (Motor Vehicles and Traffic), Chapter 6 (Parking Authorized to Remove) Add the Power to Remove Illegally Parked Vehicles on Public/City Owned Parking Lots by the Police Department City Initiated
 - 1. Ordinance Approval of First Reading
- d. Amendment to City Code Title 6 (Motor Vehicles and Traffic), Chapter 9
 (Traffic Schedules), Section 5 (No Parking Zones) Allow Parking on North Side
 of Street and Remove Parking on South of Street Cedar Drive, Woodland
 Avenue East to Woodland Avenue West City Initiated
 - 1. Ordinance Approval of First Reading
- 8. Receive, File and/or Refer
- 9. 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.

West Des Moines City Council Proceedings Monday, March 18, 2024

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, March 18, 2024 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 Hudson, second by Trevillyan approve the agenda as presented.

Vote 24-091: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

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

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

Clint Torp, Director of Operations for the Des Moines International Airport, expressed appreciation to the City for its support of their terminal project, and he presented a plaque to the City in recognition of its support.

Greg Edwards, President and CEO of the Greater Des Moines Convention and Visitors Bureau, along with Trina Flack, Vice President of Sales, and Brock Konrad, Vice President of Marketing, presented an update on the organization's activities over the past year and their outlook for the coming year.

The Mayor and Council expressed appreciation to the Greater Des Moines Convention and Visitors Bureau for the presentation and for their efforts in promoting tourism to the Des Moines metropolitan area, which generates a significant economic impact for all the metro communities.

Mayor Trimble expressed his condolences for the recent passing of Jesse Hilsabeck, Westcom Dispatcher, and he requested that those in attendance observe a moment of silence for Mr. Hilsabeck.

Council member Hardman attended a meeting of the West Des Moines Chamber Foundation, where discussion was held on the organization's bylaws and governance structure. She also reported that she and Mayor Trimble attended a ceremony where a West Des Moines small business, Lola's Fine Hot Sauce, was presented the award for Small Business of the Week by U.S. Senator Joni Ernst.

On Item 4. Consent Agenda.

It was moved by Hardman, second by McKinney to approve the consent agenda as presented.

- a. Approval of Minutes of March 4, 2024 Meeting
- b. Approval of Bill Lists
- c. Approval of Liquor Licenses:
 - 1. Apres Bar Co, LLC d/b/a Apres Bar Co, 1400 Buffalo Road Five Day Class C Retail Alcohol License for Private Event on April 2, 2024
 - 2. BDA3sons, LLC d/b/a Chicken Coop Sports Bar and Grill, 5906 Ashworth Road Class C Retail Alcohol License Renewal
 - 3. Chipotle Mexican Grill of Colorado, LLC d/b/a Chipotle Mexican Grill, 1551 Valley West Drive, Suite #224 Class C Retail Alcohol License with Outdoor Service Renewal
 - 4. Brew DMC, LLC d/b/a Hi-Fi Brew Lounge, 103 South 11th Street Class C Retail Alcohol License with Outdoor Service and Catering Privileges New
 - 5. Daniel & Phillip, Inc. d/b/a Irina's Steak & Seafood, 650 South Prairie View Drive, Suite 100 Class C Retail Alcohol License Renewal
 - 6. MLT Hospitality, LLC d/b/a The Pelican Post Bar & Grille, 265 50th Street Class C Retail Alcohol License with Outdoor Service Renewal
 - 7. Hy-Vee, Inc. d/b/a The Ron Pearson Center, 5820 Westown Parkway Class C Retail Alcohol License with Catering Privileges Renewal
 - 8. 6K Enterprises, LLC d/b/a Terra Cafe, 2800 University Avenue, Suite 400 Class C Retail Alcohol License with Outdoor Service and Catering Privileges Renewal
 - 9. Carson Advertising, Inc. d/b/a Vista Pub, 7205 Vista Drive, #116 Class C Retail Alcohol License with Outdoor Service Renewal
 - 10. Wasabi Group Inc. d/b/a Wasabi, 9500 University Avenue, Suite 2101 Class C Retail Alcohol License with Outdoor Service Renewal
 - 11. W West Investments, LLC d/b/a Wellmans West, 597 Market Street Class C Retail Alcohol License with Outdoor Service Renewal
 - 12. W West Investments, LLC d/b/a Wellman's West Rooftop, 597 Market Street (Rooftop) Class C Retail Alcohol License with Outdoor Service Renewal
 - 13. W2005/Fargo Hotels (Pool C) Realty, LP d/b/a West Des Moines Residence Inn, 160 South Jordan Creek Parkway Special Class C Retail Alcohol License Renewal
- d. Approval to Sell Surplus City Equipment
- e. Approval of Agreement Park Security Services
- f. Approval of Contract Southwoods Park Singletrack Trail Construction, Phase 2
- g. Approval of Amendment No. 1 to Professional Services Agreement Pearson Park North and South Bridge Replacement
- h. Approval of Change Order #1 Digital Enterprise Conduit Deployment Segment 4, Phase 4

- i. Approval of Contract for Office Furniture Law Enforcement Center Garage Conversion and HVAC Improvements
- j. Approval of Contract Waiver with Ahlers & Cooney, P.C. Regarding Waukee Community School District
- k. Order Construction 2024 HMA Resurfacing Program
- 1. Approval of Professional Services Agreement Supplemental Construction Observation Services
- m. Approval of Vacation Request for Sanitary Sewer Easement and Approval and Acceptance of a New Sanitary Sewer Easement West Bank, 3330 Westown Parkway
- n. Approval of Termination of Development Agreement (Property Improvement Fund and Regulatory Compliance Fund) PREAM, LLC and Junction Development Catalyst, LLC
- o. Establish Consultation Meeting and Public Hearing Ruthenium Urban Renewal Area
- p. Approval and Acceptance of Property Interests:
 - 1. Mills Civic Parkway, Sugar Creek and Fox Creek Crossings
 - 2. Mills Civic Parkway Widening, South 81st Street to South 88th Street

Vote 24-092: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 5(a) Midtown Redevelopment, 1221, 1245, and 1261 8th Street - Amend the Planned Unit Development (PUD) Ordinance to Designate and Regulate Multi-Use Medium Land Use for the Development Parcel(s) for Midtown Redevelopment PUD, initiated by Keystone Phase II, LLC

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

Vote 24-093: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

The City Clerk read the preamble to the ordinance.

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

Vote 24-094: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

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

Vote 24-095: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 5(b) Amendment to City Code - Title 7 (Public Ways and Property), Chapter 1 (Streets, Sidewalks and Alleys), Section 2 (Definitions) - Add Definitions of Abutting Property Owner and Right-of-Way to Help Clarify the Responsibility of the Property Owner which Abuts Public Right-of-Way, initiated by the City of West Des Moines

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

Vote 24-096: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

The City Clerk read the preamble to the ordinance.

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

Vote 24-097: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

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

Vote 24-098: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 5(c) Browns Woods Hollow Plat 2, SE Hollow Court west of Veterans Parkway - Acceptance of Surety and Approval and Release of Final Plat to Create 18 Lots for Single-Family Development, One Outlot for Wetlands, One Lot for Parkland, and Two Street Lots, initiated by Browns Woods, LLC

It was moved by Hudson, second by McKinney to adopt Resolution - Acceptance of Surety and Approval and Release of Final Plat.

Council member Loots inquired why the applicant is requesting the City accept surety with the approval of this final plat and what is the justification for a waiver to place utilities in the front yard.

Lynne Twedt, Development Services Director, noted this type of surety request is standard practice for cases like these, where challenges cause a delay in the installation of public improvements, but the surety allows the developer to get the final plat approved, which creates the lots so they can begin selling them and recouping costs. She also stated the Council already granted the utility placement waiver for Browns Woods Hollow Plat 1, so this request is to carry the same concept through Browns Woods Hollow Plat 2.

Keven Crawford, Cooper Crawford and Associates, speaking on behalf of the applicant, explained the site poses some topographic challenges, due to the wetlands on the southwest corner of the site, therefore they are requesting to allow utilities in the front of the lots. He noted the surety is only covering the handicap ramps which have been installed but needed a repair completed once the weather warms up enough that it is suitable for pouring concrete.

Council member Trevillyan expressed concerns that surety is not always sufficient to cover the full cost of public improvements, and he stated his preference would be to make it standard practice for the City to execute an agreement and waiver for public improvements.

Ms. Twedt noted this item has already gone through the process, but she suggested staff could research the pros and cons between obtaining surety and executing agreements and waivers, so the Council could determine which method to use going forward.

Mayor Trimble agreed with Ms. Twedt's suggestion, and he requested that staff bring the matter to the appropriate Council Subcommittee for further discussion.

Vote 24-099: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(a) Mayor Trimble indicated this was the time and place for a public hearing to consider Issuance of Not to Exceed \$13,000,000 General Obligation Bonds (ECP), initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 5, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Loots, second by Trevillyan to adopt Resolution - Instituting Proceedings to Take Additional Action.

Vote 24-100: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(b) Mayor Trimble indicated this was the time and place for a public hearing to consider Issuance of Not to Exceed \$700,000 General Obligation Bonds (GCP-1), initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 5, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Loots, second by Hardman to adopt Resolution - Instituting Proceedings to Take Additional Action.

Vote 24-101: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(c) Mayor Trimble indicated this was the time and place for a public hearing to consider Issuance of Not to Exceed \$700,000 General Obligation Bonds (GCP-2), initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 5, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Hardman, second by Trevillyan to adopt Resolution - Instituting Proceedings to Take Additional Action.

Vote 24-102: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(d) Mayor Trimble indicated this was the time and place for a public hearing to consider Issuance of Not to Exceed \$700,000 General Obligation Bonds (GCP-3), initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 5, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Loots, second by Trevillyan to adopt Resolution - Instituting Proceedings to Take Additional Action.

Vote 24-103: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(e) Mayor Trimble indicated this was the time and place for a public hearing to consider Issuance of Not to Exceed \$700,000 General Obligation Bonds (GCP-4), initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 5, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Trevillyan, second by Loots to adopt Resolution - Instituting Proceedings to Take Additional Action.

Vote 24-104: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(f) Mayor Trimble indicated this was the time and place for a public hearing to consider 2024 PCC Patching Program, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 1, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by McKinney, second by Loots to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to Brothers Concrete.

Vote 24-105: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(g) Mayor Trimble indicated this was the time and place for a public hearing to consider Pearson Park North and South Bridge Replacement, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 1, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Trevillyan, second by Loots to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to United Contractors, Inc.

Council member Trevillyan inquired what the anticipated completion date is for this project and whether both bridges will be done simultaneously or one after the other.

Ryan Penning, Parks and Recreation Director, stated the anticipated completion date is fall 2024, and he will look into the specific timing for each bridge and share his findings with the Council.

Vote 24-106: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(h) Mayor Trimble indicated this was the time and place for a public hearing to consider 2023 Sport Court Improvements, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 1, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Hudson, second by Loots to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to Concrete Connection, LLC.

Vote 24-107: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 6(i) Mayor Trimble indicated this was the time and place for a public hearing to consider 2023 Sewer Manhole Rehabilitation Program, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 1, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

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

It was moved by Hudson, second by Loots to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to Structured Solutions, LLC.

Vote 24-108: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 7(a) Porsche Des Moines, 7220 Lake Drive - Approval of Phased Site Plan to Allow Grading and Construction of Footings, Foundations, and Private Utilities, initiated by LBP Des Moines, LLC

It was moved by McKinney, second by Hudson to adopt Resolution - Approval of Phased Site Plan, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Vote 24-109: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 7(b) Raccoon River Greenway Boat Access, 104 South 1st Street - Approval of Site Plan to Allow Construction of Access to Raccoon River, initiated by the City of West Des Moines

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

Mayor Trimble noted this is a perfect example of how the City holds itself to the same standards for the development process as the private sector.

Council member Hudson commended the Parks and Recreation Department for their efforts in successfully obtaining grant funding for this project.

Vote 24-110: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

On Item 7(c) Issuance of \$15,945,000 General Obligation Bonds or Capital Loan Notes, Series 2024A, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Loots to adopt Resolution - Authorizing the Issuance and Levying a Tax.

Vote 24-111: Hardman, Hudson, Loots, McKinney, Trevillyan...5 yes Motion carried.

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

On Item 9 - Other Matters

Deputy City Manager Jamie Letzring stated a written legislative update was emailed to the Mayor and Council prior to tonight's meeting.

Council member Hudson wished a happy birthday to Mayor Trimble.

The meeting was adjourned at 6:37 p.m.

Respectfully submitted,	
Ryan T. Jacobson, CMC City Clerk	
ATTEST:	
Russ Trimble, Mayor	

March 26, 2024

West Des Moines City Council Proceedings Tuesday, March 26, 2024

Mayor Russ Trimble opened the special meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of West Des Moines City Hall on Tuesday, March 26, 2024 at 5:30 p.m. Council members present were: G. Hudson, D. Loots, and M. McKinney.

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

Vote 24-112: Hudson, Loots, McKinney...3 yes Motion carried.

On Item 3(a) Mayor Trimble indicated this was the time and place for a public hearing to consider FY 2024-2025 Proposed Property Tax Rate, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on March 15, 2024 in the Des Moines Register. Mayor Trimble asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Trimble asked if there were any public comments.

Janis Robinson, 1345 South 93rd Street, expressed concerns about how the total amount she pays in property taxes has increased in recent years.

M.J. Hoag, 413 2nd Street, spoke in opposition to a decrease in the City's property tax levy rate. He noted that only seven percent of respondents to the most recent citizen survey indicated they were dissatisfied with the overall value received for their tax dollars. He stated that a growing city equates to growing demands on the City's resources, and he expressed concerns that a property tax decrease could result in staff burnout and a decrease in the quality of City services.

Srijan Karim, 1225 28th Street, stated he chose to live in West Des Moines because of the high quality of City services, and he is concerned that a decrease in the property tax levy rate would not be sustainable in the run. He encouraged the Council, if they intend to decrease the property tax levy rate, to look into sustainable ways to increase other revenues that could help offset any decreases in property tax revenue. He noted the costs of goods and services are increasing due to inflation, and he expressed concerns that a property tax decrease could result in a decrease in the quality of City services.

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

The Mayor and Council expressed appreciation to the citizens that shared comments during tonight's public hearing, and they each expressed a desire to find the appropriate balance between providing property tax relief and continuing to provide high quality City services.

On Item 4. The Special Meeting Notice was Received and Filed.
The meeting was adjourned at 6:00 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: April 1, 2024

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	04/01/2024	\$ 1,382,379.94
EFT Claims	04/01/2024	\$ 870,261.01
End of Month & Off-Cycle	03/05/2024 to 04/14/2024	\$ 295,699.46

RECOMMENDATION: Move to approve Bill Lists as presented.

Lead Staff Member:	Tim Stiles, F	inance Director	
STAFF REVIEWS			
Department Director			
Appropriations/Finance			
Legal			
Agenda Acceptance	(A)		
PUBLICATION(S) (if appli	- DW	SUBCOMMITTEE REVIEW	V (if applicable)
	cable)		(ii applicable)
Published In		Committee	
Detec(s) Dublished		Date Reviewed	

Recommendation

City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement Batch Date: 04/01/2024

Туре	Date	Number Source	Рауее Name	Transaction Amount
Pank Ac	count: MR VEND	OR DISB - WB Vendor Disbursement		
Check	04/01/2024	332599 Accounts Payable	ABSOLUTE SERVING & INVESTIGATIONS	160,00
Check	04/01/2024	332600 Accounts Payable	ALL AUTO GLASS	430.00
Check	04/01/2024	332601 Accounts Payable	AMERICAN ABSTRACT & TITLE CO	350,00
Check	04/01/2024	332602 Accounts Payable	ASCHEMAN, PHILIP	675.00
Check	04/01/2024	332603 Accounts Payable	AUTOMATIC SYSTEMS CO	21,984.75
Check	04/01/2024	332604 Accounts Payable	AXON ENTERPRISES INC	9,096.00
Check	04/01/2024	332605 Accounts Payable	BELCH, ALEXANDER	128.00
Check	04/01/2024	332606 Accounts Payable	BIDDLE CONSULTING GROUP INC	2,195.00
Check	04/01/2024	332607 Accounts Payable	BOMGAARS SUPPLY INC	67.78
Check	04/01/2024	332608 Accounts Payable	BORMANN, DREW	128,00
Check	04/01/2024	332609 Accounts Payable	BOUND TREE MEDICAL LLC	3,791.95
Check	04/01/2024	332610 Accounts Payable	CANON FINANCIAL SERVICES INC	3,719.55
Check	04/01/2024	332611 Accounts Payable	CAPITAL SANITARY SUPPLY CO INC	6,020.37
Check	04/01/2024	332612 Accounts Payable	CAPPEL'S ACE HARDWARE	16.45
Check	04/01/2024	332613 Accounts Payable	CENTRALSQUARE TECHNOLOGIES- TRITECH SOFTWARE	16,607.34
Check	04/01/2024	332614 Accounts Payable	CHAD HITSMAN- EDGETECH SHARPENING	195.00
Check	04/01/2024	332615 Accounts Payable	CIRQUE WONDERLAND LLC	738.00
Check	04/01/2024	332616 Accounts Payable	CITY OF DES MOINES	617,546.50
Check	04/01/2024	332617 Accounts Payable	CLIVE POWER EQUIPMENT	910.10
Check	04/01/2024	332618 Accounts Payable	COMMSCOPE- COMSEARCH	1,210.00
Check	04/01/2024	332619 Accounts Payable	CONJUNCTION MEDIA	500.00
Check	04/01/2024	332620 Accounts Payable	CONSTRUCTION & AGGREGATE PRODUCTS INC	53.40
Check	04/01/2024	332621 Accounts Payable	CORY, TARRY	256.00
Check	04/01/2024	332622 Accounts Payable	CTI READY MIX LLC	384.00
Check	04/01/2024	332623 Accounts Payable	CULTUREALL INC	600.00
Check	04/01/2024	332624 Accounts Payable	D&K PRODUCTS	240.06
Check	04/01/2024	332625 Accounts Payable	DEYARMAN FORD INDIANOLA	5,461.69
Check	04/01/2024	332626 Accounts Payable	DINNER DELIGHTS	655.00
Check	04/01/2024	332627 Accounts Payable	DUSHANE DOES IT LLC	472.81
Check	04/01/2024	332628 Accounts Payable	EARL MAY SEED AND NURSERY	221.94
Check	04/01/2024	332629 Accounts Payable	EMBLEM ENTERPRISES INC	863.35

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City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement Batch Date: 04/01/2024

Туре	Date	Number Source	Payee Name	Transaction Amount
Check	04/01/2024	332630 Accounts Payable	FARNSWORTH GROUP INC	1,600.72
Check	04/01/2024	332631 Accounts Payable	FELD FIRE	1,906.92
Check	04/01/2024	332632 Accounts Payable	FERGUSON, JULIE	754.00
Check	04/01/2024	332633 Accounts Payable	FISHER & PAYKEL HEALTHCARE INC	322.73
Check	04/01/2024	332634 Accounts Payable	GALLS LLC	7,309_09
Check	04/01/2024	332635 Accounts Payable	GANNETTE IOWA - LOCAL IQ	2,282.90
Check	04/01/2024	332636 Accounts Payable	GRAINGER INC	77.26
Check	04/01/2024	332637 Accounts Payable	HAWKEYE TRUCK EQUIPMENT	880.00
Check	04/01/2024	332638 Accounts Payable	HQI HYDRAULICS	21.06
Check	04/01/2024	332639 Accounts Payable	HUGO ADAME - C & H ADAME S CONSTRUCTION	55.00
Check	04/01/2024	332640 Accounts Payable	HY VEE INC	57.94
Check	04/01/2024	332641 Accounts Payable	IOWA DEPARTMENT OF ADMIN SERVICES	3,810.00
Check	04/01/2024	332642 Accounts Payable	IOWA DEPARTMENT OF AGRICULTURE & LAND STEWARDSHIP	75.00
Check	04/01/2024	332643 Accounts Payable	J PETTIECORD INC	1,520.00
Check	04/01/2024	332644 Accounts Payable	JENSEN BUILDERS	132,613.35
Check	04/01/2024	332645 Accounts Payable	JOHNSON CONTROLS FIRE PROTECTION LP- IL	1,271.92
Check	04/01/2024	332646 Accounts Payable	LACINA, WENDY	234.00
Check	04/01/2024	332647 Accounts Payable	LANGUAGE LINE SERVICES	3,701.31
Check	04/01/2024	332648 Accounts Payable	LINDE GAS & EQUIPMENT INC	4,310.37
Check	04/01/2024	332649 Accounts Payable	LOFFREDO FRESH PRODUCE CO INC	12,894.15
Check	04/01/2024	332650 Accounts Payable	LOGOED APPAREL & PROMOTIONS	231.86
Check	04/01/2024	332651 Accounts Payable	LOWE'S HOME CENTER INC	4,077.23
Check	04/01/2024	332652 Accounts Payable	MARTIN MARIETTA MATERIALS INC	11,343.85
Check	04/01/2024	332653 Accounts Payable	MCCORKLE STREAM MITIGATION BANK	97,740.00
Check	04/01/2024	332654 Accounts Payable	McCROMETER INC	2,336.24
Check	04/01/2024	332655 Accounts Payable	MENARDS- CLIVE	1,535,30
Check	04/01/2024	332656 Accounts Payable	MERRITT COMPANY INC	320.00
Check	04/01/2024	332657 Accounts Payable	MIDWEST WHEEL	567.99
Check	04/01/2024	332658 Accounts Payable	N-EAR INC	15,854.04
Check	04/01/2024	332659 Accounts Payable	NATIONWIDE OFFICE CLEANERS LLC	5,042.64
Check	04/01/2024	332660 Accounts Payable	O'REILLY AUTOMOTIVE INC	38.46
Check	04/01/2024	332661 Accounts Payable	ONE SOLUTION FOUNDATION	7,500.00

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City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement Batch Date: 04/01/2024

Transaction Amount	Payee Name	Number Source	Date	Туре
128.00	PATTON , CHRIS	332662 Accounts Payable	04/01/2024	Check
21,288.30	PEPSI BEVERAGES COMPANY	332663 Accounts Payable	04/01/2024	Check
6,045.29	PMA ASSET MANAGEMENT LLC	332664 Accounts Payable	04/01/2024	Check
260.00	POLK COUNTY RECORDER	332665 Accounts Payable	04/01/2024	Check
217.00	POLK COUNTY RECORDER	332666 Accounts Payable	04/01/2024	Check
368.00	PREFERRED PEST CONTROL	332667 Accounts Payable	04/01/2024	Check
13,790.11	RDG PLANNING & DESIGN	332668 Accounts Payable	04/01/2024	Check
2,137.50	ROBERT HALF TECHNOLOGY	332669 Accounts Payable	04/01/2024	Check
214.25	SAFARILAND - DEFENSE TECHNOLOGY	332670 Accounts Payable	04/01/2024	Check
287.00	SCHEELS ALL SPORTS INC	332671 Accounts Payable	04/01/2024	Check
506.04	SHOTTENKIRK CHEVROLET	332672 Accounts Payable	04/01/2024	Check
65.00	SIGNARAMA URBANDALE	332673 Accounts Payable	04/01/2024	Check
81,764.09	SIMMONS PERRINE MOYER BERGMAN PLC	332674 Accounts Payable	04/01/2024	Check
264.00	SOCIETY FOR HUMAN RESOURCE MANAGEMENT	332675 Accounts Payable	04/01/2024	Check
145.20	SOUTHERN IOWA VENDING SERVICES	332676 Accounts Payable	04/01/2024	Check
20,00	SOUTHWEST POLK WATER SERVICE INC	332677 Accounts Payable	04/01/2024	Check
104.00	SPERFSLAGE, ADAM	332678 Accounts Payable	04/01/2024	Check
5,875.00	SPORTSMAN LC	332679 Accounts Payable	04/01/2024	Check
58.38	STAPLES CONTRACT & COMMERCIAL LLC	332680 Accounts Payable	04/01/2024	Check
200.00	STRATEGIC AMERICA INC	332681 Accounts Payable	04/01/2024	Check
19,963.93	SYMMETRY ENERGY SOLUTIONS LLC	332682 Accounts Payable	04/01/2024	Check
5,000.00	TBL VENTURES LLC	332683 Accounts Payable	04/01/2024	Check
11,372.52	TEKSYSTEMS INC	332684 Accounts Payable	04/01/2024	Check
442.00	THORPE, STACEY	332685 Accounts Payable	04/01/2024	Check
113,899.71	TRIMARK HOCKENBERGS EQUIPMENT & SUPPLY CO INC	332686 Accounts Payable	04/01/2024	Check
5,271.35	TRIMARK MARLINN LLC	332687 Accounts Payable	04/01/2024	Check
1,006.36	TRIVISTA COMPANIES INC - O'HALLORAN INTERNATIONAL	332688 Accounts Payable	04/01/2024	Check
237.20	TRIZETTO PROVIDER SOLUTIONS	332689 Accounts Payable	04/01/2024	Check
144.59	TRUE VALUE & V&S VARIETY STORE	332690 Accounts Payable	04/01/2024	Check
3,128.54	UNIFIED CONTRACTING SERVICES	332691 Accounts Payable	04/01/2024	Check
4,552.46	VERIZON WIRELESS	332692 Accounts Payable	04/01/2024	Check

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Bank Account: WB VENDOR DISB - WB Vendor Disbursement Batch Date: 04/01/2024

Туре	Date	Number Source	Payee Name	Transaction Amount
Check	04/01/2024	332693 Accounts Payable	VETTER EQUIPMENT	2,352.65
Check	04/01/2024	332694 Accounts Payable	VISION SERVICE PLAN	65.44
Check	04/01/2024	332695 Accounts Payable	WASTE MANAGEMENT OF IOWA	160.88
Check	04/01/2024	332696 Accounts Payable	WEST DES MOINES COMM SCHOOLS - FACILITIES	16,051.25
Check	04/01/2024	332697 Accounts Payable	WEST DES MOINES COMMUNITY SCHOOLS FOUNDATION	1,250.00
Check	04/01/2024	332698 Accounts Payable	WEX BANK	706.48
Check	04/01/2024	332699 Accounts Payable	PETTY CASH	8,340.34
Check	04/01/2024	332700 Accounts Payable	TREASURER STATE OF IOWA - STATE PUBLIC DEFENDER	95.20
Check	04/01/2024	332701 Accounts Payable	SECRETARY OF STATE	30.00
Check	04/01/2024	332702 Accounts Payable	AT&T MOBILITY	9,431.69
Check	04/01/2024	332703 Accounts Payable	CENTURYLINK	233.11
Check	04/01/2024	332704 Accounts Payable	CENTURYLINK	159.98
Check	04/01/2024	332705 Accounts Payable	CENTURYLINK	416.98
Check	04/01/2024	332706 Accounts Payable	MIDAMERICAN ENERGY	52.16
Check	04/01/2024	332707 Accounts Payable	MIDAMERICAN ENERGY	80.59
Check	04/01/2024	332708 Accounts Payable	MIDAMERICAN ENERGY	76.54
Check	04/01/2024	332709 Accounts Payable	MIDAMERICAN ENERGY	124.21
Check	04/01/2024	332710 Accounts Payable	MIDAMERICAN- DM-WDM TL	43.00
Check	04/01/2024	332711 Accounts Payable	SMART HOME EXTERIORS	6,624.00
Check	04/01/2024	332712 Accounts Payable	WHITEY EXTERIORS LLC	12,366.25
Check	04/01/2024	332713 Accounts Payable	IOWA STATE UNIVERSITY	7,000.00
EFT	04/01/2024	13177 Accounts Payable	ABC ELECTRICAL- BAKER GROUP	3,223,36
EFT	04/01/2024	13178 Accounts Payable	ADVANTAGE ASSET TRACKING CORPORATION	920.83
EFT	04/01/2024	13179 Accounts Payable	ALL CITY MANAGEMENT SERVICES INC	8,053.74
EFT	04/01/2024	13180 Accounts Payable	AMPLIMARK LLC	14,300.00
EFT	04/01/2024	13181 Accounts Payable	ARNOLD MOTOR SUPPLY LLP 39711	2,203.68
EFT	04/01/2024	13182 Accounts Payable	BAUER BUILT	632.32
EFT	04/01/2024	13183 Accounts Payable	BECKER ARENA PRODUCTS INC	600.00
EFT	04/01/2024	13184 Accounts Payable	BENJAMIN, SUZANNE	1,650.00
EFT	04/01/2024	13185 Accounts Payable	BEST PORTABLE TOILETS	1,242.60
EFT	04/01/2024	13186 Accounts Payable	BETTER IMPACT USA INC	480.00
EFT	04/01/2024	13187 Accounts Payable	BOB BROWN CHEVROLET	520.13

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City Council Report Bank Account: WB VENDOR DISB - WB Vendor Disbursement Batch Date: 04/01/2024

Туре	Date	Number Source	Payee Name	Transaction Amount
EFT	04/01/2024	13188 Accounts Payable	BOOT BARN INC	191.87
EFT	04/01/2024	13189 Accounts Payable	BRAVO GREATER DES MOINES	284,572.33
EFT	04/01/2024	13190 Accounts Payable	CHRISTIAN EDWARDS PRINT & GRAPHICS	128.20
EFT	04/01/2024	13191 Accounts Payable	COLE, LEE	200.00
EFT	04/01/2024	13192 Accounts Payable	CONTRACTOR SALES AND SERVICE LLC	1,397.40
EFT	04/01/2024	13193 Accounts Payable	DES MOINES PARTY RENTALS - GOOD DEAL LLC	664.00
EFT	04/01/2024	13194 Accounts Payable	DILLARD, CARLOS	128.00
EFT	04/01/2024	13195 Accounts Payable	DOLL DISTRIBUTING LLC	7,604.50
EFT	04/01/2024	13196 Accounts Payable	EMC RISK SERVICES	14,916.20
EFT	04/01/2024	13197 Accounts Payable	EXCEL MECHANICAL INC	21,059,01
EFT	04/01/2024	13198 Accounts Payable	FISCHER BROS LLC	6,308,75
EFT	04/01/2024	13199 Accounts Payable	FLEXICARE INC	561.45
EFT	04/01/2024	13200 Accounts Payable	GENUS LANDSCAPE ARCHITECTS	559.60
EFT	04/01/2024	13201 Accounts Payable	GREATER DES MOINES CONVENTION & VISITORS BUREAU	284,572.33
EFT	04/01/2024	13202 Accounts Payable	HADDEN, TOM	521.98
EFT	04/01/2024	13203 Accounts Payable	HAHN, JENNIFER	7,261,00
EFT	04/01/2024	13204 Accounts Payable	HOODZ OF CENTRAL IOWA	650.00
EFT	04/01/2024	13205 Accounts Payable	HYDRO KLEAN LLC	2,400,00
EFT	04/01/2024	13206 Accounts Payable	INLAND TRUCK PARTS CO	34.72
EFT	04/01/2024	13207 Accounts Payable	IOWA BEVERAGE SYSTEMS INC	3,227.40
EFT	04/01/2024	13208 Accounts Payable	IOWA DEPARTMENT OF PUBLIC SAFETY	2,160.00
EFT	04/01/2024	13209 Accounts Payable	IOWA INTERSTATE RAILROAD LTD	403.92
EFT	04/01/2024	13210 Accounts Payable	ISG	2,437.00
EFT	04/01/2024	13211 Accounts Payable	JACOBSEN AUTO BODY	2,298.00
EFT	04/01/2024	13212 Accounts Payable	KELTEK INC	12,917.60
EFT	04/01/2024	13213 Accounts Payable	KIESLER POLICE SUPPLY INC	7,679.70
EFT	04/01/2024	13214 Accounts Payable	LAIDLAW JR , WILLIAM	347.44
EFT	04/01/2024	13215 Accounts Payable	LAWRENCE , LEANNA	147.50
EFT	04/01/2024	13216 Accounts Payable	LOGAN CONTRACTORS SUPPLY INC	4,096.00
EFT	04/01/2024	13217 Accounts Payable	MAHASKA BOTTLING COMPANY	557.00
EFT	04/01/2024	13218 Accounts Payable	MARTIN BROTHERS	57,719.69

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Bank Account: WB VENDOR DISB - WB Vendor Disbursement Batch Date: 04/01/2024

Туре	Date	Number Source	Payee Name	Transaction Amount
EFT	04/01/2024	13219 Accounts Payable	McKESSON MEDICAL SURGICAL GOVERNMENT SOLUTIONS LLC	231.14
EFT	04/01/2024	13220 Accounts Payable	METRO WASTE AUTHORITY	32.68
EFT	04/01/2024	13221 Accounts Payable	MOBOTREX INC	382,00
EFT	04/01/2024	13222 Accounts Payable	MORGAN, RACHEL	78.00
EFT	04/01/2024	13223 Accounts Payable	MPH INDUSTRIES	2,820.00
EFT	04/01/2024	13224 Accounts Payable	MSTS- RED WING BUSINESS ADVANTAGE- WDM	433.48
EFT	04/01/2024	13225 Accounts Payable	NORSOLV SYSTEMS- NORTHLAND PRODUCTS	1,438.45
EFT	04/01/2024	13226 Accounts Payable	OWEN , ANDREE	147.50
EFT	04/01/2024	13227 Accounts Payable	RELIABLE MAINTENANCE COMPANY	14,400.00
EFT	04/01/2024	13228 Accounts Payable	RENEWABLE ENERGY GROUP INC	22,622.97
EFT	04/01/2024	13229 Accounts Payable	RHYTHM ENGINEERING LLC	412.50
EFT	04/01/2024	13230 Accounts Payable	RIEMAN MUSIC INC	67.50
EFT	04/01/2024	13231 Accounts Payable	ROSENBERGER, TANYA	58.00
EFT	04/01/2024	13232 Accounts Payable	ROUNDED MINDS INC	3,302.25
EFT	04/01/2024	13233 Accounts Payable	SITEONE LANDSCAPE SUPPLY LLC	71.95
EFT	04/01/2024	13234 Accounts Payable	SKOLD DOOR & FLOOR COMPANY INC	848.80
EFT	04/01/2024	13235 Accounts Payable	STEAM STARZ LLC - JANICE BEARD	396.00
EFT	04/01/2024	13236 Accounts Payable	STERLING CODIFIERS- AMERICAN LEGAL PUBLISHING CORP	2,852,63
EFT	04/01/2024	13237 Accounts Payable	SWINTON , ASHLEE	1,166,96
EFT	04/01/2024	13238 Accounts Payable	TELLO ITS LLC	3,722.38
EFT	04/01/2024	13239 Accounts Payable	TRIMBLE , RUSS	316.37
EFT	04/01/2024	13240 Accounts Payable	TRIPLETT COMPANIES	161.76
EFT	04/01/2024	13241 Accounts Payable	TSCHUDIN , JODI	1,500.00
EFT	04/01/2024	13242 Accounts Payable	TYLER TECHNOLOGIES INC	16,530_94
EFT	04/01/2024	13243 Accounts Payable	UKG- KRONOS SAASHR INC	11,811.84
EFT	04/01/2024	13244 Accounts Payable	UNIFIRST CORPORATION	496.09
EFT	04/01/2024	13245 Accounts Payable	VAISALA INC	9,940,00
EFT	04/01/2024	13246 Accounts Payable	VAN WALL EQUIPMENT	325.64
EFT	04/01/2024	13247 Accounts Payable	VOGEL PAINT INC	191.85
EFT	04/01/2024	13248 Accounts Payable	XTREME TREE	11,770.00
EFT	04/01/2024	13249 Accounts Payable	ZIEGLER INC	182.08
WB VEI	NDOR DISB WB V	endor Disbursement Totals:	Transactions: 188	\$2,252,640.95

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City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement Batch Date: 04/01/2024

Туре	Date	Number Source	Payee Name	Transactio Amour	
			44.000.070.04		
	Checks:	115	\$1,382,379.94		
	EFTs:	73	\$870,261.01		

Payment Register From Payment Date: 03/05/2024 - To Payment Date: 04/14/2024

Number	Date	Payee Name	Transaction Amount
461	03/14/2024	VOYA BENEFITS COMPANY LLC	6,067.25
462	03/21/2024	VOYA BENEFITS COMPANY LLC	4,292.39
13173	03/15/2024	WELLMARK BLUE CROSS	89,870.57
13175	03/15/2024	MEDONE LC	57,660.80
13176	03/22/2024	WELLMARK BLUE CROSS	114,487.15
13177	03/27/2024	IOWA DEPARTMENT OF REVENUE & FINANCE	21,143.62
201114	03/14/2024	R & R INVESTORS LTD- CCVI LLC	356.00
201115	03/22/2024	CHAPEL RIDGE WEST I	822.67
201116	03/22/2024	WESTWOOD APARTMENTS - WDM ARTISAN LLC	999.01
			295,699.46

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM:

Approval of Liquor Licenses

DATE: April 1, 2024

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. T&K Ventures, LLC d/b/a Early Bird, 9250 University Avenue, Suite 107 Class C Retail Alcohol License with Outdoor Service Renewal
- 2. El Rey Corporation d/b/a El Rey Burritos, 1310 Grand Avenue Class C Retail Alcohol License Renewal
- 3. Git-N-Go Convenience Stores, Inc. d/b/a Git-N-Go Convenience Store #4, 1325 Grand Avenue Class B Retail Alcohol License Renewal
- Historic Valley Junction Foundation d/b/a Historic Valley Junction Foundation, 137 5th Street
 Eight-Month Special Class C Retail Alcohol License with Outdoor Service New
- 5. LEROY'S PLACE, LLC d/b/a LeRoy's Place, 4825 EP True Parkway, Suite 112 Class C Retail Alcohol License with Outdoor Service Renewal
- 6. Miranda Brothers Corporation d/b/a Mi Patria, 1410 22nd Street Class C Retail Alcohol License Renewal
- 7. Jai Jai, LLC d/b/a Mills Grocery & Liquor, 6630 Mills Civic Parkway, Suite 3110 Class E Retail Alcohol License Renewal
- 8. West Tower Entertainment, LLC d/b/a Prime and Providence, 595 South 60th Street, Suite 100 Class C Retail Alcohol License with Outdoor Service and Catering Privileges New
- 9. Tori's Angels Foundation d/b/a Tori's Angels Foundation, 4000 Turnberry Drive Five Day Special Class C Retail Alcohol License for Private Event on April 11, 2024
- 10. Wall to Wall, LLC d/b/a Wall to Wall Wine and Spirits, 375 South Jordan Creek Parkway Class C Retail Alcohol License New

OUTSTANDING ISSUES (if any): None

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

Lead Staff Member: Ryan T. Jacobson, City Clerk

STAFF REVIEWS

01711111211211	
Department Director	Ryan T. Jacobson, City Clerk
Appropriations/Finance	
Legal	
Agenda Acceptance	RTS
	RTS

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM: Motion - Approval of Order for Violation of Alcohol Laws

FINANCIAL IMPACT: \$500 (positive impact to City)

BACKGROUND:

Pursuant to state law, a municipality is entitled to assess a civil penalty against an alcohol permittee who has been found in violation of providing alcoholic beverages to persons under 21 years of age at their respective places of business. Failure to pay the civil penalty as ordered shall result in automatic suspension of the license or permit for a period of 14 days.

On or about the date referenced on attached Exhibit "A", an employee of the permittee, also referenced on Exhibit "A", was cited for selling alcoholic beverages to a person under 21 years of age. The City of West Des Moines Legal Department sent a notice of the violation to the permittee. Since that time, said permittee returned payment of the fine for its alcohol violation.

The penalty for a first violation is a \$500 civil penalty against the Alcohol Permittee.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION:

It is recommended that the City Council approve the Order and accept payment of the fine regarding the above-referenced violation of alcohol law.

Lead Staff Member: Jessica Grove, Deputy City Attorney

STAFF REVIEWS

DIAIT REVIEW				
Department Director	Greta Truman, City Attorney	1		
Appropriations/Finance	Tim Stiles, Finance Director	h		
Legal	/\		^^	
Agenda Acceptance	Ryan Jacobson, City Clerk	_/_	(X)	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

EXHIBIT "A"

Licensee	<u>D/B/A</u>	Date of <u>Violation</u>	#Violation
Five K Enterprises L.L.C. 650 Southeast Driftwood Lane Waukee, IA 50263	Brazil Terra Grill 2800 University Ave, #405 West Des Moines, IA 50266	12/15/2023	1st (minors) – paid \$500 civil penalty

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM:

Approval of Cigarette/Tobacco Licenses

DATE: April 1, 2024

FINANCIAL IMPACT: None

BACKGROUND: Under Title III - Chapter 10, Cigarette Sales, the Council has the authority to issue cigarette permits for establishments located within the city limits of West Des Moines. All cigarette permits expire on June 30 of each year. Applications from the following establishments are on file in the City Clerk's office for review:

A&M Tried Company, d/b/a Green Leaf Tobacco, 1710 Grand Avenue 1.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Motion to approve the issuance of cigarette/tobacco permits in the City of West Des Moines.

Lead Staff Member: Ryan T. Jacobson, City Clerk

STAFE DEVIEWS

STALL INCAILING		
Department Director	Ryan T. Jacobson, City Clerk	
Appropriations/Finance	Tim Stiles, Finance Director	
Legal		
Agenda Acceptance	RTS	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)		REVIEW (if applicable)
	Committee	
	Date Reviewed	

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval of Extended Sound Permit

Wellman's Pub and Rooftop - Patio and Rooftop Music

DATE: April 1, 2024

FINANCIAL IMPACT: None

BACKGROUND:

On June 28, 2010, the City Council approved several amendments to the Noise Control Ordinance including the provision that City Council approval is required for any sound permit issued for an event going past 10:00 P.M.

Wellman's Pub and Rooftop has submitted a sound permit application to cover their everyday background music played from 11:00 a.m. to 2:00 a.m. over speakers on the lower patio and rooftop patio on their property located at 597 Market Street

This sound permit request was forwarded to the West Des Moines Police Department for their review and they have no objections to this request. As this request is being proposed to end at 2:00 a.m., City staff is forwarding this to the City Council for review and approval. Wellman's Pub and Rooftop has been issued sound permits since 2010.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Motion - Approval of Extended Sound Permit Request made by Wellman's Pub and Rooftop

Lead Staff Member: Ryan T. Jacobson, City Clerk

STAFF REVIEWS

SIAII INLITE		
Department Director	Ryan T. Jacobson, City Clerk	
Appropriations/Finance Tim Stiles, Finance Director		
Legal Greta Truman, City Attorney		
Agenda Acceptance	RTG	

PUBLICATION(S) (if applicable)

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Published In	
Dates(s) Published	

SUBCOMMITT	FE REVIEW	(if applicable)
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CODOCIMIENT	
Committee	
Date Reviewed	

SOUND PERMIT FEES

- 1-48 hrs event = \$22.00 2-7 days event = \$44.00
- Multiple events in one calendar year = \$82.50

The City Council MUST approve any sound permit request that extends past ten o'clock (10:00) P.M.

Permit, Applications received less than two (2) weeks before the event MAY NOT be processed by the City in time for the event

CITY OF WEST DES MOINES **SOUND PERMIT**

*Denotes required field

	For the Amplification of a Live Performance
Today's Dat	ree Received: 82.50 Permit No
*Applicant's	s Name: Wellman's Pub & Roottop *Phone No. 515-222-1100
*Applicant's	s Complete Address (include city/state/zip): 597 market St. Wdm, 14 50264
*Applicant'	's E-mail Address: 2nnie baldwin @ me. com
	the applicant, ever been cited for a violation of the West Des Moines Noise Ordinance?
	ain:
	no great all and linear travel 11.00
*Property o	owner name: MAKKET Street Investors LVC
*Property o	owner address: 1601 Westlakes Pkwy sto 300, Wam, 1A 5026
sound perm	signed, hereby acknowledge and certify that I am the record fee title holder of the property for which this at it is requested, and I hereby consent to this application for a sound permit, for the amplification of a live te, as described on this application.
ela /	Owner Signature 12/21/2023 Date
Property C	Owner Signature Date
Address of	proposed activity: 597 Market street
(If locatea l	in a City park, please include the name of the park)
*Describe p and number	proposed activity, including EVENT AND MUSIC START AND ENDING TIME(S) AND DATE(S) of people attending: 4/18/24 - 6/31/74
NOT 1	live music - speaker wattage 28/30
comi	day background music, from Sattelite / D.T. puter speaker lower patio llam-2am
	the parking for this event be handled? Normal Parking
Please ref sound equi	fer to Page 2, Paragraph J of this application form regarding wattage requirements for the proposed ipment as a sound permit may not be deemed necessary.
Attach an	n 8%" x 11%" sketch plan of the proposed layout of the sound amplification equipment, including
the orienta	ation to and approximate distances from the adjoining properties.
*Have the a If so, please	adjoining property owners/residents been notified of the event for which this permit is requested? YN the list addresses notified (attach additional sheets if necessary):
*Describe v	what measures will be taken, if any, to minimize the effects of this performance on surrounding property Speakers on rooffep do not Nave Subwoofers
owners	Reduced Sound bass
	nuucu surius surius

					Permit.

APPLICANT'S CERTIFICATION - I hereby certify under penalty of perjury that the statements furnished including the drawing, present all information required for this application, and that the facts, statements and information presented are true and correct, and based upon my personal knowledge. I hereby acknowledge my obligation to comply with the West Des Moines Municipal Code as it pertains to this activity and to obtain any and all necessary City, County, State and Federal permits, approvals and/or clearances, if applicable. Further, I hereby certify that I have read, understand and have received a copy of the conditions for the operation of the Sound Permit, and hereby agree to comply with such conditions. I also understand that should I fail to comply with the agreed upon conditions, my permit may be immediately revoked and that all other applicable penalties, including criminal prosecution may be pursued.

annie Baldwin

12/15/83

Date

*Applicant's Signature

FOR STAFF USE ONLY

ABBROVAL OF SOUND DEDMIT						
APPROVAL OF SOUND PERMIT						
Approved by:	Date:					
City Council Approval Date:						
This sound permit is approved subject to the following exhibits and conditions.						
Exhibits:						
Conditions:						
Conditions:						
Expiration Date:						
DENIAL OF SOUND PERMIT						
Denied by:	Date:					
This sound permit is denied based upon the following findings.						
Findings:						

Copies of this permit have been distributed to the following departments:

□ Development Services Department

□ Police Department

□ City Clerk's Office

☐ Parks and Recreation Department

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CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM:

DATE: April 1, 2024

Motion – Approve request by West Des Moines Valley High School to allow parking on grass during an outdoor commencement ceremony

FINANCIAL IMPACT:

The granting of this Motion would have little or no financial impact to the City.

BACKGROUND:

West Des Moines Valley High School has requested that they be allowed to park vehicles on the school property grass near Valley Stadium during the commencement ceremony scheduled for Sunday, May 26th. They also have a rain date of Monday, May 27th. School officials estimate that parking on the designated area of school property grass could accommodate as many as 400-500 vehicles. The schools would be responsible for installing barricades or cones to separate the city and school properties on the City Hall / School campus (see the attached overhead aerial map for the designated parking area). No parking would be allowed on grass on city property near Valley Stadium. The parking on school property grass would occur weather permitting.

OUTST	ANDING	ISSUES	(if any)
OUISE	ANUUNG	ISSUES	(III ally).

None

RECOMMENDATION:

Approve this Motion to allow parking on grass on school property near Valley Stadium for an outdoor commencement ceremony.

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

STAFF REVIEWS

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

PUBLICATION(S) (if applicable)
Published In
Dates(s) Published

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split



Ryan Jacobson

From:

Griffith, Josh <griffithj@wdmcs.org>

Sent:

Monday, March 11, 2024 3:42 PM

To:

Ryan Jacobson

Subject:

[EXT] Valley Commencement

Good afternoon Ryan,

I hope this email finds you well. We are coming up on this year's Valley Commencement where we are hoping to get approval from you to use the grass lot for parking.

Commencement: Sunday, May 26th at 7:00 pm - Gates open at 5:30 pm First Rain Date: Monday, May 27th at 10:00 am - Gates open at 8:30 am Second Rain Date: Monday, May 27th at 7:00 pm - Gates open at 5:30 pm

Please let me know if we can have approval to use this space again this year.

Thank you,



Josh Griffith Associate Principal, Valley High School 515-633-4011 griffithj@wdmcs.org

Personal Mission: To unleash the full potential of every learner!

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: 4/1/2024

ITEM:

Agreement with Trees Forever for Planting Trees on City Property

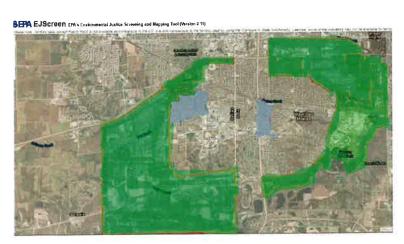
FINANCIAL IMPACT: There will be no negative financial impact to the City of West Des Moines because of this agreement. All funding for this agreement comes through a \$500,000 Inflation Reduction Act grant from the United States Department of Agriculture Forest Service Urban & Community Forestry Program. These funds require no financial or staff match from the City.

The budget for this agreement is as follows:

Expenses	
Task and Description	Total
Citizen outreach, volunteer coordination, and planting 2024	\$39,500
Citizen outreach, volunteer coordination, and planting 2025	\$79,000
Citizen outreach, volunteer coordination, and planting 2026	\$79,000
Citizen outreach, volunteer coordination, and planting 2027	\$79,000
Citizen outreach, volunteer coordination, and planting 2028	\$39,500
Total	\$316,00

BACKGROUND: This agreement between Trees Forever and the City of West Des Moines will employ Trees Forever to plant, mulch, and initially water a minimum of 800 trees on City property between 2024 and 2028. Trees Forever will utilize their Growing Futures Program, which employs disadvantaged youth and introduces them to careers in green industry, to assist with the planting of the trees. Trees Forever will also complete homeowner outreach, call utility locates, and coordinate volunteers for planting.

Planting will be restricted to the green areas seen below as approved by the USDA Forest Service.



OUTSTANDING ISSUES: None

RECOMMENDATION: That the Council approve the attached agreement with Trees Forever.

Lead Staff Member:

Paul Tauke

Urban Forestry Supervisor

STAFF REVIEWS

OIAII ILLIIU	
Department Director	Gary Rank, Public Services Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	40
Agenda Acceptance	9/5
-	A)

PUBLICATION(S) (if applicable)

Published In	N/A
Dates(s)	
Published	

SUBCOMMITTEE REVIEW (if applicable)

SODCOMMITTEE	IXEVIEV	(II uppi	TOGISTO/
Committee	N/A		
Date Reviewed			
Recommendation	Yes	No	Split

AGREEMENT FOR TREE PLANTING SERVICES BETWEEN CITY OF WEST DES MOINES, IOWA AND TREES FOREVER, INC.

This Agreement entered into by and between City of West Des Moines ("City" or "CITY"), and Trees Forever, Inc. ("Contractor or "CONTRACTOR"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

RECITALS

WHEREAS the City and Contractor share goals to create better environmental, economic, and social conditions in West Des Moines; and

WHEREAS, the City of West Des Moines Comprehensive Plan Adopted September 20, 2010, states the City's Mission Statement is to "...strive to provide the quality of life desired by the community"; and

WHEREAS urban trees improve quality of life by filtering air and water, mitigating storm water, conserving energy, providing shade, and increasing songbird and animal habitat; and

WHEREAS urban trees improve the quality of life by adding beauty, form, and structure to urban design, reducing noise, providing recreation opportunities, strengthening social cohesion, improving mental health, and adding economic value to communities; and

WHEREAS the Contractor currently operates a nonprofit organization with a mission to plant and care for trees and the environment by empowering people, building community, and promoting stewardship; and

WHEREAS, Contractor's work improves the environment, and aims to improve the development and employment of youth on their paths to productive adulthood, progress in city-wide economic development, and developing safer, more sociable, and cohesive neighborhoods; and

WHEREAS Contractor plans to invest in their Growing Futures program, to employ and develop young people through the planting and care of trees; and

WHEREAS the City values the Contractor's ability to secure hundreds of volunteer hours and private financial contributions toward its city tree canopy priorities; and

WHEREAS, Contractor has been awarded Platinum GuideStar Nonprofit Profile Seal of Transparency; and

WHEREAS the City desires to engage Contractor to provide the services of planting trees, homeowner outreach, and volunteer coordination on City owned property as a part of the City's Inflation Reduction Act (IRA) grant program, as further described herein: and

WHEREAS the City and Contractor shall collaborate to ensure those services are directed to targeted areas based on the City's IRA grant agreement with the Arbor Day Foundation and the United States Forest Service.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follow:

SECTION I. INTERPRETATION AND INTENT

- 1.01 The City Forester, shall be the liaison with the Contractor for the purpose of administration of the services to be performed under this Agreement. The services to be performed by the Contractor shall always be subject to the general supervision of the City Forester, or his designee.
- This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge, or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.
- 1.03 In resolving conflicts, errors, discrepancies, and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.
- 1.04 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.

SECTION II. TERM

The term of this Agreement shall begin upon execution date of this Agreement by all parties and shall terminate on July 30, 2028, unless terminated earlier in accordance with this Agreement.

SECTION III. CONTRACTOR DUTIES

3.01 Contractor shall plant 800 trees in West Des Moines in locations mutually agreed upon by the City and the Contractor. Trees shall be planted as follows:

Year	# of Trees to Plant
Fall 2024	100
2025	200
2026	200
2027	200
Spring 2028	100
Totals	800

This schedule and the number of trees to plant may be amended upon mutual agreement of the City and the Contractor. Trees will be planted is areas specified in the IRA grant narrative and agreement.

- 3.02 Contractor shall specifically complete the following tasks costs:
 - 1. Determine site locations.

- 2. Communicate with property owners as desired by the City and as outlined in the IRA grant narrative. Contractor will mail a "Notice of Planting Activities" (See Appendix 1) to homeowners two months prior to planting to allow homeowners input on species selection or allow them to opt out. They will also leave door hangers for property owners letting them know a right-of-way tree is coming soon and allow have 5 days to decline the tree.
- 3. Mark site locations using West Des Moines tree planting guidelines for the ROW. Example: space between trees, distance from critical infrastructure, distance from driveway, site lines, etc.
- 4. Request Iowa One Call utility locates.
- 5. Coordinate with the city and volunteers or corporate donors on a tree planting date, time, and location.
- 6. Organize day of tree planting logistics. This includes purchasing and having necessary supplies available such as shovels, mulch, rakes etc. and coordinating volunteers and Trees Forever Growing Futures Program staff.
- 7. Attend and lead tree planting events and properly plant and mulch all trees.
- 8. Complete a tree check within the week. Perform any corrective action that is needed including staking, etc.
- 9. Map all trees. This can be done in Trees Forever's mapping system and data provided to city GIS department.
- 10. Contact the City Forester for approval of any deviations from this task list.
- 11. If additional funds are available to plant trees to do so at the rate of \$395/tree.

SECTION IV. CITY RESPONSINILITES

- 4.01 The City agrees to:
 - 1. Cooperate with the Contractor to successfully complete this project.
 - 2. Purchase needed trees and deliver them to the planting sites.
 - 3. Water and maintain trees as needed.
- 4.02 The City agrees to the following Budget and Compensation schedule provided all work is completed and approved by the City Forester:

Budget

Juiger	
Expenses	
Task and Description	Total
Citizen outreach, volunteer coordination, and planting 2024	\$39,500
Citizen outreach, volunteer coordination, and planting 2025	\$79,000
Citizen outreach, volunteer coordination, and planting 2026	\$79,000
Citizen outreach, volunteer coordination, and planting 2027	\$79,000
Citizen outreach, volunteer coordination, and planting 2028	\$39,500
Total	\$316,00

Contractor will be paid with IRA finds from the United Stated Forest Service. If for any reason the Forest Service funding is reduced, this agreement will be modified accordingly.

SECTION IV. GENERAL PROVISIONS

- 5.01 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of City of West Des Moines. As such, Contractor is solely responsible for all taxes, and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate City in any way.
- 5.02 Subcontracting. The parties agree that Contractor shall not subcontract, assign, or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing, and paying the person or persons to whom such responsibilities or obligations are sublet, assigned, or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.
- Necessary Documentation. Contractor certifies that it will furnish City, if requested, all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City of West Des Moines, Polk County, Dallas County, the State of Iowa, and the United States. Contractor further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement. Failure of Contractor to comply with this paragraph shall constitute a material breach of this Agreement.
- 5.04 Records; Audit. Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by City or any other authorized representative of the City of West Des Moines. Electronic copies thereof, if requested, shall be furnished at no cost to City.
- 5.05 <u>Insurance and Indemnification Requirements</u>.

The Contractor shall defend, pay on behalf of, indemnify and hold harmless the City as provided for in **Attachment A** of this Agreement. The Contractor shall obtain and maintain in continuous effect during the term of this Agreement with the City and while any of its obligations remain unsatisfied, the insurance coverages, limits, waivers, and endorsements set forth in Attachment A and shall provide the City with a certificate of insurance showing such coverages prior to execution of this Agreement.

5.06 Termination for Cause or Convenience.

5.06.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (a) not less than thirty (30) calendar days

written notice of City's intent to terminate, and (b) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.

- 5.06.2 This Agreement may be terminated in whole or in part in writing by City for City's convenience; provided that Contractor is given (a) not less than thirty (30) calendar days written notice of intent to terminate and (b) an opportunity for consultation with City prior to termination. If City terminates for convenience, Contractor's compensation shall be equitably adjusted, and include compensation for all services Contractor performed in contemplation of performance or future performance under this Agreement.
- 5.06.3 Upon receipt of notice of termination for default or for City's convenience, Contractor shall (a) promptly discontinue all services affected, unless the termination notice directs otherwise, and (b) make available to City all information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.
- 5.07 Notice. Any notice required to be sent under this Agreement shall be sent by overnight courier, certified mail, facsimile, or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Contractor: Trees Forever P

Debra Powers, Interim CEO

80 W 8th Ave Marion, IA 52302 To City: Paul Tauke

Urban Forestry Supervisor

8850 Grand Avenue

West Des Moines, IA 50266

- Non-discrimination. Contractor and its officers, agents, employees, volunteers, and subcontractors shall not discriminate or permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, national origin, gender, age, sex, religion, sexual orientation, gender identity, disability, or familial status and shall furnish evidence of compliance with this provision when so requested by the City. Breach of this section shall be regarded as a material breach of this Agreement.
- 5.09 Force Majeure. Neither party hereto will be liable for any failure or delay in performing under this Contract where such failure or delay is due to causes beyond its reasonable control, including natural catastrophes, governmental acts or omissions, laws or regulations, war, terrorism, labor strikes or difficulties, communications systems breakdowns, hardware or software failures, transportation stoppages or slowdowns or the inability to procure supplies or materials.

5.10 Applicable Laws; Forum.

This Agreement will be governed by and interpreted and construed in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall be brought in the Iowa District Court in Polk County, Iowa, or the United States District

- Court for the Southern District of Iowa. If any provision of this Contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.
- Waiver. The City's or Contractor's delay or inaction in pursuing its remedies set forth in this 5.11 Agreement, or available by law, shall not operate as a waiver of any of that party's rights or remedies.
- Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable 5.12 by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- Authority to Bind. Notwithstanding anything in this Agreement to the contrary, the 5.13 signatory for the City and Contractor represents that he/she has been duly authorized to execute agreements on behalf of the City and Contractor and has obtained all necessary or applicable approvals to make this Agreement fully binding.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 35 day of March, 2024.

TREES FOREVER, INC. CITY OF WEST DES MOINES, **IOWA**

Tom Hadden, City Manager

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM: Motion – Approval of Artists and Artwork Locations – 2024 Art on the Campus

FINANCIAL IMPACT: Expense of \$24,000 for the artist stipends (\$2,000 per work of art) and \$500 for the People's Choice Award for a total of \$24,500. This amount is included in the FY 23-24 budget.

SYNOPSIS: The Commission is sponsoring the 12th temporary "Art on the Campus" exhibit from April 15, 2024, to November 15, 2024. An "Art on the Campus" selection committee meeting was held on Tuesday, November 15, to review and score 37 proposals that were submitted by 17 artists from Iowa (9), Illinois (4), Nebraska (3), and Missouri (1). Of the 17 artists, 3 were new and 14 were returning artists.

The selection committee members included: Courtney Moller (Commission member), David Basler (Citizen) Shirley Houghtaling (Citizen), and Suzanne Allen (Citizen).

Twelve entries were selected to be temporarily installed around the pond on the city campus.

The committee's recommendations include:

	Entry Name	Artist Name		Entry Name	Artist Name
1	Long Distance	Nathan Pierce	7	Seeking Shelter	Andrew Arvanetes
2	Tree of Life	Hilde DeBruyne	8	Gold	V. Skip Willits
3	Green	Zach Schnock	9	Female Kneeling Figure	Albert Rhea
4	Fire	Sadagat Aliyeva*	10	Vortex	David Zahn
5	Best of Luck	Dallas Blue	11	WomEarth	Daniel Castaneda
6	Heal Us	Nicole Beck*	12	Jord	Tim Adams
*ne	ew AOC artist				

The twelve proposals and a map of the proposed artwork locations are attached for your information. Artist agreements are included.

BACKGROUND: None

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: That the Council approve the recommendation of the Public Arts Advisory

Commission.

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

STAFF REVIEWS

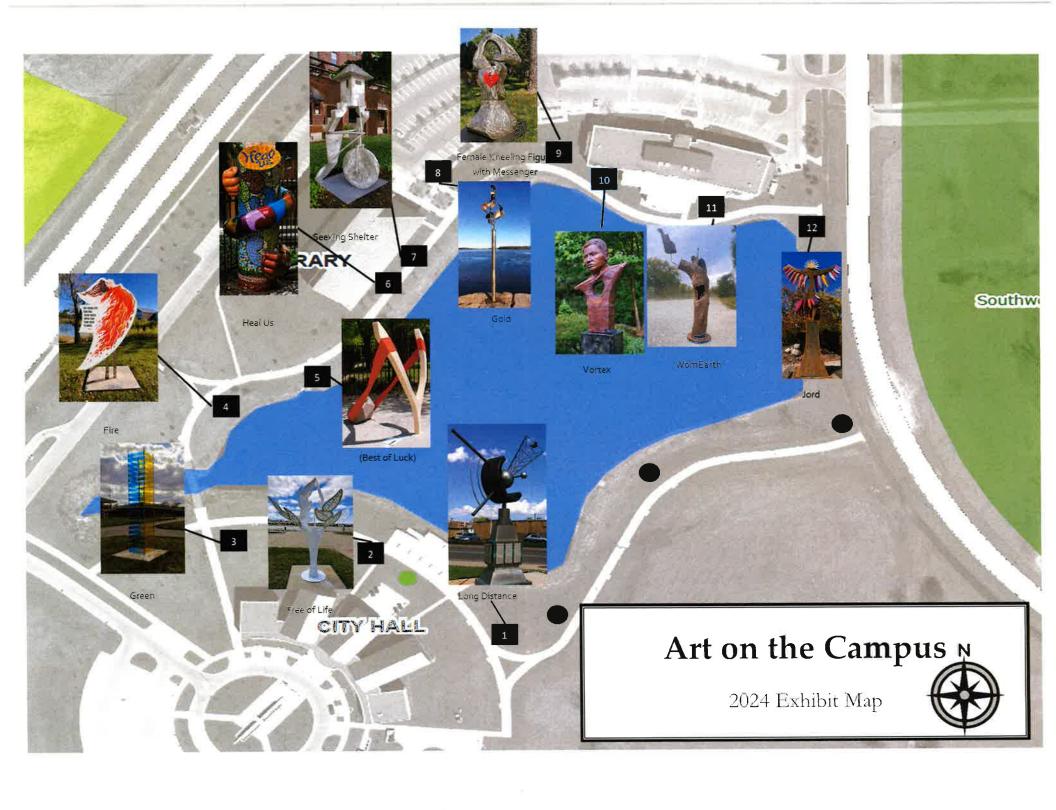
SIAII KEVILIVO		
Department Director	Ryan Penning, Director of	Parks & Recreation
Appropriations/Finance	Tim Stiles, Finance Directo	У
Legal	Greta Truman, City Attorne	ý/
Agenda Acceptance	ald	

PUBLICATION(S) (if applicable)

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Published In	
Dates(s)	
Published	

SUBCOMMITTEE	REVIEW	(if applicable)

30BCOMMINITIEL REVIEW (II applicable)			
	Public Arts Advisory		
Committee	Commission		
Date Reviewed		12/14/23	
Recommendation	YES	NO	SPLIT



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Nathan Pierce whose principal address is 1425 Merriwether Street, Cape Girardeau, MO, 63703-6012 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Nathan Pierce 1425 Merriwether Street Cape Girardeau, MO 63703-6012

ARTICLE 13: MISCELLANEOUS

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

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

ARTIST		
Nathan Pierce	2/01/2024 Date	
CITY		
Ryan Penning, Director of Parks and Recreation Department City of West Des Moines	Date	

Nathan Pierce Cape Girardeau, MO

2015 \$10,000 Painted steel 10' x 7' x 3'

An interactive sculpture that the viewer can move in any direction. through the use of our imagination, we can communicate with others from a long distance creating the conversation about what communication means to us in today



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

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

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS 7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 **Maintenance**

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

Alteration of the Work 7.3

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

Transfer of Agreement 9.1

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Hilde DeBruyne 3264 Cumming Road Cumming, IA, 50061

ARTICLE 13: MISCELLANEOUS

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

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

grych, b/Z	3.7.24
Hilde DeBruyne	Date
CITY	
Ryan Penning, Director of Parks and Recreation Department	Date

City of West Des Moines

2 Tree of Life

Hilde DeBruyne Cumming, IA

2023 \$23,000 Powder coated steel 7.5' x 4.5' x 4.5'

"Tree of Life" is an abstract organic sculpture in metal. It grew out of the artist's love for the never ending beauty of trees, the seasons and the renewal of spring. Irees represent life and growth in different cultures, religions, mythologies, legends and novels. They are a symbol of life, wisdom, power and prosperity.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Zach Schnock whose principal address is 8833 Primo Lane, West Des Moines, IA, 50266 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Zach Schnock 8833 Primo Lane West Des Moines, IA 50266

ARTICLE 13: MISCELLANEOUS

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

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

ARTIST Zach Schnock	3/12/24 Date
CITY	
Ryan Penning, Director of Parks and Recreation Department	Date

City of West Des Moines

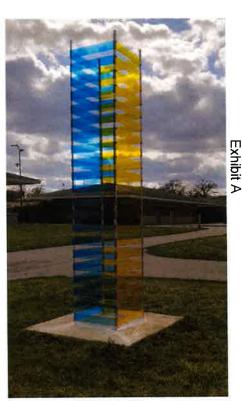
Green

Zach Schnock West Des Moines, IA

2020 \$4,300 Aluminum, cast acrylic, fasteners 8' x 20" x 20"

This artwork, while simple in form, is multidimensional both in space and meaning. I appreciate minimal forms-but how can you change the perspective with limited complexity of the shape? The transparent color blocks achieve this for me. It changes the viewers perspective on how they see through to the other side- in more ways than one. Hence the title, "Green" when viewed through one angle the two color blocks create a new color. You can view through the yellow, the blue, or both for green. How does this affect our sights on the other side? Sometimes our perspective and vantage point should be questioned, which is why I hope this sculpture evokes the viewer to observe the different sides and see things in a different light. Both literally, and figuratively.





CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Sadagat Aliyeva whose principal address is 4200 Grand Avenue, Apartment C20, Des Moines, IA, 50312 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

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

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

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

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5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

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6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Sadagat Aliyeva 4200 Grand Avenue Apartment C20 Des Moines, IA 50312

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements, and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of lowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors, and permitted

assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors, and permitted assigns), any rights, remedies, obligations, or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for the convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

ARTIST 0.	
Sadagat Allyeva	02-15-24 Date
CITY	
Ryan Penning, Director of Parks and Recreation Department	Date

City of West Des Moines

"Fire" is a two-dimensional digital painting will be printed on metal. The idea of the artwork was born from the universally famed poet Rumi's famous quote, Set your life on fire..." The painting was created to inspire viewers to live intentionally and practice self-love.





Exhibit A

CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Dallas Blue whose principal address is 405 West Maple, Libertyville, IA, 52567 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Dallas Blue 405 West Maple Libertyville, IA 52567

ARTICLE 13: MISCELLANEOUS

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

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

AKIISI		
Dallas Blue	02/05/2024	
Dallas Blue	Date	
CITY		
	Data	
Ryan Penning, Director of Parks and Recreation Department	Date	
City of West Des Moines		

Contemplating Momentary Tragedy (Best of Luck)

Dallas Blue Libertyville, IA

2023 \$6,500 Painted aluminum 5'5" x 4'6" x 4'

I sketched the idea of this silly sculpture at a bus stop in Boulder, CO. I was thinking about the moments between transportation, sitting and waiting for a bus or Uber, or stopping at a crosswalk while walking home from the grocery store. At these moments you are at rest, yet heading in a direction, contemplating your next task or next step. This piece explores these thoughts by depicting the tension of a stone in a slingshot. The stone at rest pointed in a direction by the slingshot. The slingshot form is the silhouette of a wishbone representing hopeful thinking toward your next step.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Nicole Beck whose principal address is 805 S Oakley Boulevard, Chicago, IL, 606127 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

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- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
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- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Nicole Beck 805 S Oakley Boulevard Chicago, IL 606127

ARTICLE 13: MISCELLANEOUS

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

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

ARTIST	February 6, 2024	
Nicole Beck	Date	
СІТҮ		
N		
	Data	-
Ryan Penning,	Date	
Director of Parks and Recreation Department		
City of West Des Moines		

6 Heal Us

Nicole Beck Chicago, IL

2022 \$10,000 Mosaic, fiberglass, enamel paint, polycarbonate 6' x 3' x 3'

Beautiful polychromed multimedia sculpture that celebrates our diversity and beckons we heal ourselves with a colorful hug.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Andrew Arvanetes whose principal address is 792 North River Drive, Kankakee, IL, 60901 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

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

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Andrew Arvanetes 792 North River Drive Kankakee, IL 60901

ARTICLE 13: MISCELLANEOUS

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

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

ARTIST	
Andrew Arvanetes	$\frac{2/5/24}{Date}$
CITY	
Ryan Penning, Director of Parks and Recreation Department City of West Des Moines	Date

7 Seeking Shelter

Andrew Arvanetes Kankakee, IL

2019 \$15,000 Painted aluminum 104" x 48" x 60"

"Seeking Shelter" Is fabricated of "" aluminum sheet and aluminum structural tubing. The sculpture is strengthened by utilizing interior structural elements. The edges are filed to a smooth $\frac{1}{4}$ " round. The surface of the piece is sanded in a circular brushed pattern. I am fascinated with the common house form. To me it symbolizes family, security and the "American Dream". I enjoy utilizing different physical scales in my work. I use 3 in this piece: the human scale of the audience, the imagined scale of the stairs and the imagined scale of the doorways. I often combine the house form with wheels that symbolize personal journey and the passage of time..



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

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

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

V. Skip Willits 820 3rd Street Camanche, IA 52730

ARTICLE 13: MISCELLANEOUS

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

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

V. Skip Willits	2/2/20X
CITY	
Rvan Penning.	Date

Director of Parks and Recreation Department

City of West Des Moines

2021

\$4,000

Polychrome stainless steel 85" x 25" x 25"

Welded stainless steel, airbrushed and powder coated with gold paint.





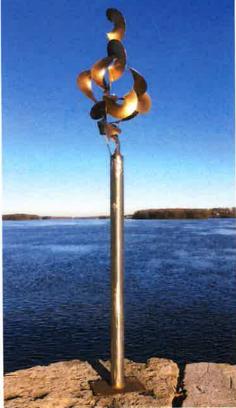


Exhibit A

CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Albert Rhea whose principal address is 811 North Beadle Street, Papillion, NE, 68046 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

- 1.1 Senteral Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
 - b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
 - c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
 - d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
 - e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
 - f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
 - g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Albert Rhea 811 North Beadle Street Papillion, NE 68046

ARTICLE 13: MISCELLANEOUS

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

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

ARTIST	
Albert Rhea	2/2/2024 Date
CITY	
Ryan Penning, Director of Parks and Recreation Department	Date

City of West Des Moines

9 Female Kneeling Figure with Messenger

Albert Rhea Papillion, NE

2021 \$7,000 Stainless Steel 57" x 28" x 34"

What does it mean to kneel? What emotions and beliefs does this action communicate? Kneeling can be a posture of mourning and sadness. Kneeling can be a sign of reverence, submissiveness, deference—and sometimes mourning and vulnerability. Broken heart (also known as a heartbreak or heartache) is a metaphor for the intense emotional stress or pain one feels at experiencing great and deep longing. The concept is cross-cultural, often cited with reference to unreciprocated or lost love. Heartbreak is a state of devastating emotional loss. While different for all of us, the intense feelings of sadness, grief, and the overwhelming sense of never being able to get past the pain, are common.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and David Zahn whose principal address is 2504 31st Avenue Ct, Moline, IL, 61265 (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

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

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:

1) The Art Work is solely the result of the artistic effort of the Artist;

- 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
- 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
- 4) The Art Work is free and clear of any liens from any source whatsoever.

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

David Zahn 2504 31st Avenue Ct Moline, IL 61265

ARTICLE 13: MISCELLANEOUS

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

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

David Zahn	2/5/24 Date	
CITY		
Ryan Penning, Director of Parks and Recreation Department City of West Des Moines	Date	

10 Vortex

David Zahn Moline, IL

2021 \$3,600 Wood, ceramic, with metal 68" x 22" x 12"

The main image of this work is a high fired ceramic sculpture. Finished with glazes and oxide stains It is suitable for outdoor display. The larger then life-size ceramic figure portion of the sculpture is 38". The bird is cast Metal. Both sit on a 30" tall wood and resin base. The multi media sculpture is 5' 8" in total. It is a thought provoking piece that can have a range of meanings to different viewers. As with many of my sculptures there is a sense of mystery and timelessness in this interesting artistic creation.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement is made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City"), and Daniel Castaneda whose principal address is 747 CR 44, Tekamah, NE, 68061, (hereinafter referred to as the "Artist").

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

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;
 - 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 whatsoever.

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

Daniel Castaneda 747 CR 44 Tekamah, NE 68061

ARTICLE 13: MISCELLANEOUS

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

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

Mar 27, 2024	
Date	
Date	_
	Date

] | WomEarth

Daniel Castaneda Tekamah, NE

2023 \$7,000 Petrified carved wood, metal incrustations, metal and marble base, marine coated for weather resistance 4.8' x 2.5'

WomEarth is the female version of my sculpture Earthman they represent the Alpha and Omega or the Yin & Yan, we are 2 different energies connected within our duality spirits. Those 2 people are the creation of our mother Earth.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM 2024 Art on the Campus – Art Exhibition AGREEMENT BY AND BETWEEN CITY AND ARTIST

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

WITNESSETH:

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

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

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2024, and ending on November 15, 2024.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist's application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
- g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
- c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2024, and no later than April 15, 2024, and shall remove the Art Work from said Site after November 15, 2024, and no later than November 30, 2024.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

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

1.4 Indemnity

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

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

- a) The City shall pay the Artist a stipend of \$2,000 per artwork which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after the final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after the final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

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

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

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

3.2 Installation Delays

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

3.3 Early Completion of Artist Services

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

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

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

4.2 Warranties of Quality and Condition

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

ARTICLE 5: INSURANCE

5.1 Artist Insurance

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

5.2 City/Art Exhibit Insurance

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

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

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

6.2 Notice

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

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

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

7.3 Alteration of the Work

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

7.4 Record

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

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

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

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

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

9.2 Subcontracting by Artist

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

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

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

ARTICLE 12: NOTICES

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

1) if to the City, to:

Allison Ullestad; Arts, Culture, & Enrichment Supervisor City of West Des Moines P.O. Box 65320 West Des Moines, IA 50265

2) if to the Artist, to:

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

ARTICLE 13: MISCELLANEOUS

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

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

ARTIST		
Tim Adams	2/4/2024	
Tim Adams	Date	
CITY		
Ryan Penning,	Date	
Director of Parks and Recreation Department City of West Des Moines		

12 Jord

Tim Adams Webster City, IA

Exhibit A

2023 \$7,500 Weathered, stainless, and painted steel 9' x 6' x 4'

'Jord' is the Norse goddess of the earth. The bright abstract feathers, plants, or petals represent the natural world bursting with growth and vibrancy as well as the welcoming "open arms" that nature offers all of us.



CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: <u>April 1, 2024</u>

ITEM:

Motion – Approving Amendment No. 1 to Professional Services Agreement Prairie View Drive & Ashworth Road Intersection Improvements IDOT Project No. CS-TSF-8260(652)--85-77

FINANCIAL IMPACT:

The original Professional Services Agreement included a maximum fee of \$45,000.00 for Basic Services of the Consultant and \$29,000.00 for Resident Consultant Services. Amendment No. 1 increases the Basic Services of the Consultant by \$3,200.00 and the Resident Consultant Services by \$6,750.00. The new maximum not-to-exceed fee thus becomes \$83,950.00. All costs for these services can be paid from account no. 500.000.000.5250.495 with the ultimate funding intended to come from General Obligation Bonds. The City will pay for the project and be reimbursed by the Iowa Department of Transportation (IDOT) up to the \$280,000.00 maximum amount awarded. The City accepted IDOT Traffic Safety Improvement Program (TSIP) Funds on May 2, 2022 which will cover construction costs only. Payment for these additional professional services will not be covered by TSIP Funds.

BACKGROUND:

Snyder & Associates, Inc. is working under an existing Agreement dated August 3, 2020 to perform the professional services necessary for widening Ashworth Road from 54th Street to Prairie View Drive to accommodate a dedicated eastbound left turn lane. Ashworth Road from I-35 to Prairie View Drive was already wide enough to accommodate the addition of a dedicated westbound left turn lane. Traffic signal modifications were also included. All work on this project has been completed to date aside from a few minor punch list items and is awaiting project acceptance.

Amendment No. 1 includes additional Basic Services of the Consultant to accommodate the preparation of additional right-of-way exhibits and more extensive property owner negotiations that were not anticipated with the original scope of the project. Amendment No. 1 also includes additional Resident Consultant Services to account for increased hourly inspection rates due in part to construction being delayed two years to accommodate grant funding, coordination with private utility companies on more significant relocations than anticipated, and the design of one additional sidewalk ramp near the SE corner of 55th Street & Ashworth Road that was not anticipated during the design of the project.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Motion Approving Amendment No. 1 to Professional Services Agreement for the Prairie View Drive & Ashworth Road Intersection Improvements.

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

STAFF REVIEWS

STAFF REVIEWS	
Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Greta Truman, City Attorney
Agenda Acceptance	Ad

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed	March 25, 2024		
Recommendation	Yes	No	Split

AMENDMENT NO. 1 TO THE AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AMENDMENT is made and entered into this 1st day of April, 20124, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Snyder & Associates, Inc. 2727 SW Snyder Boulevard, Ankeny, IA 50023, (Fed. I.D. #42-1379015), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant", hereby amends the original Agreement dated August 3, 2020 as follows:

SCOPE OF SERVICES

The Scope of Services as described in the original Agreement for the Prairie View & Ashworth Intersection Improvements (Project No. 0510-041-2020), Attachment 1 are amended as follows:

Basic Services

- The original scope only included 2 right of way parcels. The final project affected 4 parcels which resulted in the preparation of additional right of way plats.
- The Consultant provided property owner coordination for 4 parcels which was not in the original scope of services.

Resident Services

- The project schedule in the original contract called for construction of the project in the 2021 construction season. The construction happened in the 2023 construction season so additional budget is necessary to accommodate increased hourly rates.
- There were significant utility relocations along the south side of the project which required review of utility relocations plans and staking of right of way to accommodate the relocations.
- The Consultant designed the elevations for an additional ADA curb ramp at Ashworth Road and 55th Street and provided a plan revision for this work. This ramp was originally outside of the project area but was added during construction to address areas that were not in ADA compliance.

2. SCHEDULE

The Project Schedule of the professional services as described in the original Agreement, Attachment 2 is amended as follows: No Change.

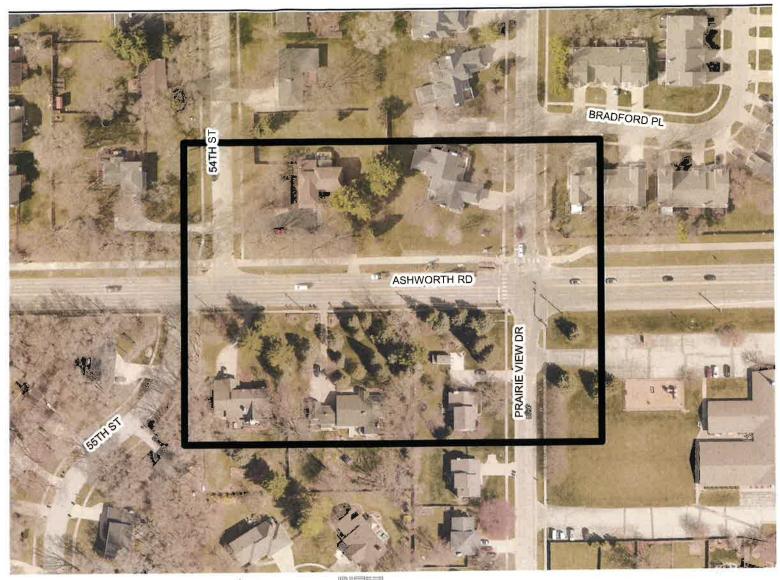
3. COMPENSATION

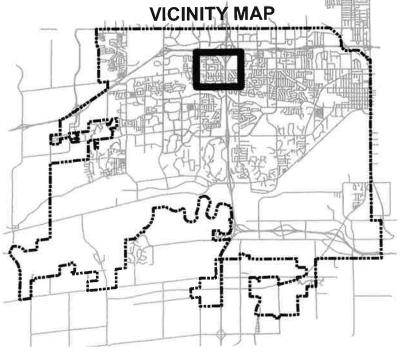
In consideration of the additional professional services provided, the City agrees to pay the Consultant the additional fees to increase the original sum NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in the original Agreement, Attachment 3.

Total Services	\$74,000.00	\$0.00	\$9,950.00	\$83,950.00
I. Basic Services of the Consultant II. Resident Consultant Services	\$45,000.00 \$29,000.00	\$0.00 <u>\$0.00</u>	\$3,200.00 \$6,750.00	\$48,200.00 \$35,750.00
	Original Fee	Previously Amended Fee	Additional Fee	Total Fee

This AMENDMENT is subject to all provisions of the original Agreement. This AMENDMENT together with the Agreement represents the entire and integrated AGREEMENT between the City and Consultant, as executed on the date written above.

SNYDER & ASSOCIATES, INC.		CITY OF WEST DES MOINES	
BY:	Digitally signed by David N. Moellor, P.E. Date: 2024.03.25 11:42:25-05'00'	BY:	
- 1	David N. Moeller, P.E., President	Ryan T. Jacobson, City Clerk	





LEGEND

PROJECT LOCATION







ROJECT

Intersection Improvements - Prairie View Dr & Ashworth Rd

LOCATION:		Exhibit "A"	10
DRAWN BY: JPM	DATE: 6/21/2022	PROJECT NUMBER/NAME: 0510-041-2020	SHT. 1 of 1

DATE: April 1, 2024

ITEM:

Motion – Approving Purchase of Stream Credits from McCorkle Stream Mitigation Bank Mills Civic Parkway – South 91st Street to South Grand Prairie Parkway U.S. Army Corps of Engineers Permit No. CEMVR-RD-2023-1097

FINANCIAL IMPACT:

City Staff would like City Council approval to purchase 3,258 stream credits from the McCorkle Stream Mitigation Bank at a total cost of \$97,740.00 based upon U.S. Army Corps of Engineers Permit No. CEMVR-RD-2023-1097 for Mills Civic Parkway – South 91st Street to South Grand Prairie Parkway. Purchasing stream credits from the White Fox Stream Mitigation Bank (\$35/credit) and the Des Moines River Stream Mitigation Bank (\$55/credit) were also considered, but the McCorkle Stream Mitigation Bank (\$30/credit) offered the least expensive stream credits. All costs for these credits can be paid from account no. 500.000.000.5250.490 using Tax Increment Financing (TIF) revenue collected from within the Coachlight Urban Renewal Area.

The U.S. Army Corps of Engineers Permit No. CEMVR-RD-2023-1097 for Mills Civic Parkway – South 91st Street to South Grand Prairie Parkway also required the purchase of 0.27 emergent wetland credits. City Staff have recently completed a debit request for these 0.27 credits from the Voas Wetland Mitigation Bank in which the City previously purchased credits. This action is not being considered as part of this approval process, but is being shared for informational purposes only.

BACKGROUND:

Due to the impacts to existing Sugar Creek and Fox Creek as part of the Mills Civic Parkway Reconstruction from South 91st Street to South Grand Prairie Parkway, the City of West Des Moines is required by Federal Law to address the stream impacts. Rather than construct off-site improvements to other streams, the City is allowed to purchase stream credits from an approved stream mitigation bank for stream improvements that were previously constructed and are currently being maintained by a third party, in this particular case Jeffrey Dane McCorkle. The City has purchased stream credits from the McCorkle Stream Mitigation Bank in the recent past. City Staff have negotiated the attached Purchase Agreement with Jeffrey Dane McCorkle for the purchase of 3,258 stream credits. City Staff recommend execution of the attached Purchase Agreement for the purchase of the necessary stream credits from the McCorkle Stream Mitigation Bank at a cost of \$97,740.00.

The reconstruction of Mills Civic Parkway from South 91st Street to South Grand Prairie Parkway from an existing 2-lane rural section to a 6-lane urban divided section (major arterial classification) will only include the construction of the southern three (3) lanes initially. A separate, yet related, project known as the Sugar Creek & Fox Creek Crossings project is slated to bid in May 2024 for the construction of a large box culvert along Fox Creek and a new bridge over Sugar Creek. The purchase of these stream credits from the McCorkle Stream Mitigation Bank and the debit of emergent wetland credits from the Voas Wetland Mitigation Bank cover both projects related to the Mills Civic Parkway Reconstruction from South 91st Street to South Grand Prairie Parkway and no additional wetland or stream credit purchases will be necessary.

City Staff continue to seek funding assistance for the project.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Motion Approving Purchase of Stream Credits from McCorkle Stream Mitigation Bank.

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

STAFF REVIEWS

JIIII ILL VILL VILL	
Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Greta Truman, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed	March 25, 2024		
Recommendation	Yes	No	Split

Stream Mitigation Bank Credit Purchase Agreement

This Stream Mitigation Bank Credit Purchase Agreement (this "Agreement") is entered into this 1st day of April 2024, by and between Jeffrey Dane McCorkle, referred to herein as "Sponsor", and the City of West Des Moines, or its assignee referred to herein as "Permittee".

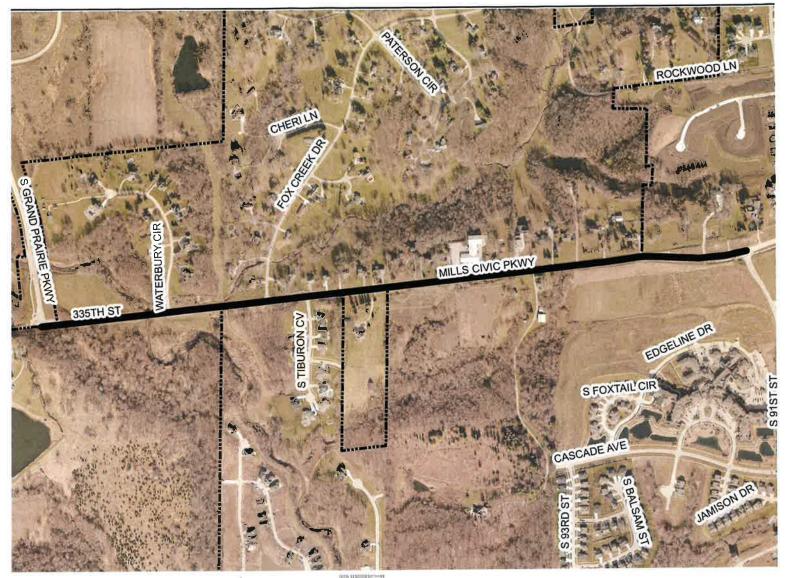
AGREEMENT

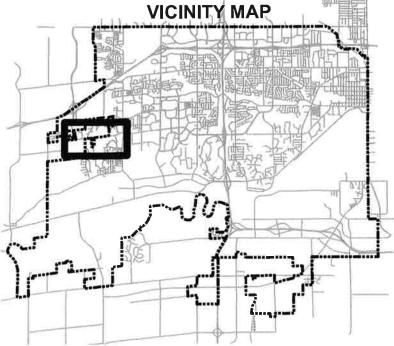
NOW, THEREFORE, in consideration of the Credits, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. <u>Credits.</u> Sponsor has an approved Banking Instrument, referred to herein as the "McCorkle Stream Mitigation Bank", issued by the Army Corps of Engineers authorizing the issuance of stream mitigation banking credits to offset losses of streams and unavoidable adverse impacts on a permitted project, Permit No. CMVR-OD-P-2019-1101. The permitted project is pursuant to the Army Corps' of Engineers' Permit No. CEMVR-RD-2023-1097 for the Mills Civil Parkway Reconstruction Project, referred to herein as the Permitted Project, to be performed pursuant to a §404 permit, which permit is referred to herein as the "Permit". The permit provides for the mitigation of permanent and unavoidable adverse impacts from the Permitted Project allowed by the Permit, by purchasing 3258 credits in the McCorkle Stream Mitigation Bank (Permit No. CMVR-OD-P-2019-1101). Sponsor represents it has good title to the Credits and the authority to transfer them without the consent of any third party.
- 2. <u>Purchase Price.</u> To satisfy the Permit requirements, Permittee agrees to purchase, and the Sponsor agrees to sell 3258 credits of stream mitigation credits in the McCorkle Stream Mitigation Bank for the purchase price of \$97,740.00 (the "Purchase Price"). The Purchase Price is payable in full upon signing the Agreement.
- 3. <u>Transfer of Credits.</u> Upon receipt by the Sponsor of the Purchase Price in immediately available U.S. currency, the Sponsor shall transfer to the Permittee Certificate No. 12, herein referred to as Certificate, evidencing the Credits and documenting payment of the Purchase Price. It is the sole duty of the Permittee to notify the U.S. Army Corps' of Engineers of the Certificate issuance.
- 4. The permittee agrees that the Permittee is not purchasing any real estate interest in the real estate containing the McCorkle Stream Mitigation Bank. The purchase is only of the Credits as specified above.
- 5. The Permittee agrees that the Sponsor has no responsibility or liability for any failure of the Permittee to comply with the terms of the Permit and the Permittee agrees to indemnify and hold harmless the Sponsor to the fullest extent permitted by law from and against any and all losses, damages, judgments, and expenses that the Sponsor may incur on account of any activity of the Permittee associated with the Permit and the Permitted Project.
- 6. Permittee agrees and understands that these credits may not be assigned to anyone without the Sponsor's prior written approval, which approval may be withheld by the Sponsor for any reason or no reason.

- 7. The parties agree that this agreement represents their entire agreement and incorporates and supersedes any or all agreements or discussions.
- 8. This Agreement may be executed in any number of counterparts, which, when taken together, shall constitute a complete and original instrument.

Dated:	Dated:
Jeffrey Dane McCorkle, Sponsor	City of West Des Moines By: Its:





LEGEND

PROJECT LOCATION







PROJECT:

Mills Civic Parkway

LOCATION: South 91st Street to South Grand Prairie Parkway

DRAWN BY: JDR DATE: 8/2/2021 PROJECT NUMBER/NAME: 0510-071-2021

SHT. 1 of 1

ITEM: Approving Interfund Transfers

DATE: April 1, 2024

FINANCIAL IMPACT: None

BACKGROUND: Effective April 13, 2019, an update to the Iowa Administrative Rules Code 545-2 now requires greater disclosures for all interfund transfers including the amount, purpose, and originating and receiving fund. The Finance Department continually reviews the status of the City's General, Road Use Tax, Tax Increment Financing, Capital Project, Debt Service, Local Option Sales Tax and Enterprise Funds.

The City of West Des Moines did adopt transfer amounts in the FY 23-24 Budget and Exhibit A represents transfers to be authorized for the fiscal year ended June 30, 2024.

RECOMMENDATION: Approval of Resolution Authorizing Transfer of Funds.

Lead Staff Member: Lesley Montgomery, Accounting Manager

STAFF REVIEWS

STAFFICEVILLAR		
Department Director	Tim Stiles	
Appropriations/Finance		
Legal		
Agenda Acceptance	$\langle \mathcal{N} \rangle$	

PUBLICATION(S) (if applicable)

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Published In	Not required
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

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Committee	N/A		
Date Reviewed	N/A		
Recommendation	Yes	No	Split

RESOLUTION AUTHORIZING TRANSFER OF FUNDS

WHEREAS, the City of West Des Moines did adopt transfer amounts in the FY 2023-2024 Budget; and WHEREAS, Exhibit A represents the transfers to be authorized at this time.

THEREFORE, BE IT RESOLVED BY THE CITY OF WEST DES MOINES, IOWA, that the Accounting Manager be instructed to transfer the appropriate amounts to each fund for the purpose stated in Exhibit A attached.

PASSED AND APPROVED this 1st day of April, 2024.

	Russ Trimble, Mayor	
ATTEST:		
Ryan T. Jacobson, City Clerk		

EXHIBIT A

	EXHIBIT A					
#	From	Fund #	То	Fund #	Amount	Purpose
1	Police Custodial	830	General	100	1,030.39	Release police found custodial funds to general fund for closed cases
2	General	100	HUD Entitlement	467	20,506.00	Reverse FY23 Program & Admin costs incurred related to Homelessness Prevention expenses coded to 467 not 100
			M.			Reverse FY23 Budgeted LOST Property
3	General	100	LOST	491	2,000,000.00	Tax Reduction due to surplus
Ŭ	Contra					Reverse FY22 Budgeted LOST Property
4	General	100	LOST	491	2,000,000.00	Tax Reduction due to surplus
			HUD Entitlement		7/2	Reimburse for FY22, FY23 HUD
5	Woodland Hills LMI TIF	353	Program	467	14,066.77	admininstrative expense shortfall

ITEM: Revised Petty Cash Fund Levels DATE: April 1, 2024

FINANCIAL IMPACT: None

BACKGROUND: Section 1-10-2 (c) of the West Des Moines City Code states that: "The Finance Director is authorized, at his/her discretion, to draw a check on the General Fund for establishing departmental petty cash accounts to accommodate disbursements of small amounts for operating purposes and making change, without commingling other funds to meet the requirements of said office. The funds shall be operated on an imprest basis not to exceed a total amount as authorized by resolution of the City Council. Disbursements from departmental petty cash accounts shall be evidenced by supporting data, properly approved as to propriety and authenticity."

Based on frequency of use, location, and discussions with staff, the Finance Director periodically recommends updates to the City's authorized petty cash funds due to changes in operational needs, and other factors.

At this time, it is recommended that the petty cash funds for Community & Economic Development, Human Services, and Public Works be reduced to due to lack of need.

Also, increases are being recommended to several Parks & Recreation petty cash funds due to changes in operations. Prior to this upcoming summer season, concession operations at Valley View Aquatic Center, Holiday Park Aquatic Center, and the Raccoon River Softball Complex were managed by a third party. Now that each of these are becoming "in-house" operations, they each require a petty cash / change fund. In addition, additional change funds are needed at the MidAmerican Energy Rec Plex so they will have adequate change funds during large tournament events.

The other changes are due to a change in the accounting for aquatic centers admissions. Petty cash in previous years was charged as an expense at the beginning of each season and as a revenue when the change funds were returned at the end of each season. It is being requested now that these be handled as a petty cash fund for a more appropriate accounting. Finally, the narcotics fund at the Police Department was being accounted for similarly to the aquatic center admissions funds, and it is also being corrected with this action.

Note that some of the seasonally inactive funds are submitted to Finance during non-peak times (aquatics centers, softball complex).

On the following page is a summary of the petty cash levels currently approved as well as the new levels being recommended by staff. This list of Petty Cash Funds was last reviewed and approved by Council on October 2, 2023.

Department	Current	Proposed
City Clerk	\$ 200	\$ 200
Community & Economic Development	50	0
Development Services	100	100
Development Services (change fund)	200	200
EMS	100	100
Engineering Services	50	50
Finance	800	800
Fire	50	50
Human Services	50	0
Library	150	150
Parks & Recreation Administration	400	400
Holiday Aquatic Center concessions	0	600
Holiday Aquatic Center admissions	0	1,500
MidAmerican Energy Rec Plex	8,000	8,000
MidAmerican Energy Rec Plex-Spring tournaments	0	1,000
Raccoon River Park Nature Lodge	150	150
Raccoon River Park Softball concessions	50	1,550
Raccoon River Park Softball-Summer admissions	1,000	1,000
Valley Junction Activity Center	75	150
Valley View Aquatic Center concessions	0	600
Valley View Aquatic Center admissions	0	2,000
Police Administration	100	100
Narcotics Fund	800	2,000
Public Works	200	100
Total (GL account 900.1000.999)	\$ 12,525	\$20,800

OUTSTANDING ISSUES: None

RECOMMENDATION: Adopt resolution updating petty cash fund levels across various departments.

Lead Staff Member: Lesley Montgomery, Accounting Manager

Department Director Appropriations/Finance Legal Agenda Acceptance

PUBLICATION(S) (if applicable)

SUBCOMMITTEE REVIEW (if applicable)

SUBCOMMITTEE REVIEW (if applicable)

T OBLIGATION (III applicable)	002001111111111			
Published In	Committee	Finan	ce & Admini	istration
Dates(s) Published	Date Reviewed	l N	1arch 20, 20	24
V. /	Recommendation	Yes	No	Split

Resolution

WHEREAS it is advantageous for the City of West Des Moines to have petty cash funds in various City departments and,

WHEREAS the Director of Finance has recommended the following amounts of petty cash be allocated to departments:

Department	Amo	unt
City Clerk	\$	200
Development Services		100
Development Services (change fund)		200
EMS		100
Engineering Services		50
Finance		800
Fire		50
Library		150
Parks & Recreation Administration		400
Holiday Aquatic Center concessions		600
Holiday Aquatic Center admissions		1,500
MidAmerican Energy Rec Plex		8,000
MidAmerican Energy Rec Plex-Spring tournaments		1,000
Raccoon River Park Nature Lodge		150
Raccoon River Park Softball concessions		1,550
Raccoon River Park Softball-Summer admissions		1,000
Valley Junction Activity Center		150
Valley View Aquatic Center concessions		600
Valley View Aquatic Center admissions		2,000
Police Administration		100
Narcotics Fund		2,000
Public Works		100
Total (GL account 900.1000.999)		\$20,800

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA that the recommendations concerning petty cash funds are hereby approved and the Director of Finance is directed to implement the same.

PASSED AND APPROVED this 1st day of April 2024

	Russ Trimble, Mayor	
TTEST:		

ITEM: Resolution- Establishing Public Hearing

Regarding FY 2024-2025 Operating and Capital Budgets

DATE: April 1, 2024

FINANCIAL IMPACT:

None at this time.

BACKGROUND:

Chapter 384, Code of lowa, requires a public hearing on the budget estimates for the proposed expenditures, income, and the amount to be raised by property taxation and tax levies for the fiscal year beginning July 1, 2024. The hearing should be held some time before the final certification date (April 30, 2024). Approving the resolution at tonight's meeting will formally establish the public hearing date of April 15, 2024, for consideration of the FY 24-25 Budget.

RECOMMENDATION:

City Council Adopt:

- 1. Resolution Establishing Public Hearing Regarding Fiscal Year 2024-2025 Budget
- 2. Ordering the City Clerk to publish the notice of said hearing

Lead Staff Member: Chris Hamlett, Senior Budget Analyst

STAFF REVIEWS

Department Director

Appropriations/Finance

Tim Stiles, Finance Director

Appropriations/Finance
Legal
Agenda Acceptance

PUBLICATION(S) (II	applicable)
Published In	
Dates(s) Published	
Dates(s) Published	

SUBCOMMITTEE REVIEW (II applicable)			
Committee		NA	
Date Reviewed			
Recommendation	Yes	No	Split

RESOL	UTION	NO.	
TEOOL	CILOII	1101	

RESOLUTION SETTING A DATE OF HEARING TO CONSIDER THE PROPOSED ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2024.

WHEREAS, the provisions of Chapter 384, Code of Iowa, require a public hearing on the budget estimates for the proposed expenditures, income and the amount to be raised by property taxation and the tax levies for the fiscal year beginning July 1, 2024, before the final certification date; and

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

- 1. A public hearing time and date of 5:30 p.m. on April 15, 2024, is established to consider the Fiscal Year 2024-25 budget.
- 2. The City Clerk is ordered to publish notice of said hearing in the Des Register, a newspaper of general circulation in the City of West Des Moines, Iowa, in accordance with Iowa Code Section 384.16(3), not less than ten (10) nor more than twenty (20) days prior to the dates for said hearing.

PASSED AND APPROVED, this 1st day of April, 2024.

	Russ Trimble, Mayor
ATTEST:	

DATE: April 1, 2024

ITEM:

Resolution – Approving Professional Services Agreement Fire Administration Building – Exterior Improvements

FINANCIAL IMPACT:

The cost of the Professional Services Agreement associated with the design of this project is anticipated not to exceed \$9,800.00 for Basic Services of the Consultant. In addition, the cost for performing Resident Consultant Services will not exceed \$3,200.00. Should the cost for the professional services be projected to exceed the amounts set forth in the contract, staff would not authorize such expenditures without further approval by the City Council. All work will be billed on an hourly basis using the established hourly fee structure as set forth in the contract. All costs for these services can be paid from account no. 500.000.000.5250.495 with the ultimate funding intended to come from General Obligation Bonds.

BACKGROUND:

Approval of this action authorizes Melee, L.L.C. dba Studio Melee to perform the professional services necessary for the removal and replacement of the fascia and soffit, removal and replacement of the rear (west) canopy/awning, and re-painting of bollards at the Fire Administration Building located at 318 5th Street. The parking lot repairs, sidewalk repairs, replacement of the access stairs/ramps, and handrail replacement is being handled with the 2023 Parking Lot Repair Program. These are the last of the remodel items necessary at this facility at this time.

The Engineering Services Department retains professional consultants based on their past work experience, qualifications of their staff, familiarity with the project, staffing availability, and past performance. Once a firm has been selected based on the above criteria, City staff then negotiates a fee with the consultant for performing the desired scope of services. City staff attempts, whenever feasible, to distribute professional services work on an equitable basis to qualified firms maintaining local metropolitan area offices who have expressed interest in working for the City of West Des Moines.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution Approving Professional Services Agreement for the Fire Administration Building – Exterior Improvements.

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

STAFF REVIEWS

JIMII KEVIEWS		
Department Director	Brian J. Hemesath, P.E., City Engineer	
Appropriations/Finance	Tim Stiles, Finance Director	
Legal	Greta Truman, City Attorney	
Agenda Acceptance	al	

PUBLICATION(S) (if applicable)

10222017	
Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if appl	icable)
-----------------------	---------	---------

Committee	Public Services		
Date Reviewed	March 25, 2024		
Recommendation	Yes	No	Split

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT

WHEREAS, funding is available for the following described public project:

Fire Administration Building – Exterior Improvements Project No. 0510-019-2024

and,

WHEREAS, said project Plans, Specifications, Form of Contract, and Estimate of Cost need to be prepared, and

WHEREAS, Engineering Services Department staff have recommended Plans, Specifications, Form of Contract, and Estimate of Cost be prepared by Melee, L.L.C. dba Studio Melee; and

WHEREAS, the Engineering Services Department has obtained a written proposal from Melee, L.L.C. dba Studio Melee to do the work requested, which estimates the following cost to the City of West Des Moines:

Basic Services of the Consultant \$ 9,800.00 Resident Consultant Services \$ 3,200.00 Total \$13,000.00

therefore,

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that Melee, LLC dba Studio Melee is hereby directed to prepare Plans, Specifications, Form of Contract, and Estimate of Cost for the above-named project.

BE IT FURTHER RESOLVED, that the City Clerk is authorized and directed to enter into an agreement with Melee, L.L.C. dba Studio Melee for the cost indicated above as payment by the City of West Des Moines for the services indicated.

PASSED AND APPROVED on this 1st day of April, 2024.

	Russ Trimble, Mayor
ATTEST:	
Ryan T. Jacobson, City Clerk	

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 1st day of April, 2024, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and MELEE, L.L.C. (d/b/a "Studio Melee"), (Fed. I.D. #46-4949004), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

THE CITY HEREBY AGREES TO RETAIN THE CONSULTANT FOR THE PROJECT AS DESCRIBED IN THIS AGREEMENT AND CONSULTANT AGREES TO PERFORM THE PROFESSIONAL SERVICES AND FURNISH THE NECESSARY DOCUMENTATION FOR THE PROJECT AS GENERALLY DESCRIBED IN THIS AGREEMENT.

SCOPE OF SERVICES

Services provided under this Agreement for the <u>Fire Administration Building – Exterior Improvements</u> (Project No. 0510-019-2024) shall be as further described in Attachment 1, Scope of Services.

2. SCHEDULE

The schedule of the professional services to be performed shall conform to the Schedule set forth in Attachment 2. Any deviations from the Schedule shall be approved by the authorized City representative. The City agrees that the Consultant is not responsible for delays arising from a change in the scope of services, a change in the scale of the Project or delays resulting from causes not directly or indirectly related to the actions of the Consultant.

3. COMPENSATION

A. In consideration of the professional services provided herein, the City agrees to pay the Consultant the following sum NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in Attachment 3.

I. Basic Services of the Consultant
II. Resident Consultant Services
Total

\$ 9,800.00
\$ 3,200.00
\$ 13,000.00

- B. The Consultant shall invoice the City monthly for services, any reimbursable expenses and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Consultant's submission of final deliverables in accordance with the Scope of Services.
- C. In consideration of the compensation paid to the Consultant, the Consultant agrees to perform all professional services to the satisfaction of the City by performing the professional services in a manner consistent with that degree of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar circumstances. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Consultant agrees to pay for the same in full.

4. INSURANCE

A. Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant' representative(s) in connection with the professional services which are to be provided by Consultant pursuant to this Agreement, including protection from claims for bodily injury, death, property damage, and lost income. Consultant shall provide worker's compensation insurance coverage for Consultant and all Consultant's personnel. Consultant shall file applicable

insurance certificates with the City, and shall also provide evidence of the following additional coverage.

- B. The Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of lowa in the limits of at least \$1,000,000 each personal injury accident and/or death; \$1,000,000 general aggregate personal injury and/or death; and \$1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- C. The Consultant shall also provide evidence of automobile liability coverage in the limits of at least \$1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- D. The Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of \$1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.
- E. Failure of Consultant to maintain any of the insurance coverages set forth above shall constitute a material breach of this Agreement.

5. NOTICE

Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

City of West Des Moines Name:

Ryan T. Jacobson, City Clerk Attn: 4200 Mills Civic Parkway Address:

City, State: West Des Moines, IA 50265-0320

FOR THE CONSULTANT:

MELEE, L.L.C.(d/b/a "Studio Melee") Name:

Curtis D. Ehler, AIA Attn: 139 Fourth Street Address:

City, State: West Des Moines, Iowa 50265

6. GENERAL COMPLIANCE

In the conduct of the professional services contemplated hereunder, the Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of lowa.

STANDARD OF CARE

Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. INDEPENDENT CONTRACTOR

Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or Consultant's employees, representatives or other personnel performing the

professional services specified herein, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, representatives or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION

Consultant will not discriminate against any employee of applicant for employment because of age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status. Consultant will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status. Consultant will cooperate with the City in using Consultant's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this Agreement.

10. HOLD HARMLESS

Consultant agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Consultant is legally liable.

11. ASSIGNMENT

Consultant shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS

The funds appropriated for this Agreement are equal to or exceed the compensation to be paid to Consultant. The City's continuing obligations under this Agreement may be subject to appropriation of funding by the City Council. In the event that sufficient funding is not appropriated in whole or in part for continued performance of the City's obligations under this Agreement, or if appropriated funding is not expended due to City spending limitations, the City may terminate this Agreement without further compensation to the Consultant. To the greatest extent allowed by law, the City shall compensate Consultant as provided in Section 18(B) of this Agreement.

13. AUTHORIZED AMENDMENTS TO AGREEMENT

- A. The Consultant and the City acknowledge and agree that no amendment to this Agreement or other form, order or directive may be issued by the City which requires additional compensable work to be performed if such work causes the aggregate amount payable under the amendment, order or directive to exceed the amount appropriated for this Agreement as listed in Section 3, above, unless the Consultant has been given a written assurance by the City that lawful appropriation to cover the costs of the additional work has been made.
- B. The Consultant and the City further acknowledge and agree that no amendment to this Agreement or other form, order or directive which requires additional compensable work to be performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation

to be paid, such amendment, order or directive to be signed by the authorized City representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

14. OWNERSHIP OF CONSULTING DOCUMENTS

All sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall become the property of the City; a reproducible set shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the Consultant. All drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so. The Consultant's liability for use of the sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall be limited to the Project.

15. INTERPRETATION

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the Agreement. This is a completely integrated Agreement and contains the entire agreement of the parties; any prior written or oral agreements shall be of no force or effect and shall not be binding upon either party. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

16. COMPLIANCE WITH FEDERAL LAW

To the extent any federal appropriation has or will be provided for the Project, or any federal requirement is imposed on the Project, Consultant agrees that Consultant will comply with all relevant laws, rules and regulations imposed on City and/or Consultant necessary for receipt of the federal appropriation. Consultant shall provide appropriate certification regarding Consultant's compliance.

17. SOLICITATION AND PERFORMANCE

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.
- B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

18. SUSPENSION AND TERMINATION OF AGREEMENT

- A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be effected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.
- B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.
- C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event Page 4 of 9

of such default by the Consultant, the City may give ten (10) days written notice to the Consultant of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.

- D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.
- E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

19. TAXES

The Consultant shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this Agreement. The Consultant shall execute and deliver and shall cause any subconsultant or subcontractor to execute and deliver to the City certificates as required to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY

If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

21. MISCELLANEOUS HEADINGS

Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

22. FURTHER ASSURANCES

Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

MELEE, L.L.C.(d/b/a "Studio Melee")		CITY OF WEST DES MOINES		
BY:	Digitally signed by Curtis Ehler DN: C=US, E=curtis@studiometee.com, O='MELEE, LLC (dbs: Studio MELEE)', CN=Curtis Ehler Date: 2024.03.23 13:04:49-05'00'	BY:		
Curtis Ehler, AIA – Owner / Architect		Ryan T. Jacobson, City Clerk		

ATTACHMENT 1

SCOPE OF SERVICES

Project scope involves professional consulting design services for the <u>Fire Administration Building – Exterior Improvements (Project No. 0510-019-2024)</u> located at 318 Fifth Street.

Professional consulting design services will be provided in two categories.

- First will be the "Basic Services of the Consultant" which will involve design services prior to the start of construction. These would include Schematic Design, Design Development, Construction Documents, and Bidding. This category of services will end at the completion of the preconstruction meeting.
- Second will be the "Resident Consultant Services" which will involve design services during construction. These include shop drawing and submittal review, design interpretation during construction, reviewing requests for additional information from contractors and providing responses, reviewing change order requests, and providing recommendations to the owner, onsite observation, semi-weekly project updates/reporting, reviewing and developing payapplications and change orders, project monitoring, weekly reports, final observation report, and coordination of record drawings.

The project involves the following:

- Removal and Replacement of the building's <u>Fascias and Soffits</u> (not including those fascias directly attached and part of the existing roof membrane system).
- Removal and Replacement of the building's rear (west) Canopy/Awning.
- Refinish and Repaint the building's Original Bollards located near the garage doors.
- Paint the building's New Bollards provided as part of the 2023 Parking Lot Repairs Program (Note that all other work included as part of the 2023 Parking Lot Repairs Program is being handled by a separate professional services consultant under a separate agreement).

The project involves the following phases of service:

Basic Services of the Consultant

- Schematic Design & Design Development:
 - Prepare schematic design and design development documents which consist of drawings showing the overall scope of the project. These may include demo plans, new plans, demo elevations, new elevations, and other related views.
 - Prepare a first draft of the specification manual describing the materials and products included as part of the project.
- Construction Documentation:
 - Using the schematic design and design development documents from the previous phase, prepare construction drawings which include all necessary information for bidding the work to contractors and construction. These documents may consist of additional drawings showing an added level of scope and detail, including code plans, demo sections, new sections, demo details, and new details.
 - Using the schematic design and design development documents from the previous phase, prepare construction specifications.
 - Prepare (via a separate sub-consultant) structural engineering and design detailing related to the Canopy/Awning.
 - o Review the final construction documents with the Owner.
- Bidding:
 - Assist in project notification to interested contractors and distribution of Construction Documents to relevant bidders (digitally).
 - o Review questions from bidders and provide responses.
 - Review requests for substitutions and make decisions on whether substitutions are acceptable.
 - o Prepare addenda.

o Compile bid tabulation after bids have been received (digitally).

 Review bid tabulation with the Owner, assist in contractor selection, and assist with securing construction contract documents from the low bidder.

Resident Consultant Services

- Construction Administration:
 - Attend pre-construction meetings.
 - o Review submittals (including samples, shop drawings and product data).
 - o Select final color, material or other aesthetic design options presented by the contractor.
 - Review requests for additional information from contractors and provide responses.
 - o Review change order requests and provide recommendation to the Owner.
 - o Review payment applications from the contractor and sign/certify.
 - Attend semi-weekly construction progress meetings (to be held at the project site) and prepare meeting minutes along with a site observation field report.
 - o Upon substantial completion, prepare one final observation report (punch list) and one follow-up
 - Incorporate any changes into electronic record documents and deliver to Owner (in PDF format).

The following sub-consultants and their respective professional consulting services in relation to the project description above, are included under this prime agreement:

Structural Engineering:

Structurefy Engineering, Inc.

Note that the Scope of Services does not include the following:

- Geotechnical Exploration, Borings, Engineering, Reports and/or Soil Testing.
- Civil Engineering, Storm Water Pollution Prevention Plan (SWPPP) and/or Land Surveys.
- Structural Analysis, Engineering, and/or Modification to the existing building's footings, foundations, and framing systems (other than those related to the work described above).
- Mechanical, Electrical, Plumbing, Fire Alarm and Telecommunication Engineering.
- Detailed design of Fire Sprinkler Systems (would be provided by a separate licensed design-build sub-contractor as required by the State)
- Security Alarms, Security Cameras, and/or other Active Shooter Prevention Measures.
- Energy Modeling, Life Cycle Cost Analysis (LCCA), Life Cycle Assessment (LCA).
- Commissioning of Systems and/or assisting with system startup or adjustment.
- Building Envelope Modifications (other than those related to the work described above).
- Exterior Building Signage, Logo Design, and/or other Graphical Design.
- Identification, Protection, and/or Removal/Abatement of hazardous materials.
- Retaining walls, monument signs, storage garages, dumpster enclosures, and/or other detached accessory structures.
- Specification of tables, chairs, and/or other nonfixed furniture and/or furnishings.
- Construction phasing/scheduling, job-site safety, detailed cost estimation, temporary bracing/shoring, temporary weather protection, and/or other Contractor-related Duties.
- Planning and Zoning and/or Zoning Board of Adjustment Applications and/or Processes.
- Fees paid for securing approval of the Authority Having Jurisdiction of the project.
- (Planning and Zoning, Site Plan Review, Building Plan Review, Permit and/or Variances).
- Special Inspections and/or testing required by the Authority Having Jurisdiction.
- Preparation of "As-Built" or other Record Drawings. ("As-designed" Record Drawings can be provided at completion by request).
- Printing and/or distribution costs for drawings/specification documents to contractors for bidding & construction.
- Boiler-plate front-end specification sections from divisions 0 and 1 (language shall be provided by the Owner and modified by the professional consultant as required).

ATTACHMENT 2

PROJECT SCHEDULE

Project schedule is based on a start date of April 2nd, 2024, which would coincide with the next day after the date of the City Council's approval of this professional services agreement on April 1st, 2024.

The following schedule is anticipated but can be modified if dates are not convenient to the Owner:

April 1 st , 2024		Approval of Consultant Agreement ~ City Council Meeting ~
April 2 nd – April 19th, 2024	(3 weeks)	Basic Services of the Consultant: Schematic Design & Design Development
April 20 th – May 17th, 2024	(4 weeks)	~ Review Meeting with City Staff ~ Construction Documents ~ Send to City Staff ~
May 20 th , 2024		Plan Approval and Order of Construction ~ City Council Meeting ~
May 21 st , 2024		Notice of Letting ~ Release Documents for Bidding ~
June 5 th		Bid Opening
June 17 th , 2024		Approval of Contractor Agreement ~ City Council Meeting ~
		Resident Consultant Services:
June 18 th – September 6th, 2024	(12 weeks)	Construction ~ Through Substantial Completion ~
September 13 th , 2024	(1 week)	Final Completion

ATTACHMENT 3

SCHEDULE OF FEES

Fees are based on an hourly rate for the services described in Attachment 1. The hourly rates include reimbursable expenses (printing and mileage).

Architectural	(Studio MEI	LEE):
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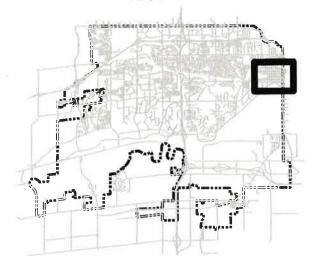
Principal / Project / Managing Architect: Licensed Architect:	\$115 / hour \$100 / hour
Intern Architect / CAD Technician: Clerical:	\$85 / hour \$75 / hour

Structural (Structurefy Engineering, Inc.):

Principal-in-Charge (Brant Bristow):	\$150 / hour
Engineer (Keegan Pullis):	\$110 / hour
Drafter (Keegan Pullis):	\$110 / hour



VICINITY MAP



LEGEND

PROJECT LOCATION



SHT. 1 of 1



Fire Administration Building, Exterior Improvements

LOCATION		318 5th Street	
DRAWN BY: JPM	DATE: 3/18/2024	PROJECT NUMBER/NAME: 0510-019-2024	

ITEM: Housing Tax Credit Program Application to the

DATE: April 1, 2024

Iowa Finance Authority – Approval of Resolution of Support –

Hubbell Realty Company

RESOLUTION: Approval of city funds and support for Hubbell Realty Company's application to the Iowa Finance Authority's Housing Tax Credit Program.

FINANCIAL IMPACT: City staff propose a 10-year, 100% property tax rebate. Staff projects the rebate in the total estimated amount of \$825,000 of TIF assistance over the 10-year period, which will be capped in an amount to address the developer's gap, per a future development agreement. Additionally, staff recommends providing a \$15,000 per dwelling unit (\$780,000 total) grant from the City's Woodland Hills Housing TIF (LMI set aside), which would be paid out upon satisfactory completion of the project.

BACKGROUND: Keystone on 8th is an affordable multi-family residential infill development that consists of two separate phases and is located at 1245 and 1261 8th Street. The first phase was built by JGC Holdings, LLC (Joe Cordaro) which opened in 2022 with 42 one and two-bedroom apartment units and first floor commercial space. Phase II has not yet commenced construction as originally proposed by the developer. Hubbell Realty Company has approached the developer with intent to acquire the undeveloped Phase II land and build a second multi-family building that is comparable in scope, only without the first-floor commercial space, which is to be known as the Valley Ridge Apartments.

Hubbell Realty Company is proposing to construct a 4-story, 52-unit building with a mix of one, two, and three-bedroom units, surface parking, and outdoor resident amenity space. A total of 13 units are proposed at rent and tenant income caps that meet HUD's 40% Area Median Income (AMI) threshold, and 39 units at the 60% AMI rent and income level. Total project costs are estimated at \$11,900,000.

Hubbell will be submitting an application to the lowa Finance Authority for the 9% affordable Housing Tax Credit (LIHTC) Program, which has an upcoming application deadline of April 10, 2024. This area of the city has been recently designated as a part of the lowa Thriving Communities Program, which will provide an additional 2 bonus points on the Housing Tax Credit application to the lowa Finance Authority. In addition, Hubbell Realty Company has submitted an application to the Polk County Housing Trust Fund for a housing grant in the amount of \$300,000 to bolster their capital stack.

Citing high construction costs, coupled with rent structures that will challenge the project's debt coverage service ratio in the years after the project is built, Hubbell Realty Company is requesting a 10-year, 100% property tax rebate. Staff projects the rebate to amount to an estimated \$825,000 in TIF assistance over the 10-year period, which will be capped at the developer's gap, per a future development agreement. The proposed TIF assistance represents an estimated 7% of the total project costs. It is projected that if the site is left undeveloped, the total estimated tax revenue generated from the vacant land after 20 years is \$474,000. If developed, less the property tax rebate incentive, the site is projected to create a property tax return on investment for the city in the estimated amount of \$1,037,000.

Additionally, staff recommends providing a \$780,000 grant from the City's Woodland Hills Housing TIF (LMI set aside) to address the financing gap and reduce the amount of TIF originally requested, which would be paid out upon satisfactory completion of the project. This amount equates to \$15,000 per affordable dwelling unit. The City's Housing TIF would include a provision that would keep the units affordable for a period of at least 15 years, in addition to any program requirements placed on the project from the Iowa Finance Authority.

The City's funding commitments are contingent upon the applicant receiving a tax credit award from the lowa Finance Authority during their competitive application process, with an award date anticipated in the Fall of 2024. Should the project receive an award, the city anticipates bringing forward a negotiated development agreement to finalize the city's financial incentive package, which will require the vote of the City Council.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Staff is recommending that the City Council authorize the Mayor to sign a Resolution of Support for the Housing Tax Credit Program application to be submitted by Hubbell Realty Company to the Iowa Finance Authority.

ATTACHMENTS:

Exhibit I

Resolution of Support

Lead Staff Member:___

Christine Gordon, AICP, Housing & Community Development Manager

STAFF REVIEWS

STAFF MEATERS	
Department Director	Ryan Moff
Appropriations/Finance	Tim Stiles 1
Legal	Jessica Grove
Agenda Acceptance	NA
	1 N V

PUBLICATION(S) (if applicable)

PUBLICATION(5) (II applicable)		
	Published In	NA
	Dates(s) Published	NA

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	March 20, 2024		
Recommendation	X YES	NO	

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA AUTHORIZING THE MAYOR TO SIGN THE RESOLUTION OF SUPPORT FOR HUBBELL REALTY COMPANY'S APPLICATION TO THE IOWA FINANCE AUTHORITY'S HOUSING TAX CREDIT PROGRAM

WHEREAS, Hubbell Realty Company proposes to undertake the redevelopment of the property located at 1245 8th Street for rental housing development; and

WHEREAS, Hubbell Realty Company proposes to file a formal application to the Iowa Finance Authority's Housing Tax Credit Program; and

WHEREAS, the City of West Des Moines is in support of providing affordable rental housing within the City; and

WHEREAS, Hubbell Realty Company has requested funds from the City for project gap financing assistance; and

WHEREAS, if successfully awarded the Housing Tax Credits from the Iowa Finance Authority, the City of West Des Moines proposes to enter into a development agreement to provide a 10-year, 100% property tax rebate on the project with a maximum capped Tax Increment Finance rebate estimated at \$825,000; and

WHEREAS, if successfully awarded the Housing Tax Credits from the Iowa Finance Authority, the City of West Des Moines proposes to provide, through a development agreement, \$15,000 per affordable dwelling unit, or up to \$780,000 of the Woodland Hills Tax Increment Financing funds; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of West Des Moines fully supports Hubbell Realty Company's application to the Iowa Finance Authority's Housing Tax Credit Program.

Russ Trimble, Mayor	Attest:
	Ryan T. Jacobson, City Clerk

PASSED AND ADOPTED this 1st day of April 2024.

ITEM: Housing Tax Credit Program Application to the Iowa Finance Authority – Approval of Resolution of Support – Newbury Living **DATE:** April 1, 2024

RESOLUTION: Approval of funds and support for Newbury Living's application to the lowa Finance Authority's Housing Tax Credit Program.

FINANCIAL IMPACT: City staff proposes a 10-year, 100% property tax rebate. Staff projects the rebate in the total estimated amount of \$700,000 of TIF assistance over the 10-year period, which will be capped in an amount to address the developer's gap, per a future development agreement. Additionally, staff recommends providing a \$15,000 per dwelling unit (\$735,000 total) grant from the City's Woodland Hills Housing TIF (LMI set aside), which would be paid out upon satisfactory completion of the project.

BACKGROUND: 3535 Westown Parkway is the site of former Valley West Inn hotel, which was demolished in late 2023. Newbury Management Company d/b/a Newbury Living (Frank Levy) ("Newbury Living") has a purchase agreement to acquire the 2.6-acre property with the intent to construct a new affordable multi-family apartment building on the site.

Newbury Living is proposing a 4-story building with a total of 49 dwelling units in the first phase of a two-phase project, which will include surface parking, and on-site resident amenities. The developer is proposing a mix of one, two, and three-bedroom units, with roughly 15 units at or below 40% of Area Median Income (AMI) and the remainder being at 60% or below of AMI thresholds. Total project costs for Phase I are estimated at \$15,500,000. The future Phase II would include a separate building of roughly the same unit count for around 100 total dwelling units on site, although unit count and affordability ranges have yet to be determined for Phase II.

Newbury Living will be submitting an application to the Iowa Finance Authority for the 9% affordable Housing Tax Credit (LIHTC) Program. In addition, Newbury Living has applied to the Polk County Housing Trust Fund for \$300,000 in grant funding from their Rental Development Program, and \$400,000 in grant funding from their ARPA Housing Fund.

Citing high construction costs, coupled with rent structures that will challenge the project's debt coverage service ratio in the years after the project is built, Newbury Living is requesting a 10-year, 100% property tax rebate. Staff projects the rebate estimated at \$700,000 in TIF assistance over the 10-year period, which will be capped to address the developer's gap, per a future development agreement. The proposed TIF assistance represents an estimated total of 6% of the total project costs. It is projected that if the site is left undeveloped, the total estimated tax revenue generated from the vacant land (Phase I portion only) after 20 years is \$540,000. If developed, less the property tax rebate incentive, the site is projected to create a property tax return on investment for the city in the estimated amount of \$1,121,852 which could be increased even more substantially if the additional future phase of the project is brought online.

Additionally, staff recommends providing a \$15,000 per affordable housing unit grant from the City's Woodland Hills Housing TIF to address the financing gap and reduce the amount of TIF assistance originally

requested, which would be paid out upon satisfactory completion of the project. The total would be up to \$735,000. The City's Housing TIF would include a provision that would keep the units affordable for a period of at least 15 years, in addition to any program requirements placed on the project from the lowa Finance Authority.

The City's funding commitments are contingent upon receiving a tax credit award from the Iowa Finance Authority during the competitive application process, with an award date anticipated in the Fall of 2024. Should the project receive an award, the city anticipates bringing forward a negotiated development agreement to finalize the city's financial incentive package, which will require the vote of the City Council.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Staff is recommending that the City Council authorize the Mayor to sign a Resolution of Support for the Low-Income Housing Tax Credit Program application to be submitted by Newbury Living to the Iowa Finance Authority.

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Exhibit I

Resolution of Support

Lead Staff Member: Christine Gordon, AICP, Housing & Community Development Manager

STAFF REVIEWS

JIAN REVIEWS		
Department Director	Ryan Moffatt	
Appropriations/Finance	Tim Stiles //	
Legal	Jessica Grove	
Agenda Acceptance	WE '	

PUBLICATION(S) (if applicable)

	1 OBEICATION (II applicable)	
ì	Published In	NA
	Dates(s) Published	NA

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration March 20, 2024	
Date Reviewed		
Recommendation	X YES	NO

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA AUTHORIZING THE MAYOR TO SIGN THE RESOLUTION OF SUPPORT FOR NEWBURY LIVING'S APPLICATION TO THE IOWA FINANCE AUTHORITY'S HOUSING TAX CREDIT PROGRAM

WHEREAS, Newbury Living proposes to undertake the redevelopment of the property located at 3535 Westown Parkway for rental housing development; and

WHEREAS, Newbury Living proposes to file a formal application to the Iowa Finance Authority's Housing Tax Credit Program; and

WHEREAS, the City of West Des Moines is in support of providing affordable rental housing within the City; and

WHEREAS, the Newbury Living has requested funds from the City for project gap financing assistance; and

WHEREAS, if successfully awarded the Housing Tax Credits from the Iowa Finance Authority, the City of West Des Moines proposes to enter into a development agreement to provide a 10-year, 100% property tax rebate on the project with a maximum capped Tax Increment Finance Rebate estimated of \$700,000; and

WHEREAS, if successfully awarded the Housing Tax Credits from the Iowa Finance Authority, the City of West Des Moines proposes to provide, through a development agreement, \$15,000 per affordable dwelling unit, or up to \$735,000 of the Woodland Hills Tax Increment Financing funds; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of West Des Moines fully supports Newbury Living's application to the Iowa Finance Authority's Housing Tax Credit Program.

PASSED AND ADOPTED this 1st day of April 2024.		
Russ Trimble, Mayor	Attest:	
	Ryan T. Jacobson, City Clerk	

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: April 1, 2024

ITEM: The Pines at Glen Oaks, Southwest quadrant of I-35 and Mills Civic Parkway Interchange – Approve Extension of Preliminary Plat Approval Entitlement – Paramount – Destination Homes, Inc. – PP-005359-2021

Resolution: Approval of Extension of Preliminary Plat Entitlement

Background: The applicant, Paramount – Destination Homes, Inc. an Iowa Company, and property owner, Gerald M. Kirke Revocable Family Trust, request approval of an extension of the Preliminary Plat approval entitlement for the approximately 8-acre property located at the southwest quadrant of the I-35 and Mills Civic Parkway interchange. The original approval of the project application was granted by the City Council on April 3, 2023. That approval allowed the grading and installation of private utilities on the site. Grading has commenced; however, has been stalled due to the arrival of winter and due to the project being in litigation (see following bullet) which has restricted what work can be done until the matter is settled.

Staff Review & Comment:

• <u>History</u>: Subsequent to the approval of the preliminary plat for the Pines at Glen Oaks on April 3, 2023, the Glen Oaks Owners Association sued the property owner claiming that the property owner and developer didn't follow the provisions of the covenants of the owner association. This litigation has delayed the developer in improving the property.

Preliminary plats are reviewed under City Code, Title 10 Subdivision Regulations which state:

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.

The developer has not yet submitted a final plat, which the developer indicates is a result of the lawsuit. With no public improvements being done with this plat, staff recommends that the entitlement follow the 12-month rule and the extension allowance be six months from the extension approval date to get a final plat to the City Council.

 <u>Modifications to Code since last approval</u>: No changes to the City Code or regulations have been made that would render the preliminary plat inconsistent with codes and regulations.

Outstanding Issues: There are no outstanding issues.

Recommendation: Approve the request for the extension of entitlement by six (6) months to October 1, 2024, for the final plat to be submitted, subject to the applicant meeting all City Code.

Approval Meeting Dates: N/A Planning and Zoning Commission April 1, 2024 City Council: First Reading Staff Report Reviews: □ Legal Department City Council □ Director Agenda Acceptance □ Appropriations/Finance Council Subcommittee Review (if applicable) Publications (if applicable) Des Moines Register Published Development & Planning Subcommittee Community Section ln: Date(s) n/a Date Reviewed n/a Published Date(s) of ☐ Split Recommendation ☐ Yes □ No

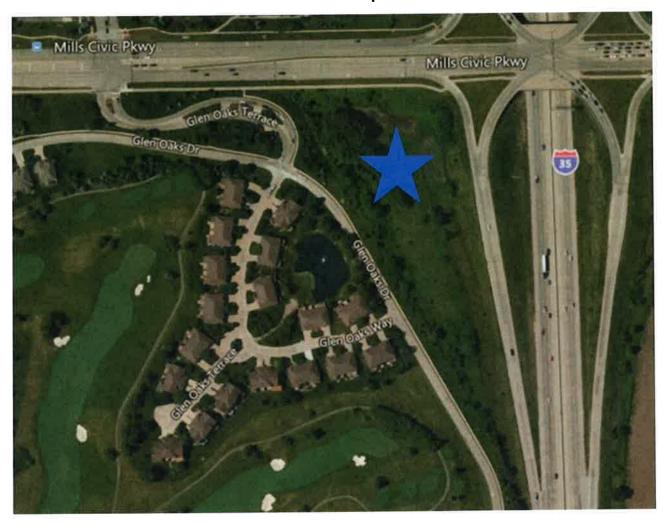
Lead Staff Member: Kara Tragesser

Mailed

Notices

n/a

Location Map



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 AN EXTENSION OF ENTITLEMENT FOR AN APPROVED PRELIMINARY PLAT FOR THE PINES AT GLEN OAKS

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant, Paramount – Destination Homes, Inc. an Iowa Corporation, and property owner, Gerald M Kirke Revocable Family Trust, request approval of an extension of entitlement of the approved Preliminary Plat for the Pines at Glen Oaks for that property located at the southwest quadrant of I-35 and Mills Civic Parkway and legally described in attached Exhibit 'B; 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 findings stated in the applicable provisions of Title 9, Chapter 1, Subsection 8, the Comprehensive Plan and City Code.

WHEREAS, on this day the City Council held a duly noticed meeting to consider the request for an extension of entitlement to October 1, 2024 for the approved The Pines at Glen Oaks Preliminary Plan.

NOW, THEREFORE, The City Council does approve the extension of entitlement to the Preliminary Plat for the Pines at Glen Oaks until October 1, 2024 (PP-005395-2021), 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 entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on April 1, 2024.
Russ Trimble, Mayor
ATTECT.
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 April 1, 2024, by the following vote.
Exhibit A: Conditions of Approval
1. None.

Outlot O in Glen Oaks Plat 2, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa

Exhibit B: Legal Description

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM:

Resolution - Approval and Acceptance of Conveyance of Property Interests for

Construction of the Mills Civic Parkway Widening Project

FINANCIAL IMPACT:

None.

SYNOPSIS: Property interests necessary for construction of the Mills Civic Parkway Widening, South 81st Street to South 88th Street Project have been secured through a negotiated Temporary Easement Contract and will be donated from the owners shown on **Exhibit "A**. The attached resolution approves the contract and, for policy and title purposes, formally accepts the property interests and authorizes the filing of all relevant documents. Costs associated with acquisition of the property interests will be paid from Account No. 500.000.000.5550.735, Project No. 0510-035-2023 with the ultimate funding intended to come from the Coachlight Drive Urban Renewal Area TIF and 8300 Mills Civic Parkway Urban Renewal Area TIF.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION:

Adopt a Resolution approving and accepting conveyance of property interests to the City of West Des Moines for Construction of the Mills Civic Parkway Widening, South 81st Street to South 88th Street Project.

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

STAFF REVIEWS

Department Director	Greta Truman, City Attorney
Appropriations/Finance	Brian J. Hemesath, P.E., City Engineer
Legal	Tim Stiles, Finance Director
Agenda Acceptance	Ryan T. Jacobson, City Clerk

PUBLICATION(S) (if applicable)

	I CDLICITION (S)	(1
1	Published In	
	Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed		16	
Recommendation	Yes	No	Split

RESOL	UTION	NO.	

AUTHORIZING APPROVAL AND ACCEPTANCE OF PURCHASE AGREEMENTS AND CONVEYANCE OF PROPERTY INTERESTS FOR CONSTRUCTION OF THE MILLS CIVIC PARKWAY WIDENING PROJECT, PROJECT NO. 0510-035-2023

WHEREAS, on February 5, 2024, the City Council of the City of West Des Moines, Iowa established the fair market value and authorized the acquisition of property and easements, including any leasehold interests, necessary for construction of the Mills Civic Parkway Widening, South 81st Street to South 88th Street Project (Project No. 0510-035-2023); and

WHEREAS, ultimate funding is intended to come from the Coachlight Drive Urban Renewal Area TIF and 8300 Mills Civic Parkway Urban Renewal Area TIF; and

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

WHEREAS, the City of West Des Moines has obtained a Temporary Easement Contract for the donation of property interests necessary for the Project; and

WHEREAS, the name of the property owners of the property to be acquired is attached hereto as Exhibit "A" and made a part of this resolution; and

WHEREAS, documents conveying property interests necessary to complete the Project have been presented to the City for approval; 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 City Attorney is authorized to take all steps necessary and consistent with the contract to acquire the property interests.
- 4. The documents shall be filed with the county recorder as appropriate.
- 5. The Director of Finance is authorized to make payment to the property owner shown on the attached **Exhibit "A"** pursuant to the terms and conditions of the Purchase Agreements.

PASSED AND ADOPTED this 1st day of April, 2024.

ATTEST:	Russ Trimble, Mayor	
Ryan T. Jacobson City Clerk	<u></u>	

Exhibit "A"

MILLS CIVIC PARKWAY WIDENING, SOUTH 81ST STREET TO SOUTH 88TH STREET PROJECT NO. 0510-035-2023

EXHIBIT/ PARCEL	PROPERTY OWNER	ACQUIRED PRICE-FMV	SUMMARY
08	PFC WDM, LLC SW NW /EX SILVERWOOD PLATS 1, 2, & 3 & EX PARCEL AA & EX PARCEL 21- 119/Sec: 14Twp: 78Rng: 26 West Des Moines, IA 50266 Dallas County 1614100030	0.00	*donation - TE only
	TOTAL	0.00	

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM:

Resolution - Approval and Acceptance of Conveyance of Property Interests for

Construction of the Valley Junction Alleys Phase 8 Project

FINANCIAL IMPACT: Minimal filing costs

SYNOPSIS: Property interests necessary for construction of the Valley Junction Alleys Phase 8 Project are being donated through a negotiated permanent easement from the owner shown on **Exhibit "A"**. The attached resolution approves the easement and, for policy and title purposes, formally accepts the property interests and authorizes the filing of all relevant documents. Costs associated with acquisition of the property interests will be paid from Account No. 500.000.000.5550.735, Project No. 0510-021-2023 with the ultimate funding intended to come from General Obligation Bonds.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION:

Adopt a Resolution approving and accepting conveyance of

property interests to the City of West Des Moines for Construction

of the Valley Junction Alleys Phase 8 Project.

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

STAFF REVIEWS

STAIT KEVIEWS	
Department Director	Greta Truman, City Attorney
Appropriations/Finance	Brian J. Hemesath, P.E., City Engineer
Legal	Tim Stiles, Finance Director
Agenda Acceptance	Ryan T. Jacobson, City Clerk

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION NO	
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AUTHORIZING APPROVAL AND ACCEPTANCE OF PURCHASE AGREEMENTS AND CONVEYANCE OF PROPERTY INTERESTS FOR CONSTRUCTION OF THE VALLEY JUNCTION ALLEYS PHASE 8 PROJECT, PROJECT NO. 0510-021-2023

WHEREAS, on January 16, 2024, the City Council of the City of West Des Moines, Iowa established the fair market value and authorized the acquisition of property and easements, including any leasehold interests, necessary for construction of the Valley Junction Alleys Phase 8 Project (Project No. 0510-021-2023); and

WHEREAS, ultimate funding is intended to come from General Obligation Bonds; and

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

WHEREAS, the City of West Des Moines has obtained a permanent easement for the donation of property interests necessary for the Project; and

WHEREAS, the name of the property owners of the property to be acquired are attached hereto as **Exhibit "A"** and made a part of this resolution; and

WHEREAS, documents conveying property interests necessary to complete the Project have been presented to the City for approval; 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 City Attorney is authorized to take all steps necessary and consistent with the easement to acquire the property interests.
- 4. The documents shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED this 1st day of April, 2024

Exhibit "A"

VALLEY JUNCTION ALLEYS PHASE 8 PROJECT NO. 0510-021-2023

EXHIBIT/ PARCEL	PROPERTY OWNER	ACQUIRED PRICE-FMV	SUMMARY
43, 44, 45,	John L. Austin and Diane Kay Austin 106 and 116 13 th Street West Des Moines, IA 50265 Polk County	\$0.00	*Donation – Permanent Easement only
	TOTAL	\$0.00	

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: April 1, 2024

ITEM: 3725 Greenbranch Drive - Approval and Acceptance of Settlement

Agreement – Fredrick and Lynne Bell

Resolution: Approval and Acceptance of Settlement Agreement

Financial: Waiver of \$159.00 abatement costs.

<u>Background:</u> The property owner(s) of 3725 Greenbranch Drive, Fredrick and Lynne Bell (the "Bells"), have consistently contested the application of City Code Section 7-1-6, asserting that "abutting property owner" was not specifically defined and did not apply to them. To resolve this ongoing matter wherein the Bells were not mowing the strip of grass between their property line and S. 35th Street, the City and the Bells have come to a settlement agreement.

Staff Review & Comment: City Code 7-1-6 requires the "abutting property owner to maintain all property outside the lot and property lines and inside the curb lines upon public streets." The Bells have contested that since the right-of-way is owned by the City in multiple parcels, the City is the "abutting property owner". This disagreement has been ongoing for some time. To resolve this matter, the City has negotiated a settlement agreement. On March 18, 2024, the City Council amended City Code Section 7-1-2 to add a specific definition of "abutting property owner" and "right of way" to clear up any confusion over the application of City Code Section 7-1-6. In addition to this amendment, the City has also agreed to waive the cost of an administrative abatement invoice issued on August 29, 2023 against the Bells in the amount of \$159.00. In return of the items addressed by the City, the Bells now agree they are responsible for maintaining those areas of the City right-of-way abutting their property.

Recommendation: Approve and Accept the Settlement Agreement.

Lead Staff	Member: Jessica Grove	, Depu	ty City Attorney			
Staff Repor	rt Reviews:					
City Counci		⊠ Dir	ector	N/ 1	Legal Depa	7 A 1 A 1
		□Ар	propriations/Finance	(h 🍱	Agenda Acc	ceptance
Publication Published In:	ns (if applicable)		Council Subcomm		eview (if ap	
Date(s) Published	n/a		Date Reviewed	Januar	y 16, 2024	
Date(s) of Mailed Notices	n/a		Recommendation	⊠ Yes	□ No	□ Split

Prepared by: Jessica Grove, City of West Des Moines Legal 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 APPROVING AND ACCEPTING HOLD HARMLESS AGREEMENT

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve all settlement agreements; and

WHEREAS, a Settlement Agreement to resolve ongoing matters with Fredrick and Lynne Bell (the "Bells") has been presented to the City Council for approval; and

WHEREAS, it is in the best interests of the City to approve and accept the above-described document.

NOW, THEREFORE, the City Council does approve and accept the document described above. Said document shall be filed with the county recorder, as appropriate.

PASSED AND ADOPTED on April 1,	<u>2024</u> .
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 <u>April 1, 2024</u>, by the indicated vote.

SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into on the latest date signed below ("Effective Date") by and between City of West Des Moines, Iowa ("City") and Fredrick A. Bell and Lynne E. Bell ("Bells"). City and Bells may individually be referred to herein as "Party" or collectively as "Parties."

RECITALS:

A. Bells are the owners of property locally known as 3725 Greenbranch Drive, West Des Moines, IA 50265, and legally described as:

Lot 15, Thornwood Second Addition, an official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

(hereinafter referred to as the "Property").

- B. There has been a good faith disagreement between the Parties about Bells' responsibility for maintaining the curb-adjacent and sidewalk-adjacent areas of City right-of-way abutting the Property pursuant Section 7-1-6 of the City Code of the City;
- C. The City has also alleged that Bells have a responsibility to restore portions of City right-of-way adjacent to S. 35th Street to a level prior to a die-off that occurred in said area in 2023;
- D. On August 29, 2023, the City invoiced Bells for abatement of Bells' alleged nuisance violation of Section 4-4-2:A of the City Code of the City ("Violation");
- E. The City has amended Title 7, Chapter 1 of the City Code of the City to make clear Bells' responsibility for mowing curb-adjacent and sidewalk-adjacent areas of City right-of-way abutting the Property;
- F. In order to avoid the high costs and uncertainties of litigation, the Parties have decided to compromise and settle the claim between the Parties on the terms set forth in this Settlement Agreement, without admitting any liability or wrongdoing.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

- 1. <u>Recitals</u>. The above recitals are true and correct and form a part of this Agreement.
- 2. <u>Performance</u>. Bells, for themselves, their heirs, successors and assigns, acknowledge responsibility to maintain those areas of City right-of-way abutting the Property shown on Exhibit "A" in accordance with Section 7-1-6 of the City Code of the City, as may be amended from time time.

- 3. Release by City. City, in consideration of the performance described in paragraph 2, above, does for itself, its successors and assigns, members, managers, and/or officers, forever remise, release, and discharge Bells from any and all claims, known or unknown, matured or not yet matured, recognizable at law or in equity, founded upon statute or common law, secreted or concealed, now owned, that have been brought or could be brought arising out of: (i) the facts set forth in the Violation; or (ii) any allegations of die-off of portions of City right-of-way adjacent to S. 35th Street that occurred in 2023. City further agrees to quash and extinguish any special assessent in full connected to the Infraction within ten days of this Agreement.
- 4. <u>Attorneys' Fees and Costs.</u> The Parties shall each bear its own attorneys' fees and costs incurred in this matter.
- 8. <u>Representations and Warranties</u>. The Parties represent and warrant to each other that:
 - (i) This Agreement represents a compromise of a disputed claim. The execution of this Agreement by any party hereto shall not be deemed an admission of liability or fault on the part of any person or entity executing this Agreement;
 - (ii) The consideration provided in this Agreement is all the consideration that any party hereto shall receive and there are no promises, written or oral, express or implied for the receipt of any additional consideration made by any party so as to induce any party hereto to execute this Agreement; and
 - (iii) Each party has had the opportunity to review this Agreement with their own independent legal counsel prior to the execution of this Agreement and so executes this Agreement solely upon the reliance of the advice of their own independent legal counsel and not any conversation, writing or remark of any other party, or legal counsel acting on behalf of any other party.
- 10. Other Documents or Action May Be Necessary. The parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to effectuate this Agreement.
- 11. <u>Default</u>. If any Party defaults in any promises, duties, or obligations under this Agreement, the other Party or Parties may pursue any legal means necessary to enforce this Agreement. If future litigation involving this Agreement is brought, the Party deemed to be the prevailing party by a court of competent jurisdiction may recover its reasonable attorney's fees, expenses, and costs.
- 12. <u>Governing Law/Jurisdiction</u>. This Agreement is entered into in the State of Iowa and shall be construed and interpreted in accordance with the laws of the State of Iowa. This Agreement shall be deemed to be performed and enforceable within the State of Iowa, and any cause of action brought pursuant to this Agreement or between any party shall only be brought in the Iowa District Court for Polk County.

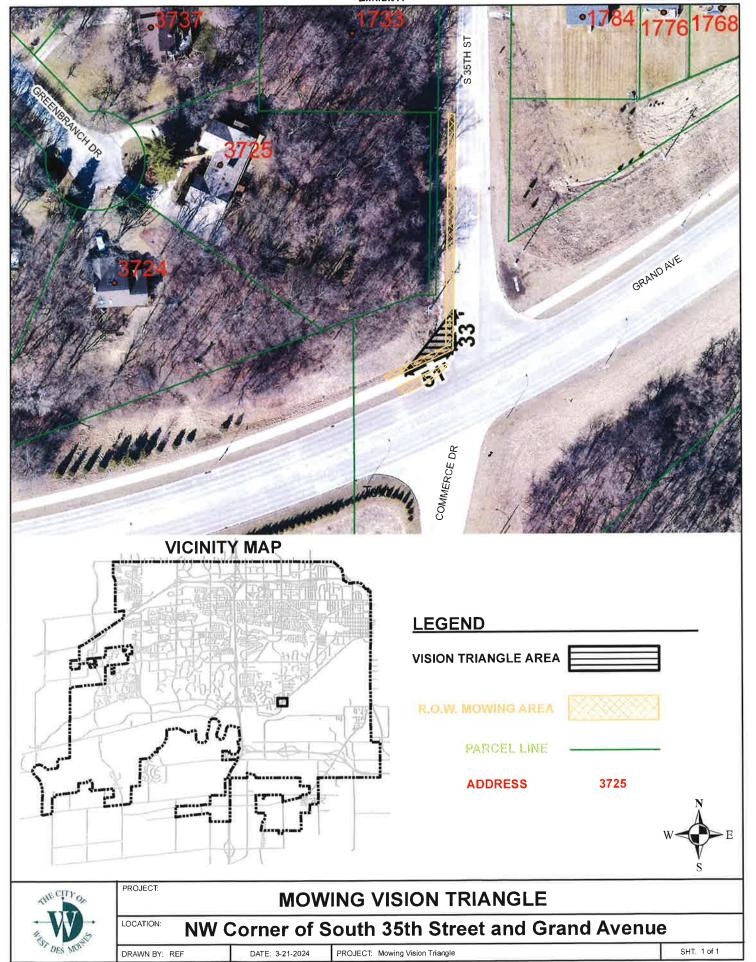
13. <u>Construction of Agreement.</u> Each Party to this Agreement and its attorneys have reviewed this Agreement, and accordingly, this Agreement shall not be construed for or against any party by reason of source of drafting.

14. Miscellaneous.

- a. This Agreement contains the entire agreement between the parties hereto with regard to the matters set forth in it, and fully supersedes any and all prior agreements and understandings between the Parties.
- b. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision, or part of this Agreement shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions or parts.
- c. The Parties understand and expressly agree that this Agreement shall bind and benefit the respective party, its parent, the party's subsidiaries, divisions or affiliated companies or successors, and any of the party's or such companies' directors, officers, shareholders, partners, predecessors, employees, agents, attorneys, representatives, heirs, executors, administrators, successors and assigns, past or present.
- d. The parties acknowledge and agree that they have discussed in detail the provisions of this Agreement with their respective legal counsel and that each party has a full and complete understanding of its terms, that it accurately and completely reflects the agreement of the parties, and that the signatures below signify a voluntary decision to settle actual and potential claims against the other party according to the terms stated herein.
- e. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.
- f. The enumerations and headings contained in this Agreement are for the convenience of reference only and are not intended to have any substantive significance in interpreting this document.
- g. Each individual executing this Agreement on behalf of an entity represents that he/she is authorized to do so.

IN WITNESS WHEREOF, the parties hereto voluntarily enter into this Agreement.

Dated: March 27, 2024	Dated:
	CITY OF WEST DES MOINES, IOWA
Fredrick A. Bell	By:Russ Trimble, Mayor
Lynne E. Bell	Attest: Ryan T. Jacobson, CMC City Clerk



CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM:

Approval of Proclamation Fair Housing Month

April 2024

DATE: April 1, 2024

FINANCIAL IMPACT: None

BACKGROUND:

Fair Housing Month provides us the opportunity to raise awareness of fair housing regulations to prevent discriminatory practices and ensure our community is welcoming and inclusive.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approval of Proclamation recognizing Fair Housing Month

Lead Staff Member: Audrey Kennis, DEI Director

STAFF REVIEWS

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Department Director	Audrey Kennis, DEI Director
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split



Proclamation Fair Housing Month April 2024

Whereas, April 2024 marks the 56th anniversary of the federal Fair Housing Act, a landmark piece of Civil Rights legislation passed in 1968. This law made many types of housing discrimination illegal and is accompanied by numerous civil rights protections in our community, including the Iowa's Civil Rights Act; and

Whereas, the Fair Housing Act of 1968 prohibits discrimination in the sale, rental, and financing of housing on the basis of (as amended) race, color, religion, national origin, sex, disability, and family status; and

Whereas, the Iowa Civil Rights Act additionally prohibits housing discrimination on the basis of those areas and additionally, creed, sexual orientation, and gender identity; and

Whereas, it is the mission of the West Des Moines Human Rights Commission to influence and advocate for community and government systems to ensure an inclusive, equitable, and thriving community; and

Whereas, fair housing practices play a positive role in ensuring the well-being, economic growth, and human relations of all people in our community; and

Whereas, all members of our community are encouraged to raise awareness of fair housing regulations to prevent discriminatory practices and ensure our community is welcoming and inclusive;

Now, Therefore, I, Russ Trimble, Mayor of the City of West Des Moines, Iowa, do hereby proclaim April 2024 as

"Fair Housing Month"

And I call upon the residents of West Des Moines to promote an inclusive community committed to fair housing and support private and public entities who advocate for equal housing opportunities for all current and prospective residents of West Des Moines.

Signed this 1st day of April, 2024.	
ATTEST:	Russ Trimble, Mayor
Ryan T. Jacobson, City Clerk	

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM:

Approval of Proclamation National Library Week April 7-13, 2024 **DATE:** April 1, 2024

FINANCIAL IMPACT: None

BACKGROUND:

Libraries, librarians, and library workers are joining library supporters and advocates across the nation to celebrate National Library Week.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approval of Proclamation recognizing National Library Week

Lead Staff Member: Jennifer Ohzourk, Interim Library Director

STAFF REVIEWS

SIALL KEALLARD	
Department Director	Jennifer Ohzourk, Interim Library Director
Appropriations/Finance	
Legal	40
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

CODOCIMIENT TELETICIST (III SEPTIMENT)					
Committee					
Date Reviewed					
Recommendation	Yes	No	Split		

Proclamation

National Library Week April 7-13, 2024

WHEREAS, public libraries provide the opportunity for everyone to pursue their interests and passions and engage in lifelong learning, allowing them to thrive and excel;

WHEREAS, public libraries have long served as trusted institutions for all members of the community regardless of race, ethnicity, creed, ability, sexual orientation, gender identity, income, social class or socio-economic status;

WHEREAS, public libraries strive to develop and maintain programs and collections that are as diverse as the people they serve and ensure service and access for all;

WHEREAS, public libraries adapt to the ever-changing needs of their communities, continually assessing and evolving their collections, services, and partnerships;

WHEREAS, libraries play a critical role in the economic vitality of communities by providing internet and technology access, literacy skills, and support for job seekers, small businesses, and entrepreneurs;

WHEREAS, libraries are accessible and inclusive places that promote a sense of local connection, advancing understanding, civic engagement, shared community goals and common ground;

WHEREAS, libraries are cornerstones of democracy, providing a neutral venue for the free exchange of information and the respectful exploration of differing viewpoints and ideas for all;

WHEREAS, libraries, librarians, and library workers are joining library supporters and advocates across the nation to celebrate National Library Week;

NOW, THEREFORE, I, Russ Trimble, Mayor of West Des Moines, do hereby proclaim National Library Week, April 7-13, 2024. During this week, I encourage all residents to visit their library to explore the wealth of resources available.

Signed this 1st day of April, 2024.	
ATTEST:	Russ Trimble, Mayor

Ryan T. Jacobson, City Clerk

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM:

Approval of Proclamation

DATE: April 1, 2024

National Public Safety Telecommunicators Week

April 14-20, 2024

FINANCIAL IMPACT: None

BACKGROUND:

Public Safety Telecommunicators are the first and most critical contact our residents have with emergency services.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approval of Proclamation recognizing National Public Safety Telecommunicators Week

Lead Staff Member: Udell Mentola, Chief of Westcom

STAFF REVIEWS

SIALL KEAIEAAS	
Department Director	Udell Mentola, Chief of Westcom
Appropriations/Finance	
Legal	ΔΛ
Agenda Acceptance	

PUBLICATION(S) (if applicable)

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Published In		
Dates(s) Published		

SUBCOMMITTEE REVIEW (if applicable)

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Committee				
Date Reviewed				
Recommendation	Yes	No	Split	

Proclamation

National Public Safety Telecommunicators Week April 14-20, 2024

Whereas, emergencies can occur at any time that require Police, Fire, or Emergency Medical Services, for the cities of Clive, Norwalk, Urbandale, Waukee, West Des Moines, and Windsor Heights; and

Whereas, when an emergency occurs the prompt response of Police officers, Firefighters and Paramedics is critical to the protection of life and preservation of property; and

Whereas, the safety of our Police officers, Firefighters and Paramedics is dependent upon the quality and accuracy of information obtained from residents who telephone the WestCom Emergency Communications Center; and

Whereas, Public Safety Telecommunicators are the first critical contact our residents have in their time of need to start the emergency support services cycle; and

Whereas, Public Safety Telecommunicators are the vital link for our Police officers, Firefighters and Paramedics by monitoring their activities by radio, providing them information, and ensuring their safety; and

Whereas, Public Safety Telecommunicators of WestCom have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients; and

Whereas, each Public Safety Telecommunicator has exhibited compassion, understanding and professionalism during the performance of their profession.

NOW, THEREFORE, I, Russ Trimble, Mayor of the City of West Des Moines, Iowa, do hereby proclaim the week of April 14 through 20, 2024, to be:

National Public Safety Telecommunicators Week

in the City of West Des Moines, Iowa, in honor of the public safety professionals whose diligence and expertise keep our city and residents safe.

Signed this 1st day of April, 2024.	
ATTEST:	Russ Trimble, Mayor
Ryan T. Jacobson, City Clerk	

Changes in Content for Clarification and to Reflect Discussions Occurring after First Reading

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: April 1, 2024

ITEM: Ordinance Amendment, Amend Title 9 (Zoning) to modify regulations pertaining to uses permitted in the Open Space Zoning District and Amusement and Recreational Service uses in non-residential zoning districts - City Initiated – AO-005905-2023

Continued from September 25, 2023, November 20, 2023, December 4, 2023, January 16, 2024, February 5, 2024, and March 5, 2024

RESOLUTION: Approval of Second Reading of Ordinance Amendment

At the March 5th meeting, the City Council requested the full land use matrix with coding to reflect current allowance and intended allowance; information on how much ground is needed to support the production of various agricultural animals; and the Animal Control Ordinance language. Staff has provided this information prior to the meeting via email and web links to city code.

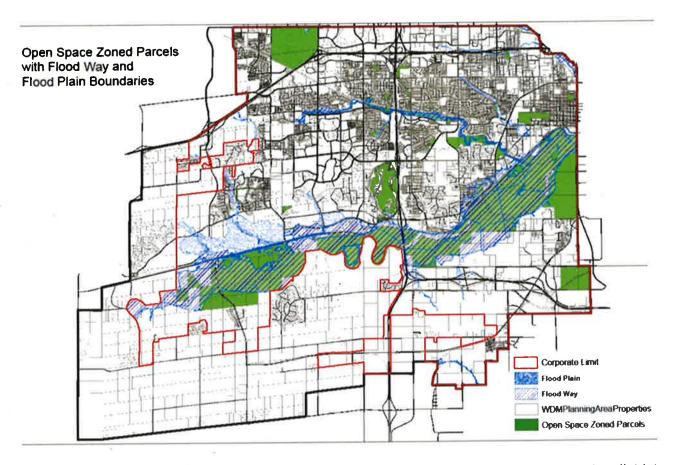
Background: Development Services Staff is initiating an amendment to the chapters and sections identified below in Title 9 (Zoning) to modify regulations pertaining to uses permitted in the Agricultural/Open Space Zoning District and to amend Amusement and Recreational Service uses in non-residential zoning districts as currently regulated within City Code.

Specifically, the following changes are proposed with this request:

- Title 9: Zoning
 - Chapter 5: Agricultural/Open Space and Residential Zoning District, Section 8: Open Space/Agricultural and Residential Use Regulations, Subsection C: Use Matrices to amend uses in the Open Space Zoning District.
 - Chapter 6: Commercial, Office and Industrial Zoning District, Section 6: Commercial, Office and Industrial Use Regulations, Subsection C: Table 6.1 – Use Matrix to amend uses in the Agricultural/Open Space Zoning District and to amend Amusement and Recreational Service uses in non-residential zoning districts.

It is important to keep in mind that the proposed amendment to uses only affects Agricultural/Open Space <u>zoned</u> properties (shown in green in the following illustration). Ag/Open Space areas primarily include ground located along the Raccoon River, DSM Golf & Country Club, Glen Oaks, and Willow Creek golf courses and city, county or state-owned parks and greenbelts, existing and future. It does not include all undeveloped property within the corporate limits, nor does it apply to any ground outside of the corporate limits since by State Code, the city cannot apply zoning beyond the corporate limits.

Besides golf courses & parks, a majority of Ag/Open Space designated parcels are located along the Raccoon River and have environmental aspects such as steep slopes, heavily treed or have a likelihood of flooding. Development of many of the open space designated parcels are impacted/restricted due to floodway and flood plain boundaries. Floodway properties (hatched) are restricted from receiving fill dirt or the placement of structures altogether thus promotion or allowance of a use that would require structures does not align.



- Provided in this staff report is a list of all uses currently allowed in the Ag/Open Space zoning district. The use is color coded to indicate whether the amendment will continue to allow the use (shaded in yellow and blue) or will prohibit the use (shaded in pink and orange). It should be realized, of the 80 uses proposed to now be prohibited in the Ag/Open Space district, 58 are allowed in other zoning districts and the parcel could be rezoned if deemed appropriate for the proposed use. While a rezoning would be necessary, most property owners would benefit from an alternate district which has smaller minimum lot size requirement than the 10 acres required for Ag/OS, less required open space percentage than the 75% required in Ag/OS, and a smaller minimum lot width requirement than the Ag/OS districts 200' lot width.
- Finally, it should be remembered that a legally established use is allowed to continue in the city
 upon annexation. The city has non-conforming use provisions in current code that allow for a use
 lawfully established when it was in the county to continue in the city. This includes agricultural
 uses/activities, as well as other uses such as West Grand Golf miniature golf and driving range,
 Raccoon River Kennels, and Wright Tree Service yard.

Staff Review & Comment:

• <u>Key Aspects of Proposed Amendment</u>: This amendment will modify uses within the Agricultural/Open Space district to reduce commercial, industrial or commercial agricultural uses and activities that pose potential impacts that would affect the natural environment of the designated Ag/Open Space zoned areas, or impact nearby residential which is generally adjacent to Ag/Open Space designated ground. With the exception of keeping Ag/Open Space in the Residential Uses Table (table 5.1) in Chapter 5 which allows for individual residential dwellings in natural open areas and associated residential uses or activities, the "OS" column and the associated uses are being eliminated from all other use tables included in Chapter 5. Those uses listed in tables 5.2 through 5.5 which are still desired in some manner are being incorporated into Chapter 6 use tables. This

is being done to the allowed Open Space uses to be listed in one location and avoid allowance contradictions if in two locations (Chapter 5 and Chapter 6). This amendment will provide a minor clean up to Amusement and Recreation Service uses (SIC 7999) to designate specific uses as allowed within all commercial and office districts.

 <u>Designation as Permitted versus Permitted Conditional</u>. Allowed uses can be Permitted by right (indicated by "P" within the use table) or Permitted Conditional (indicated by "Pc" within the use table).

The city cannot deny a "Permitted" use unless the site development plans do not comply with all applicable regulations included in Zoning, or unless the city can prove that the use and site development would be contrary to the promotion of 'health, safety, and welfare' of the community. Permitted by right uses should only be assigned to those uses that the city is comfortable with and are compatible uses to others typically found within the same zoning district or an adjacent district, (e.g., typical commercial uses when adjacent to single family residential). Additionally, permitted by right uses should be limited to those with operational needs and site development characteristics that are suitable for the type of ground that a specific zoning district generally would have (e.g., uses that require large footprint buildings should be limited to ground with minimal topographic change to avoid the need for mass grading. Such ground generally will have industrial land use and zoning). If there is possibility that the development of the site for the use, the operational characteristics, or activities could cause impacts, the use should either be designated as Permitted Conditional or prohibited altogether for a specific zoning district.

The designation of a use as Permitted Conditional (Pc) provides the city a security blanket for ensuring the use is appropriate for a given location. Allowance of a use designated as Permitted Conditional is at the discretion of the Board of Adjustment (BOA). The BOA's review provides the opportunity to evaluate implementation of a use on a case by case basis for potential impacts on nearby properties such as, noise, odors, increase in traffic, hours of operation, etc., as well as evaluation for site development impacts for a specific location such as environmental impacts due to mass grading, removal of quality tree stands, increase in water run-off, provision of suitable access for emergency response, adequate water volume for fire protection, etc. The BOA can establish site development and/or business operational conditions of approval to minimize and or negate identified impacts. While it is rare, the BOA does have the authority to deny the use entirely if they deem the impacts cannot be appropriately mitigated.

 <u>Amusement and Recreational Services.</u> Major Group (SIC 79), Amusement and Recreation Services category contains a variety of recreation and entertainment type uses, including related to dance, theatrical and music productions, fitness, sporting activities, training, education and sports facilities, and other entertainment activities such as fairs, carnival or other amusement type uses.

The SIC Manual does not include a generic listing for "Parks". It provides a separate SIC number for such things as bowling, professional sports facilities and clubs, horse and auto racing, golf courses, amusement parks, and membership sports clubs, but not a catch-all which would encompass recreational facilities and amenities found in a typical city park. Chapter 5 did include a non-SIC based line item for 'parks'; however, by the title it limited it to Public Parks only and only indicated allowed in Ag/Open Space and residential zoning districts. Current code has no allowance for a 'Park' to be located in any commercial, office or industrial related zoning district. Staff recommends a generic line item of "Parks, public or private (including typical courts, fields, and facilities found in public parks)" be included and allowed in all zoning districts, including the commercial, office and industrial zoning districts within Chapter 6.

SIC 7999 "Amusement and Recreation Services, not elsewhere classified" includes a wide variety of recreation or entertainment related uses, such as circus operations, card, bingo and billiard parlors, instruction schools for basketball, gymnastics, karate, etc., gambling establishments and machines, including bookies, rental of various sports related equipment, bicycles, canoes, etc.. Rather than listing the 100+ 'uses' included under SIC 7999 in the land use table in Chapter 6, staff pulled out specific uses that are believed to be suitable ("P), or potentially suitable ("Pc") to the Ag/Open Space zoned areas within the city and listed these separately. These include uses such as archery, all golf related uses, batting cages, canoe & kayak rental, horse shows and riding stables, and ice skating. All other SIC 7999 uses are recommended to be Permitted Conditional in all non-residential districts. Chapter 5 maintains the SIC 7999 listing of "Amusement and recreation services, not elsewhere classified, horse shows, horse stables and commercial areas only" as Permitted Conditional in the Residential Estate district. It should be realized, horse related aspects are also included in SIC 0752 Animal Specialties which allows for horse boarding, showing and training.

- <u>Stull Family Discussions</u>. Staff and the City Manager met with the Stull family on March 22nd to review the proposed changes to land uses currently allowed in the Ag/Open Space zoning district. We walked through enclosed Table C and discussed the following:
 - 1. <u>Greenhouse/Hoop Structures</u>. The Stull family has indicated a desire for flower production both outdoors and undercover. SIC 0181 Ornamental Floriculture and Nursery Products (sub-group of SIC 018 Horticultural Specialties) states, "These products may be grown under cover greenhouse, frame, cloth house, lath house) or outdoors'. Code currently allows all sub-groups under SIC 018, both outdoors and undercover as Permitted (P) on Ag/Open Space zoned parcels. Prior to construction of permanent structures, including greenhouses or hoop structures, a building permit would need to be obtained. Low tunnel structures are small 'hoop houses' approx. 18" tall along the crop row to promote early growth are allowed without any permits.
 - Sale of Produce and Flowers. SIC 543: Fruit & Vegetable Markets allows for the sale of produce but does not include sale of flowers which falls under SIC 5992 Florists. Both SIC 543 and SIC 5992 are located in the Retail Division of the Standard Industrial Classification (SIC) and are geared toward permanent retail buildings.

SIC 543 is currently included in code for the Ag/Open Space district (chapter 5 as Pc / chapter 6 as P): SIC 5992 is not currently allowed in Ag/Open Space. Staff is indicating the addition of SIC 5992 as and allowed use in Ag/Open Space. To control the amount of retail activity on Ag/Open Space zoned property, Staff recommends adding the following breakout and language to both SIC 543 and SIC 5992:

- "permanent commercial: not grown on-site." This would be Permitted (P) in typical commercial districts but not allowed in Ag/Open Space district.
- "(e.g., roadside stands) seasonal or permanent commercial: grown on-site." Staff suggests this be Permitted Conditional (Pc) in the Ag/Open Space district.

An individual can obtain a Temp Use Permit for Agricultural Produce Stands. These stands are temporary structures and are allowed year-round. Staff would recommend a separate subsequent ordinance amendment to modify the Agricultural Produce Stands Temp Use to allow the sale of produce as well as flowers and garden plants.

Ag Animal Production Commercial versus Personal. As has been previously mentioned, staff
does not believe certain uses are appropriate given the nature of the ground within the
corporate limits which is zoned Ag/Open Space. As has been indicated, the Ag/Open Space
zoned areas are for the most part golf courses, parks and dedicated greenways, and/or ground

with an environmental aspect such as topography, heavily treed or susceptible to flooding. For this reason, staff has recommended prohibiting uses that would require buildings or activities that could negatively impact the environmental aspect, cannot tolerate flooding and/or would potentially generate frequent traffic. These uses are reflected in pink and orange within the coded land use table included in the report. The Stull family have indicated overall agreement with these uses to be prohibited except for commercial agricultural animal production.

Animal Control Ordinance (5-3-2) and Zoning (9-2-2) within City Code include the following definitions:

- AGRICULTURAL PRODUCTION ANIMALS, COMMERCIAL: Any livestock animal
 as defined by Code of Iowa, Sec. 717.1 which is raised to provide a service such as
 labor, breeding purposes with offspring sold or provided to another individual or
 business, or production of commodities such as, but not limited to meat, eggs, milk,
 fur, leather and wool primarily for sale to individuals or businesses not located within
 the property upon which the livestock animal(s) is raised, with little to no personal
 consumption or use. Roosters shall be considered agricultural production animals,
 commercial.
- AGRICULTURAL PRODUCTION ANIMALS, PERSONAL: Any livestock animal as
 defined by Code of Iowa, Sec. 717.1 which is housed or primarily live outside of the
 residence and raised for or can be raised for production of commodities such as, but
 not limited to meat, eggs, fur, milk, leather, and wool for personal consumption or
 use. Roosters are considered agricultural production animals, commercial.

(Code of Iowa 717.1 provides: "Livestock" means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus; farm deer as defined in section 170.1; or poultry." 170.1 provides: "Farm deer" means an animal ... commonly referred to as fallow deer; ... commonly referred to as red deer or elk; ... commonly referred to as whitetail; ... commonly referred to as mule deer; ... commonly referred to as sika; ... commonly referred to as moose. ... does not include any unmarked free-ranging elk, whitetail, or mule deer.)

These definitions were put into code in 2020 to aid in defining animals wild by nature and prohibiting backyard chickens and other typical ag animals on suburban residential properties within the corporate limits.

While the Stull family has indicated that they do not want commercial animal production in the sense of large number of any specific animal for sale to the global market, they do desire the ability to raise what they, extended family and possibly friends would consume, as well as the possibility to sell eggs or other ag products raised on their property. While overall what the Stull family wishes to do generally aligns with Agricultural Animal Production Personal, the City's Animal Control code limits the number of animals that could be raised at a maximum of eight (8), which causes the family concern. Additionally, from a city perspective, the desire to sell ag products could potentially trip it to a commercial activity dependent on volume sold. Through discussions with the Stull's, it was realized that what they desire to do sits somewhere between the two definitions we have — Personal and Commercial. It was determined what was needed was an allowance for production in numbers greater than the eight (8) that Ag Personal will allow, but not allow the number of animals be as high as what Ag Commercial for profit generating purposes would entail or for the primary purpose of raising livestock to be for income generation versus personal consumption.

SIC 029 is "General farms primarily livestock and animal specialties". This classification defines the use as "establishments deriving 50% or more of their total value of sales of ag products from livestock & animal specialties and their products, but less than 50% from products of any

single 3-digit (SIC) industry group (i.e., 021 = Livestock, 024 = Dairy Farms, 025 = Poultry & Eggs, etc.). While this has provisions for the sale of ag products (commercial activity), the income restriction for 'less than 50% from products of any single 3-digit (SIC) industry group' provides staff comfort that allowing this type of farming operation would prevent the raising of cattle, hogs, turkeys, etc. in numbers that would lend itself as commercial farming or generate impacts to the land or generate offensive odors. Staff believes this SIC captures what farming for purpose of providing for one's family has traditionally been in that smaller numbers of several types of animals are raised. This type of farming has been referred to as 'Homesteader Farming' which is focused on self-sufficiency and growing or raising what is needed to feed yourself with the sale of any products produced for purposes of off-setting costs rather than a for-profit farm. Staff is recommending making SIC 029 Permitted (P) in Ag/Open Space with the same current code provision that it instead be Permitted Conditional (Pc) if the building housing an animal(s) is within 100' feet of a residential dwelling on an adjoining property. To add extra protection in controlling the number of animals, staff recommend limiting the number of animals allowed per acre based on size, as well as a collective total based on farm acreage. Staff suggests the following limits:

- Large animals (e.g., horses, cattle) minimum 2 acres per animal
- Medium size animals (e.g., pigs, goats, sheep) minimum 1 acre per 4 animals
- Small animals (e.g., chickens, turkeys, geese) minimum 1 acre per 10 animals
- Collective number of all livestock and specialty animals shall not exceed 10 per each acre of ground upon which the animals live and/or graze.

Establishing the animal limits for SIC 029 will necessitate a subsequent separate amendment to the Animal Control ordinance to clarify the application of maximum eight (8) animals is for residential zoned properties, and SIC 029 is allowed the previously stated number of animals per type and collectively. This amendment will need to be done as a separate action after proper public hearing noticing in accordance with State code is completed.

- <u>McKinney Discussion</u>. At the request of the Mayor, Staff met with Wayne McKinney Jr. and Jim McKinney on March 25th. Also in attendance at this meeting were Mayor Trimble, Council Member Loots, Council Member Trevillyan, and Tom Stull. As was done with the Stull family, the land uses as provided in enclosed Table C (color-coded sorted list) were discussed. The following summarizes the recommended modifications and are reflected in the enclosed Table C.
 - 1. Tree Farms and Pumpkin Patches. As part of the discussion regarding agricultural uses, staff was directed to ensure that corn mazes, hayrides, petting zoo, bounce houses, produce stands, and variety of other activities associated with pumpkin patches and tree farms are allowed. Agritourism refers to the act of visiting a working farm or any horticultural or agricultural operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation that also adds to the economic viability of the site. While there is no specific SIC for Agritourism as a primary use; staff is recommending that it be allowed as part of the following primary uses:
 - SIC 018: Horticulture specialties both outdoor and undercover
 - SIC 019: General farms, primarily crop production
 - SIC 029: General farms, primarily livestock and animal specialties
 - SIC 08: Forestry

Changes and Additions to Allowed Uses. The following specific activities were evaluated for
potential impacts to the site and/or if a neighboring property were residential and determined
they would be okay to allow in Ag/Open Space.

SIC	Use	Current Code Allowance	Recommended Code Allowance
0742	Veterinary services for animal specialties, no outdoor runs	Р	Р
0752	Animal specialty services, boarding services with no outside runs	Р	Р
0752	Animal specialty services, grooming services	Р	Р
0781	Landscape counseling & planning	Р	Р
0782	Lawn and garden services	Р	Р
526	Retail nurseries and garden stores	Pc	Pc
5992	Florist – seasonal or permanent commercial – product grown on-site		Pc
7883	Drive-in motion pictures	Pc	Pc
7999	Go kart raceway operation	Pc	Pc
7999	Batting cages		Р

The yellow and blue shaded lines in enclosed Table C reflect all uses that will be allowed in some format within the Ag/Open Space zoning district.

Outstanding Issues: There are no outstanding issues.

Planning and Zoning Commission Action:

Date:

September 25, 2023

Vote:

6-0 for approval with Commissioner Crowley absent

Recommendation:

Approval of Amendment

City Council First Reading:

Date:

October 2, 2023

Vote:

4-0 for approval; Council Member Trevillyan absent

<u>Recommendation</u>: Approve the Ordinance Amendment to city code with the use allowances or prohibitions as indicated in enclosed Table C, including the addition of language confirming the city's prohibition of concentrated Animal Feeding Operations (AFOs), both open air feed lots and within a confinement structure (CAFOs).

Should any Council Member desire to allow or prohibit a use different than indicated in Table C, a motion for approval can be made with specific direction to staff to 'change use X to Permitted (P), Permitted Conditional (Pc) or prohibited', as applicable. If the vote on the proposed amendment is for denial, staff will bring back a separate amendment which proposes the language related to prohibiting concentrated animal feeding operations.

For the April 15th third reading of the amendment, the use titles and allowances as indicated in Table C, and as amended by the City Council at the second reading, if applicable, will be transferred into the standard ordinance amendment format and full land use table typical of code.

Lead Staff Member: Lynne Twedt

Approval Meeting Dates:

Planning & Zoning Commission	September 25, 2023
City Council: First Reading	October 2, 2023
City Council: Second Reading	April 1, 2024
City Council: Third Reading	

Staff Report Reviews

Otali itopolititorione		
Planning & Zoning	□ Development	⊠ Legal Department
Commission	Coordinator/Director	
City Council		□ Legal Department
	☐ Appropriations/Finance	☐ Agenda Acceptance

Publications (if applicable)

Published	Des Moines Register
In:	Community Section
Date(s)	9/15/23
Published	9/13/23
Date(s) of	
Mailed	Not Required
Notices	

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning			
Date Reviewed	9/18/23 & 11/20/2023			
Recommendation	Yes	No	Split	No Discussion

TABLE C

Text in blue italics provided for information on what the SIC classification/use is; how current treated in code; or staff rationale for change in allowance.

Information on specific SIC numbers can be found here: https://www.osha.gov/data/sic-search

Permitted or Permitted Conditionally today – remains as allowed either Permitted or Permitted Conditionally

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS	
Single-family dwelling: Detached	Р	Р	
Second dwelling unit	Р	Р	per March 25th meeting – moved to permitted
Manufactured or Mobile Home, individual not part of a 'mobile home park'	Р	Р	per March 25th meeting – moved to permitted
Park Home or Park Model – see city code 9-5-7	Pc	Pc	In current code 9-5-8 – omitted in error
- Second dwelling unit	Р		
 As part of an approved campground or recreational vehicle park 	Pc		
Tiny Home – see city code 9-5-7	Р	Р	In current code 9-5-8 – omitted in error
- Second dwelling unit	Р		
Short term rental (State prevents city from prohibiting)	Р	Р	
Long term rental	Р	Р	
8351 Child and day care services: Childcare home – 5 children or less	Р	Р	
8351 Child and day care services: Child development home maximum 6 full time children (State license category A or B)	Р	Р	
01 Agricultural production – crops - production outdoors			
011 Cash grains	Р	Р	
013 Field crops except cash grains	Р	Р	
016 Vegetables and melons	Р	Р	
017 Fruit and tree nuts	Р	Р	
018 Horticulture specialties – other than cultivation of marijuana, (added back per discussion with Tom S – allows for growing of flowers, etc.)	Р	Р	
- Including Agritourism when on a working farm, horticultural or agricultural operation		Pc	Agricultural tourism refers to the act of visiting a working farm or any horticultural or agricultural operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation that also adds to the economic viability of the site." Allows for 'Howell Tree Farm' or Pumpkin
			Patch Farm type operations
01 Agricultural production – crops - production under cover			-
018 Horticultural specialties – other than cultivation of marijuana (added back per discussion with Tom S – allows for growing of flowers, etc.)	Р	Р	
- Including Agritourism when on a working farm, horticultural or agricultural operation		Pc	See Agritourism definition above

https://wdmiowa.sharepoint.com/sites/ds/CommDev Documents/___Development Projects/_Ordinance Amendments PR-000574-2016/Open Space Uses AO-005905-2023/SR_Open Space Uses_04-01-2024.docx

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS	
O19 General farms, primarily crop	Р	Р	
- Including Agritourism when on a working farm, horticultural or agricultural operation		Pc	See Agritourism definition above
02 Agricultural production - livestock and animal specialties			
 Concentrated Animal Feeding Operations (AFO) – open air or confined within a structure (CAFO) 		Not allowed	
Agricultural Production Animals, Personal – lot size of 40,000sf or greater (Pc in Chap 5 OS & this title not currently in Chap 6)	Pc	Pc	
 Horses and Other Equines¹ – A minimum lot size of two (2) acres is required and a minimum of two (2) acres per horse is required (**** "P" except "Pc" when bldg housing animal is within 100" of residential dwelling not on same property) 		Р	
 Apiary (bee and honey farm/beekeeping) – no minimum lot size. See 9-10-4.19 for specific regulations related to beekeeping (omitted in error from 1st reading) 	Р	Р	In current code 9-5-8 – omitted in error
029 General farms primarily livestock and animal specialties¹ - Homesteader Agriculture or Farms ("livestock" animal as defined by Code of lowa, Sec. 717.1: "animal specialties" as included in SIC 027 listing) Maximum animals allowed: • Large animals (e.g., horses, cattle) – minimum 2 acres per animal • Medium size animals (e.g., pigs, goats, sheep) – minimum 1 acre per 4 animals • Small animals (e.g., chickens, turkeys, geese) – minimum 1 acre per 10 animals • Collective number of animals shall not exceed 10 per each acre of ground upon which the animals live and/or graze. *** "P" except "Pc" when bldg housing animal is within 100' of residential dwelling not on same property)	P *** Pc	P *** Pc	Income restrictions included in SIC provides a 'test' whether the activities align with the definition of Ag Animal Production, Commercial versus traditional farming or subsistence agriculture in which the numbers raised are primarily for consumption by the farmer and their family. Surplus may be sold, but sale is not common nor the goal of the farming activity. Maximum # of animals by size and collective total recommended to aid in ensuring scale of animal production remains less than what typical commercial ag animal production would include.
 Including Agritourism when on a working farm, horticultural or agricultural operation 		Pc	See Agritourism definition above
0742 Veterinary services for animal specialties, no outdoor runs	Р	Р	per March 25th meeting – moved to permitted
0752 Animal specialty services, boarding services with no outside runs	Р	Р	per March 25th meeting – moved to permitted
0752 Animal specialty services, grooming services	Р	Р	per March 25th meeting – moved to permitted
0781 Landscape counseling and planning	Р	Р	per March 25th meeting – moved to permitted
0782 Lawn and garden services	Р	Р	per March 25th meeting – moved to permitted
08 Forestry, including Agritourism when on a working tree farm (includes tree farms, including Christmas tree farm)	Pc	Pc	See Agritourism definition above
085 Forestry services (growing trees for the purpose of reforestation or gathering of forest products (bark, seeds, syrup, moss, nuts)	Р	Р	
09 Fishing, hunting and trapping – Non-commercial only (Pc was prior to clarifier as non-commercial operation)	Pc	Р	
14 Mining and quarrying of nonmetallic materials except fuels	Pc	Pc	

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS	
241 Logging, non-commercial only		Р	
242 Sawmills and Planing Mills, non-commercial only		Р	
45 Transportation by Air	170		
- Non-commercial airstrip or airfield		Р	
481 Telephone communications (except transmitting/receiving towers and/or dishes) (beeper, cellular phone, paging)	Pc	Pc	
- Unmanned service buildings	Р	Р	
484 Cable and other pay TV services (except: transmitting/receiving towers and/or dishes) (cablecasting – cable TV, closed-circuit TV, satellite master antenna systems)	Pc	Pc	
- Unmanned service buildings	Р	Р	
489 Communications services, not elsewhere included (except: transmitting and receiving towers and/or dishes) (radio station operations, radio broadcasting, satellite earth stations, satellite or missile tracking)	Pc	Pc	
- Wall mounted antennas and/or dishes	Pc	Pc	
489 Communications services, not elsewhere included – transmitting/receiving towers	Pc	Pc	
491 Electric services	Р	Р	
Small wind energy conversion system (see section 9-14- 13 of this title)	Р	Р	
Small solar energy system (see section 9-14-14 of this title)	Р	- P	
Large solar energy system (see section 9-14-14 of this title)	Р	Р	
Electric vehicle charging station - providing charging station/service to patrons of an allowed primary use within same site, such as grocery store	Р	Р	
Renewable energy electric vehicle charging station - providing charging station/service to patrons of an allowed primary use within same site, such as grocery store	Р	Р	*
4922 Natural gas transmission (except: natural gas storage and 4925)	Pc	Pc	
4925 Mixed, manufactured, or liquefied petroleum gas production and/or distribution (except: production and manufacturing)	Pc	Pc	
493 Combination utility services	Р	Р	
494 Water supply	Р	Р]
4952 Sanitary services, sewerage systems	Р	Р	_
4959 Sanitary services, not elsewhere classified	Р	Р	
526 Retail nurseries and garden stores	Pc	Pc	per March 25th meeting – moved to allowed as Pc New operations would be Pc; existing continue to operate as is
543 Fruit and vegetable markets – (roadside stands) - seasonal or permanent commercial: grown on-site		Pc **	Additional text allows for potential produce stand on-site where product grown ** Pc if permanent structure: otherwise can do temporary under a Temp Use Permit
5992 – Florist – seasonal or permanent commercial; grown on-site	7	Pc **	Added to accommodate sale of flowers & other non-food 'crops' grown on-site at roadside stand ** Pc if permanent structure: otherwise can do temporary under a Temp Use Permit

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS	
6553 Cemeteries	Pc	Pc	
703 Camps and recreational vehicle parks	Pc	Pc	
7833 Drive-in motion pictures	Pc	Pc	per March 25th meeting – moved to allowed as Pc
Amusement and Recreation Services			
 Parks public or private, (including typical courts, fields and facilities found in public parks) (chap 5 listed only Public Parks, Private Tennis courts & Pedestrian/biking Trails) 	Р	Р	
 Sports facilities including arenas, stadiums, and fields – public and private, and club, professional and non- professional, including ancillary use/activities such as concessions, rentals, merchandise shop, etc. 	Pc	Pc	
7992 Golf courses, public and private, membership and non-membership, with or without clubhouse, including ancillary use/activities such as concessions, rentals, merchandise shop, etc.	Р	P	
 7999 Amusement and recreation services, NEC, (except 7999-100 fireworks display services) regardless whether by membership or not 			
- Archery ranges, operation of	Pc	Р	
- Batting cages	Pc	Р	
- Bathing beaches	Pc	Р	
- Canoe rental, operation of	Pc	Pc	
- Day camps	Pc	Pc	
- Fishing piers and lakes, operation of	Pc	Р	
- Go-kart raceway operation	Pc	Pc	per March 25th meeting -
- Golf, driving range	Chap 5 = P Chap 6 = Pc	Р	
- Golf, miniature golf course	Chap 5 = P Chap 6 = Pc	Р	
- Golf professionals not operating retail stores	Pc	Р	and the second
- Golf, pitch-n-putt	Pc	Р	Per March 25 th meeting – add as permitted
 Horse shows and riding stables, including riding school 	Pc	Р	
- Ice skating rink operation	Pc	Р	
- Observation tower operation		Pc	
- Rental of bicycles	Pc	Р	70
- Rental of rowboats and canoes	Pc	Pc	
- River rafting, operation of, including kayaks	Pc	Р	
- Shooting ranges, operation of	Pc	Pc	
- Skeet shooting facilities, operation of	Pc	Pc	
84 - Botanical Gardens	Pc	Р	

Permitted today but changing to Permitted Conditional

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS	
0742 - Veterinary services for animal specialties, with outside runs	Р	Pc	Due to outdoor component, remains Pc
0752 Animal specialty services, except veterinary, grooming and boarding services, kennels (chap 6 included as shown here with breakout for boarding with and without outdoor runs & grooming; (all "P): chap 5 allowed 'horse only') (0752 includes animal shelters, showing of animals, training including horses – veterinary services falls under SIC 0742)	Chap 5 = Pc Chap 6 = P	Pc	
- Boarding services kennels, with outside runs (chap 6)	Р	Pc	Due to outdoor component, remains Pc
4493 Marinas (lakes from previous mining are generally DSMWW supply; ownership of future lakes from mining west of interstate is unknown — city should have say in whether want marina which suggest power boats)	Р	Pc	

Currently allowed – changing to Prohibited but allowed in other zoning districts

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS	
071 Soil preparation services (establishments themselves, not the service action/activities)	Р	NA	
072 Crop services (SIC 071 & 072 would be the home base of the business that provides the services, not the execution of the services themselves. These establishments likely have warehouse storage of materials and equipment necessary to complete the services)	P	NA	
0741 Veterinary services for livestock (establishment itself, not the service action – large ag animals brought to site)	Р	NA	
076 Farm labor and management services	Р	NA	
15, 16, 17 Building construction, contractor and operative builders (offices only, no warehouse component)	Р	NA	
15, 16, 17 Building construction, contractor and operative builders (with warehouse building - no outdoor storage yard allowed)	Р	NA	
3273 Ready mixed concrete (can also be allowed under a Temp Use Permit)	Pc	NA	Can obtain Temp Use Permit
421 Trucking and courier services, except air	Pc	NA]
 Product transportation services, garbage collection and transport - not disposal 	Pc	NA	
46 Pipelines	Pc	NA	
4789 Transportation services, not elsewhere classified - Horse drawn transportation services - must abide by provision in Title 3, Chapter 12. Location of housing of animals allowed per SIC 0752 (this a service similar to food trucks. The establishment's home base/stables would be regulated under SIC 0752)	Р	NA	Title 3, Chapter 12 speaks specifically to Animal Drawn Vehicles Although not allowed as a specific use in Ag/Open Space, the bold italicized text to be included in land use matrix as the use is allowed in Valley Junction
515 Farm product, raw materials (establishments engaged in buying &/or marketing of grains, includes grain elevators)	Pc	NA	
543 Fruit and vegetable markets - permanent commercial: not grown on-site	Chap 5 = Pc Chap 6 = P	NA	Stand alone retail not part of an ag operation; all goods sold are acquired from off-site sources and shipped in
555 Boat dealers	Pc	NA	

SIC Land Uses	Current Code allowance for OS	Proposed code allowance for OS	
5999 Miscellaneous retail stores, NEC – Auction rooms	Pc	NA	
(concern is amount of vehicle traffic on sales day) 5999 Miscellaneous retail stores, NEC – Farm equipment and supply stores	Pc	NA	₽,
726 Funeral service (except: crematories)	Pc	NA	
- Crematories	Pc	NA	
7381 Detective, Guard, and Armored Car Services – Guard dogs only	Pc	NA	
7699 Repair shops and related services, not elsewhere classified – Waste cleaning services	Pc	NA	
7699 Repair shops and related services, not elsewhere classified – Nautical repair services	Pc	NA	
7699 Repair shops and related services, not elsewhere classified – Metal reshaping and replating services	Pc	NA	2 _K
7699 Repair shops and related services, not elsewhere classified – Agricultural equipment repair services	Pc	NA	
7948 Racing, including track operations	Pc	NA	This is horses and cars, not go-karts – those regulated under SIC 7999
7991 Physical fitness facilities	Pc	NA	
7999 Amusement and recreation services, NEC (e.g., golf courses - miniature, driving ranges, circus companies and fairs, except 7999-100 fireworks display services), regardless whether by membership or not = chapter 6 Chapter 5 only allowed horse shows, horse stables and commercial	Pc (both chap 5 & chap 6)	NA	Specific SIC 7999 uses for Ag/Open Space included in allowed table (yellow)
806 Hospitals	Pc	NA	
821 Elementary and secondary schools	Chap 5 = P Chap 6 = Pc	NA	
822 Colleges and universities	Pc	NA	
B23 Libraries	Pc	NA]
824 Vocational schools	Pc	NA	
829 Schools and educational services, not elsewhere classified (tutoring)	Pc	NA	
8322 Individual – family social services (Pc in chap 5; not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	
8331 Job Training – vocational rehabilitation services (Pc in chap 5; not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	
836 Residential care (except: juvenile care)	Pc	NA	
- Juvenile care	Pc	NA	
8399 Social services not elsewhere classified	Pc	NA	
84 Museums, art galleries, betanical and zoological gardens	Pc	NA	Botanical garden specifically listed in allowed table (yellow)
866 Religious organizations	Pc	NA	
8731 Commercial physical and biological research	Р	NA	
8734 Testing laboratories (except: auto testing)	Р	NA	
- Auto testing laboratories	Pc	NA	
8744 Facilities support management services	Pc	NA	
91 Executive, Legislative, and General Government, except Finance (Pc in chap 5; not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	more restrictive applies – not allowed today
921 Courts	Pc	NA	
9221 Police protection (aka Public order and safety)	Pc	NA	

SIC Land Uses	Current Code allowance for OS	Proposed code allowance for OS	
9223 Correctional institutions	Pc	NA	
9224 Fire protection	Pc	NA	
9229 Public order and safety, not elsewhere classified (Pc in chap 5; not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	more restrictive applies – not allowed today
9331 Public finance, taxation and monetary policy (Pc in chap 5, not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	more restrictive applies – not allowed today
9441 Administration of human resource programs (Pc in chap 5; not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	more restrictive applies – not allowed today
951 Administration of environmental quality and housing programs (Pc in chap 5, not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	more restrictive applies – not allowed today
961 Administration of economic programs (Pc in chap 5; not allowed per chap 6)	Chap 5 = Pc Chap 6 = NA	NA	more restrictive applies – not allowed today
6515 Mobile home developments	Р	NA	
805 Nursing and personal care	Р	NA	

Either Permitted or Permitted Conditionally today but changing to Prohibited – no allowance in any zoning district in the city

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS	
02 Agricultural production - livestock and animal specialties			
Agricultural Production Animals, <u>Commercial</u> (Pc in Chap 5 OS & this title not currently in Chap 6) (Chap 6 included just the "0211 - 027" animal breakout listed below)	Chap 5 = Pc Chap 6 = NA	NA	Goal of "commercial agriculture" is to produce food for sale in the global marketplace. The food in commercial agriculture is rarely sold directly to the consumer; rather, it is sold to a food-processing company where it is processed into a product. The primary income of the farmer comes from the raising of crops and animals.
			new ag operations raising animals allowed only as part of SIC 029 – in allowed (yellow) table
0211 Beef cattle feedlots 0213 - Hog feedlots	NA	NA	Language prohibiting concentrated feeding operations for all ag and specialty animals, open air (AFO) or contained within buildings (CAFO) added to land use matrix in code accordingly
0212 Beef cattle, except feedlots¹ (*** "P" except "Pc" when bldg housing animal is within 100 of residential dwelling not on same property)	P *** Pc	NA	new ag operations raising animals allowed only as part of SIC 029 – in allowed (yellow) table
0213 Hogs - hog farms, except feedlots1***	P *** Pc	NA	new ag operations raising animals per SIC 029
0214 Sheep and goats1***	P *** Pc	NA	new ag operations raising animals per SIC 029
0219 General livestock, except dairy and poultry1***	P *** Pc	NA	new ag operations raising animals per SIC 029
024 Dairy farms ^{1***}	P *** Pc	NA	new ag operations raising animals per SIC 029
025 Poultry and eggs ¹ ***	P *** Pc	NA	new ag operations raising animals per SIC 029
027 Animal specialty1***	P *** Pc	NA	new ag operations raising animals per SIC 029

https://wdmiowa.sharepoint.com/sites/ds/CommDev Documents/___Development Projects/_Ordinance Amendments PR-000574-2016/Open Space Uses AO-005905-2023/SR_Open Space Uses_04-01-2024.docx

SIC Land Uses	Current code allowance for OS	Proposed code allowance for OS
0751 Livestock services, except veterinary	Р	NA
12 Coal mining (includes both surface and underground mining)	Pc	NA
13 Oil and gas extraction (includes extraction and production of)	Pc	NA
241 Logging, commercial activity	Pc	NA
242 Sawmills and planing mills, commercial activity (concern with commercial scale operations)	Pc	NA
4221 Farm product warehousing and Storage (includes grain elevators)	Pc	NA
4512 Air transportation - scheduled	Pc	NA
4513 Air courier services	Pc	NA
4522 Air transportation - nonscheduled	Pc	NA
- Heliport/helistop (ancillary to a primary use)	Pc	NA
4581 Airports, flying fields and airport terminal services	Pc	NA
519 Miscellaneous nondurable goods – Farm supplies – fertilizers and agricultural chemicals	Pc	NA
5999 Miscellaneous retail stores, NEC – Sales barn (concern is amount of traffic on sales day)	Pc	NA
7996 Amusement parks	Pc	NA

These all relate to commercial air transportation activities.

Added "non-commercial airstrips or airfields" as Permitted use in yellow

Notes:

1*** - "Pc" when bldg housing animal is within 100' of residential dwelling not on same property

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION NO. PZC-23-045

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, staff requests approval of an Ordinance Amendment to the following chapters and sections identified below in Title 9 (Zoning) to modify regulations pertaining to uses permitted in the Open Space Zoning District and Amusement and Recreation Service uses permitted in non-residential zoning districts as currently regulated within City Code.

- Chapter 5: Agricultural/Open Space and Residential Zoning District, Section 8: Open Space/Agricultural and Residential Use Regulations, Subsection C: Use Matrices
- Chapter 6: Commercial, Office and Industrial Zoning District, Section 6: Commercial,
 Office and Industrial Use Regulations, Subsection C: Table 6.1 Use Matrix

WHEREAS, the Ordinance Amendment request complies with the applicable provisions of lowa Code Chapter 414, the Comprehensive Plan and City Code.

NOW THEREFORE, the Planning and Zoning Commission of the City of West Des Moines recommends the City Council approve the Ordinance Amendment (AO-005905-2023).

PASSED AND ADOPTED on September 25, 2023,

Andrew Conlin, Chair

Planning and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Planning and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on September 25, 2023, by the following vote:

AYES: Conlin, Costa, Davis, Hatfield, McCoy, Shaw

NAYS:

ABSTENTIONS:

ABSENT: Crowley

ATTEST Michelle Kiesenberg

ORDINANCE NO.

AN ORDINANCE AMENDING THE CITY CODE OF
THE CITY OF WEST DES MOINES, IOWA, 2024, TITLE 9 (ZONING),
CHAPTER 5 (AGRICULTURAL/OPEN SPACE AND RESIDENTIAL ZONING
DISTRICT), AND TITLE 9, (ZONING), CHAPTER 6 (COMMERCIAL, OFFICE AND
INDUSTRIAL ZONING DISTRICT), PERTAINING TO USES PERMITTED IN THE
AGRICULTURAL/OPEN SPACE ZONING DISTRICT AND AMUSEMENT
AND RECREATION SERVICE USES ALLOWED IN
NON-RESIDENTIAL ZONING DISTRICTS

(Full ordinance in standard city code format will be included for 3rd Reading)

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: April 1, 2024

ITEM: Eagle Brook, south of Veterans Parkway and east of SE 35th Street – Amend the Zoning Map to establish R-1 Single-Family Residential zoning – Eagle Brook, L.L.C. – ZC-006328-2024

Ordinance: Approval of First Reading of Ordinance to Consistency Zone Property

<u>Background</u>: Tyler Tuttle with Bishop Engineering, on behalf of the applicant and property owner, John Larsen, Eagle Brook, L.L.C., request approval of a zoning request on approximately 28 acres generally located south of Veterans Parkway and east of SE 35th Street. The applicant requests an amendment to the Zoning Map to designate R-1 (Single Family Residential) Zoning District consistent with the adopted Comprehensive Plan Land Use designation of Detached Residential.

Staff Review & Comment.

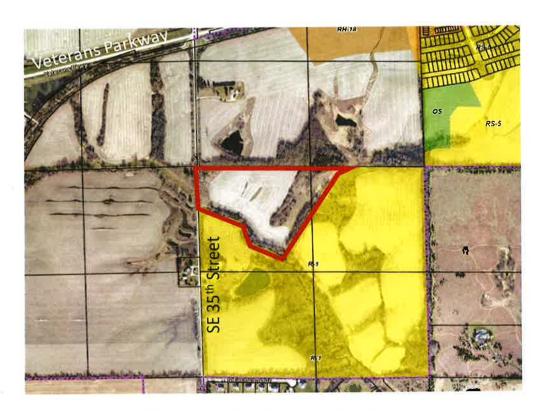
- Financial Impact: Undetermined
- <u>Anticipated Development</u>: The requested actions are in preparation of development of the site for future single family detached residential development.
- <u>Developer Responsibilities</u>: In conjunction with future platting of the lots, unless otherwise provided in a development agreement with the city, the developer will be responsible for construction and/or installation of all required public and private infrastructure improvements necessary to support development. The following items are known improvements; additional improvements may be required in response to development proposals:
 - Street Improvements:
 - The installation of all streets (public and private) is required for access to the development and continuation of the city street network. Streets will need to be coordinated with adjacent property owners to determine alignments and shared access points. Proposed street network will need to be consistent with the ultimate street circulation map adopted as part of the City's Transportation Master Plan.
 - Development of the property requires a minimum of two access locations from a public street, one of which must be paved. SE 35th Street will need to be paved from the current end of paving along the entire plat frontage to facilitate the development.
 - Sanitary Sewer: The Middle Creek trunk sewer runs through the proposed development. The developer will be responsible for extending collector lines from the trunk sewer into and throughout their development. The Developer will need to extend public sanitary sewer through their site to adjacent upstream properties, if deemed necessary.
 - Construction of and provision of easements for all public water lines, sanitary and storm sewers, and public utility for the development.

- The applicant shall meet the parkland dedication requirements as per city code (Title 10, Chapter 1, Section 4). Once a residential unit count is determined, details of the parkland dedication requirements will be provided.
- As part of parkland dedication, the applicant shall provide greenway land within the development in accordance with the Master Parks and Trails Plan.
- Traffic Analysis Findings: The proposed zoning is consistent with the adopted Comprehensive

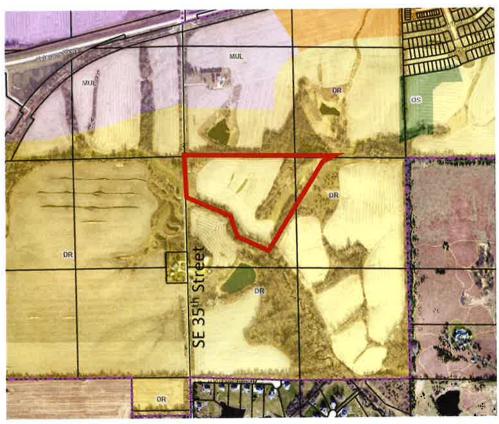
Plan Land	d Use Map. be done in	A Traffic Imp	act St	oning is consistent to tudy was not necest a associated Prelim in the layout of the	sary with th inary Plat. f	is action; Recomme	however, a
Outstanding	Issues: Ti	nere are no ou	tstand	ing issues.			
Planning an Date: Vote: Recommen	M 7-	ommission Ac arch 25, 2024 0 for approval pprove Consis		Zoning			
City Counci Date: Vote:		<u>ling</u> : pril 1, 2024					
Recommend requirements		prove the zoni	ng red	quest, subject to the	applicant r	neeting al	l City Code
Lead Staff N	Member:	Karen Marren	1				
Approval M	eeting Date	es:					
Planning and						n 25, 2024	1
City Council	: First Read	ling			April	1, 2024	
City Council	Second Re	eading					
City Council	: Third Rea	ding					
Staff Repor	t Reviews:						
Planning & 2		⊠ Deve	lopme	ent Coordinator (or)	\[\tau_1 =1	Deneutus	- m+
Commission		□ Direc	-	, ,	⊠ Legai	Departme	ent
City Council		⊠ Direc			∠ Legal	Departme	ent
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Publication	s (if applic			Council Subcomr			000
Published	Des Moine						
In:	Community			Subcommittee	Developme	HIL & PIAII	
Date(s) Published	3/18/24			Date Reviewed	2/19/24		
Date(s) of Mailed	3/12/24			Recommendation	□ Yes	□ No	⊠ No Discussion

Publications (if applicable)		Council Subcommittee Review (if applicat				
Published In:	Des Moines Register Community Section	Subcommittee	Developme	ent & Plan	ning	
Date(s) Published	3/18/24	Date Reviewed	2/19/24		•	
Date(s) of Mailed Notices	3/12/24	Recommendation	□ Yes	□ No	⊠ No Disc	

Location Map



Comprehensive Plan Land Use Map



A RESOLUTION OF THE PLANNING AND ZONING COMMISSION NO. PZC-24-013

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, the applicant and property owner, John Larsen, Eagle Brook, L.L.C., requests approval for a Zoning Map Amendment for property generally located south of Veterans Parkway and east of SE 35th Street as depicted on the Consistency Zoning Illustration included in the staff report to change the zoning designation as follows:

 Amend the Zoning Map to designate R-1 (Single Family Residential) Zoning District on approximately 28 acres consistent with the Comprehensive Plan Land Use designation.

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

NOW, THEREFORE, the Planning and Zoning Commission of the City of West Des Moines recommends that City Council approve the zoning request, (ZC-006328-2024) 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 March 25, 2024.

Andrew Conlin, Chair

Planning and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Planning and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on March 25, 2024, by the following vote:

AYES: Conlin, Costa, Crowley, Davis, Hatfield, McCoy, Shaw

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST

Karen Marren, 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

ORDINANCE #

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF WEST DES MOINES, IOWA, 2024, BY AMENDING TITLE 9, ZONING, CHAPTER 4, **ZONING DISTRICTS AND MAPS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

SECTION 1. Amendment. The Zoning Map of the City of West Des Moines, Iowa, is hereby amended by designating on approximately 28 acres to R-1 Single Family Residential Zoning District consistent with the adopted Comprehensive Plan Land Use Map on that property legally described as follows and shown on the attached Consistency Zoning Illustration:

Legal Description

AN IRREGULAR SHAPED PORTION OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH P.M., WARREN COUNTY, IOWA. MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 9; THENCE S88°56'16"E ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 9, A DISTANCE OF 1881.72 FEET; THENCE S57°21'20"W, A DISTANCE OF 453.18 FEET; THENCE S27°10'37"W, A DISTANCE OF 1024.54 FEET; THENCE N61°14'06"W, A DISTANCE OF 467.03 FEET; THENCE N14°34'56"W, A DISTANCE OF 231.81 FEET; THENCE N67°07'52"W, A DISTANCE OF 600.68 FEET TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 9; THENCE N01°11'55"W ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 9, A DISTANCE OF 508.35 FEET TO THE POINT OF BEGINNING.

SECTION 2. Repealer. All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. Savings Clause. If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

SECTION 4. <u>Violations and Penalties</u>. 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 5. Other Remedies. In addition to the provisions set out in Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed and approved by the City	Council on April 15, 2024.
Russ Trimble, Mayor	-
ATTEST:	
Ryan Jacobson, City Clerk The foregoing Ordinance No.	was adopted by the Council for the City of West Des
Moines, lowa, on, 2024.	was adopted by the Countries and John 2024, and was published in the Des Moines Register
Ryan T. Jacobson City Clerk	

Consistency Zoning Illustration



CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: April 1, 2024

ITEM: Ordinance Amendment, Amend Title 9 (Zoning) to modify land uses permitted in the Business Park (BP), General Industrial (GI), and Light Industrial (LI) zoning districts – Spraytec Fertilizers, LLC. – AO-006341-2024

ORDINANCE: Approval of First Reading of Ordinance Amendment

Background: An amendment to the chapters and sections identified below in Title 9 (Zoning) is being requested by Korey Marsh from Snyder & Associates, INC. on behalf of Renato Firmento of Spraytec Fertilizers, LLC. The applicant is requesting SIC 2875: Fertilizers, Mixing Only, be added as a Permitted Conditional (Pc) use within the Business Park (BP) district. Staff believes the use could also be appropriate in the General Industrial (GI) and Light Industrial (LI) zoning districts and is requesting SIC 2875 also be allowed as a Permitted Conditional (Pc) use in these districts as well. The use is identified as a Permitted Conditional Use to allow the Board of Adjustment to evaluate each proposal for impacts and, if necessary, place the appropriate site and operational conditions, or deny the use allowance.

Specifically, the following changes are proposed with this request:

- Title 9: Zoning
 - Chapter 6: Commercial, Office and Industrial Zoning District, Section 6: Commercial, Office and Industrial Use Regulations, Subsection C: Table 6.1, Use Matrix, to modify land uses permitted within the Business Park (BP), General Industrial (GI), and Light Industrial (LI) zoning districts.

Staff Review & Comment:

- Ordinance Amendment Intent: The intent of the ordinance amendment is to allow Fertilizer, Mixing Only (SIC 2875) as a Permitted Conditional Use in Business Park, General Industrial, and Light Industrial zoning districts.
 - This amendment is being requested as the applicant is interested in constructing a warehouse at 4350 SE Army Post Road within the South Branch Business Park development at which they would conduct mixing of pre-made fertilizer materials and then package and distribute the end product. The property is located within the Business Park zoning district. Under current City Code SIC 2875: Fertilizer, Mixing Only, is not permitted or permitted conditionally anywhere in the city.
- <u>Key Aspects of Proposed Amendment</u>: Staff is comfortable with adding the use as Permitted Conditional (Pc) which requires the approval of the Board of Adjustment (BOA). As noted above, the BOA has the authority to evaluate the operational aspects of a business and either establish conditions to mitigate any potential negative impacts, or if they believe appropriate due to unmitigable concerns, deny a business' request.
 - While the proposed code amendment would be applicable across the city, in this particular situation, as part of the Pre-application process and in response to a Council Member's

questions, staff inquired about the possibility of contamination to nearby ground and/or waters, odor or other particulate escape from the intended facility. The applicant assured staff that there are not any harmful impacts to the environment. They have indicated that the assembly process is very clean with the mixing occurring within tanks and noted that there are no odors, gas or smoke emissions, and no particles leave the building in their manufacturing procedures.

Outstanding Issues: There are no outstanding issues.

Planning and Zoning Commission Action:

Date:

March 25, 2024

Vote:

7-0 for approval

Recommendation: Approval of Ordinance Amendment

City Council First Reading:

Date:

April 1, 2024

Vote:

X-X for approval, with Council Member(s) xxxx absent

Recommendation: Approve the Ordinance Amendment to City Code.

Lead Staff Member: Emani Brinkman

Approval Meeting Dates:

Approval meeting bates.	1.4 1.05.0004
Planning & Zoning Commission	March 25, 2024
City Council: First Reading	April 1, 2024
City Council: Second Reading	
City Council: Third Reading	

Staff Report Reviews

Planning & Zoning	□ Development	□ Legal Department
Commission	Coordinator/Director	
City Council	⊠ Director	□ Legal Department □
	☐ Appropriations/Finance	Agenda Acceptance

Publications (if applicable)

Publication	Publications (ii applicable)		
Published	Des Moines Register		
ln:	Community Section		
Date(s)	3/11/24		
Published			
Date(s) of			
Mailed	NA		
Notices			

Council Subcommittee Review (if applicable)

Subcommittee	Develo	pment	& Plan	ning
Date Reviewed	3/18/2	1 via ei	mail	
Recommendation	Yes	No	Split	No Discussion ⊠

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION NO. PZC-24-012

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, staff requests approval of an Ordinance Amendment to the following chapters and sections identified below in Title 9 (Zoning) to modify regulations to allow SIC 2875 Fertilizers, Mixing Only, as a Permitted Conditional (Pc) use as currently regulated within City Code.

 Title 9: Zoning, Chapter 6: Commercial, Office and Industrial Zoning District, Section 6: Commercial, Office and Industrial Use Regulations, Subsection C: Table 6.1, Use Matrix, to modify land uses permitted within the Business Park (BP), General Industrial (GI), and Light Industrial (LI) zoning districts.

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

NOW THEREFORE, the Planning and Zoning Commission of the City of West Des Moines recommends the City Council approve the Ordinance Amendment (AO-006341-2024).

PASSED AND ADOPTED on March 25, 2024.

Andrew Conlin, Chair

Planning and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Planning and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on March 25, 2024, by the following vote:

AYES: Conlin, Costa, Crowley, Davis, Hatfield, McCoy, Shaw

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

https://wdmiowa.sharepoint.com/sites/ds/CommDev Documents/___Development Projects/_Ordinance Amendments PR-000574-2016/Fertilizer Mixing Only in BP AO-006341-2024/SR_Fertilizer Mixing AO_3-25-2024.docx

Prepared by: Emani Brinkman, City of West Des Moines, Development Services Dept., P.O. Box 65320,

West Des Moines, IA 50265-3620, 515-222-3620

When Recorded Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

ORDINANCE NO.

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2024, TITLE 9 (ZONING), CHAPTER 6 (COMMERCIAL, OFFICE AND INDUSTRIAL ZONING DISTRICT) PERTAINING TO FERTILIZER MIXING

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

Section 1. <u>Amendment.</u> Title 9: *Zoning*, Chapter 6: *Commercial, Office and Industrial Zoning District*, Section 6: *Commercial, Office and Industrial Use Regulations*, Subsection C: *Table 6.1, Use Matrix* is hereby amended by inserting the text in bold italics in numeric order. All other items in current adopted table but not reflected below shall remain as is.

SIC CODES	RC	СМС	NC	CVC	sc	VJC	VJHB	WR	BP	VJLI	Li	GI	OF	PCP	os
2875 Fertilizers, Mixing Only									Pc		Pc	Pc			

Section 2. Repealer. All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. <u>Savings Clause</u>. If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

Section 4. <u>Violations and Penalties</u>. 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 5. Other Remedies. In addition to the provisions set out in Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

Section 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Russ Trimble, Mayor Attest: Ryan Jacobson, City Clerk The foregoing Ordinance No. ______ was adopted by the Council for the City of West Des Moines, Iowa, on ______, 2024, and published in the Des Moines Register on ______, 2024.

PASSED AND APPROVED by the City Council on April 15, 2024.

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM:

Public Hearing for the award and sale of the property at 1205-1207 Locust Street to Greater Des Moines Habitat for Humanity.

Resolution – Accept the proposal, award, and approve the sale of the property at 1205-1207 Locust Street to Greater Des Moines Habitat for Humanity.

FINANCIAL IMPACT: The proposal includes a purchase price of \$110,000.00. These funds would be put into the Historic West Des Moines Housing Fund.

SYNOPSIS: One proposal was received in response to the Request for Proposals. Greater Des Moines Habitat for Humanity proposes to remove the two houses on the property, complete a plat of survey for the property to create three buildable lots to allow the construction of three new homes, and sell the houses to income qualified households.

Habitat for Humanity proposes to purchase the property in the amount of \$110,000. The anticipated appraisal/sale prices of the homes are anticipated to range from \$240,000 to \$265,000.

Habitat for Humanity will select the buyers for these homes using their buyer selection process. The buyers must complete 300-400 hours of sweat equity and the "Blueprint to Homeownership" Education program prior to purchase. Habitat agrees to the City's required restrictive covenants of a 10-year promissory note on the property to ensure only income-qualified buyers purchase the homes.

BACKGROUND: On November 7, 2022, the City Council approved the purchase of property containing two single-family homes at 1205 and 1207 Locust Street in the amount of \$225,000. The property was acquired as part of the Historic West Des Moines Housing Fund – Rental Acquisition Program with the intent to sell the houses for 75% of the purchase price to a non-profit housing developer for rehabilitation and then to be sold to a household below 80% Area Median Income (AMI). The two houses have been evaluated and determined to be too expensive to renovate and remain affordable to the targeted buyers. City staff have evaluated the options and recommend selling the property as-is with the expectation the houses will be demolished and three new single-family homes will be constructed. The construction of three new houses accomplishes the original goals of the Rental Acquisition Program, which is to transition rental properties into owner-occupied homeownership opportunities for households below 80% AMI. The land at 1205 and 1207 Locust Street is adequate to support the subdivision platting into three new buildable lots.

The City agrees to reimburse the Buyer for the reasonable costs for demolition of the existing structures, replatting, and utility connections in an amount not to exceed a total of \$100,000.00. These funds have been allocated from the Community Development Block Grant Program.

None of the public utility connection fees or building permit fees will be waived. The proposals received have been evaluated according to the criteria found in the original Request for Proposals.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Approve the resolution that accepts the proposal and approves the sale of the property at 1205 -1207 Locust Street to Greater Des Moines Habitat for Humanity.

Lead Staff Member:

Christine Gordon, Housing and Community Development Manager

STAFF REVIEWS

Department Director	Ryan Moffatt	
Appropriations/Finance	Tim Stiles \	
Legal		
Agenda Acceptance	(D)	

PUBLICATION(S) (if applicable)

. 00210/11/01/0/ (// 2//	
Published In	Des Moines Register
Dates(s) Published	March 22, 2024

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance 8	& Admin	istration
Date Reviewed	Janu	ary 10, 2	.024
Recommendation	X Yes	No	Split

Attachments:

Exhibit I Resolution

Exhibit II Notice of Public Hearing

Exhibit III Proposal from Greater Des Moines Habitat for Humanity

Exhibit IV Purchase & Agreement

RESOLUTION N	(O.

RESOLUTION ACCEPTING THE PROPOSAL AND APPROVING THE SALE OF CITY-OWNED PROPERTY, 1205-1207 LOCUST STREET, WEST DES MOINES, IOWA TO GREATER DES MOINES HABITAT FOR HUMANITY

WHEREAS, City-Owned property located at 1205-1207 Locust Street, West Des Moines, Iowa, is available for sale, legally described as:

Lot 12 Butler's Addition to Valley Junction, now included in and forming a part of the City of West Des Moines, Polk County, Iowa

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT the Request for Proposal (RFP) was approved, released and was on file in the Office of the West Des Moines City Clerk for public inspection for 30 days; and

BE IT FURTHER RESOLVED, one proposal was received from Greater Des Moines Habitat for Humanity by the deadline of 2:00 p.m. on Wednesday, February 28, 2024; and

BE IT FURTHER RESOLVED, the City awards the property at 1205-1207 Locust Street to Greater Des Moines Habitat for Humanity for the demolition of the existing houses and construction of three new single-family homes for purpose of sale to buyers below 80% of Area Median Income.

THEREFORE, BE IT RESOLVED, that the Council of the City of West Des Moines approves the sale of City-owned property, 1205-1207 Locust Street, West Des Moines, Iowa

BE IT FURTHER RESOLVED THAT:

- 1. Pursuant to Code of Iowa Section 364.7, publication of notice regarding the sale of the above legally described property has been properly made.
- 2. The public hearing regarding the sale of the above legally described property is closed and the sale and conveyance of the property to Greater Des Moines Habitat for Humanity is approved.
- 3. The Purchase Agreement is hereby approved and accepted.
- 4. The Mayor is authorized to sign all documents necessary to complete the sale of the Subject Property to Greater Des Moines Habitat for Humanity and the City Clerk is directed to attest to his signature.
- 5. The City Attorney is authorized to take all steps necessary and consistent with the Purchase Agreement to convey the property.

PASSED AND ADOPTED this 1st day of April, 2024.

	Russ Trimble, Mayor
TTEST:	

NOTICE OF PUBLIC HEARING

The West Des Moines City Council will hold a public hearing at 5:35 p.m. on April 1, 2024, at the West Des Moines City Hall Council Chambers, 4200 Mills Civic Parkway, West Des Moines, Iowa to consider the sale and conveyance of properties locally known as 1205 Locust Street and 1207 Locust Street, and legally described as:

Lot 15 Nuttall Acres, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa

Any interested person may appear at the hearing and be heard regarding the proposed sale of the property. A detailed location map showing the property may be obtained at the West Des Moines City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa.

CITY	OF WEST DES MOINES, IOWA
By: Ry	an T. Jacobson, City Clerk
Published in the Des Moines Register on	March 22 , 2024 .

OFFICIAL PROPOSAL SHEET – for Purchase of City-owned Property at 1205 and 1207 Locust Street (Removal, Subdivision, Construction, and Resale)

PROPOSALS DUE NO LATER THAN 2:00 PM, WEDNESDAY, February 28, 2024

PROPOSAL	\$ <u>110,000.00</u>
The undersigned understands that the City reserves the right to reject and conditions contained in the PURCHASE AGREEMENT .	
Proposal submitted by:	
INDIVIDUAL / BUSINESS NAME: Greater Des Moines Habitat for	Humanity
BY: Ryan Doyle TITLE: Real Es	state and Land Development Manager
INDIVIDUAL / BUSINESS ADDRESS: PO Box 716	
CITY/STATE: Des Moines, IA.	ZIP:50303
PHONE: 515-329-6963 EMAIL: rdoyle@gdmhabitat.org	
MUST BE ATTACH TO THIS SHEET:	
 Plan for removal of existing structures, replating, construction Provide sources and uses for construction expenses Anticipated appraised value Anticipated sale price of house List any subsidies, grants, and loans being offered to Provide floorplans and elevations of proposed new Developer experience with this type of house constructions Explain how homebuyers will be qualified and selected PLAN FOR REMOVAL OF EXISTING STRUCTURES, REPLATED.	to buyers r single family houses truction cted
RESALE: MUST BE ATTACHED TO THIS SHEET CONTRACTOR: Greater Des Moines Habitat for Humanity	
	oines IA 50303
PHONE: 515-319-6963 ADDRESS: PO Box 716. Des Mo	
PROPOSER'S ACKNOWLEDGMENT AND ACCEPTANCE	OF ABOVE DOCUMENT
	DATE: <u>2/10//24</u>
	DATE:
	160 160 160 160 160 160 160 160 160 160

Include certified check, treasurer's check or cashier's check in the amount of \$500 as proposal security to ensure full performance of the demolition, construction, and resale (refundable upon completion of the demolition, construction, and resale) and submit in a sealed envelope, plainly marked "Proposal for Cityowned lot – 1205 and 1207 Locust Street" (subject property address) to:

City Clerk's Office West Des Moines City Hall 4200 Mills Civic Parkway PO Box 65320 West Des Moines, Iowa 50265



To: City of West Des Moines

1205_1207 Locust st - Project plan

- Abatement and Demolition: Habitat will remove existing structures on the site utilizing a licensed demolition company. All applicable West Des Moines regulations concerning utilities and hazardous material abatement will be followed. Demolition company will secure proper permits prior to work.
- 2. Plat of survey: Habitat will hire licensed engineering company to complete plat of survey work per the guidance of City of West Des Moines Planning.
- 3. Community Engagement: Pre-development neighborhood outreach will take place prior to construction and plans for community involvement will be finalized.
- 4. Construction: Infrastructure needs will be addressed, and 3 new homes will be constructed on site. Homes will conform to all City of West Des Moines zoning requirements. Multiple house plans could potentially be used on the site. Final selections will be made with City input. Intent is to fit the design and scale of the neighborhood. (initial proposed layouts attached). Garage waivers will be requested on all 3 homes. All requirements of waivers will be met.
- 5. Sale: Homes will be sold per Buyer selection and affordability plan



To: City of West Des Moines

1205_1207 Locust st - Sources and Uses

Proposal financials

S	ou	rc	es
_	u		~~

Total

Uses

Total

\$114,819 \$1,042,319
\$110,000 \$69,332
\$47,500
\$4,500
\$562,845
\$28,142
\$220,000
\$1,042,319



To: City of West Des Moines

1205_1207 Locust st - Anticipated appraised value and sale price

Habitat will use as-built independent appraised values as the sale price of the home. Anticipated appraisal/sale prices are as follows.

N Parcel:

\$255,000

SW Parcel: SE Parcel:

\$265,000

\$240,000



To: City of West Des Moines

1205_1207 Locust st - Subsidies, grants, and loans

Habitat intends to assist the future homeowners in applying for the West Des Moines Down payment assistance program.

Habitat may use other buyer downpayment assistance grants from IFA and PCHTF at time of sale if available to offset Habitat subsidy

Habitat intends to originate an affordable mortgage on the newly constructed properties in an amount that ensures the direct housing expenses (principle, interest, taxes, insurance) do not exceed 30% of the applicant's gross income. The use of Habitat's mortgage financing is not required.



To: City of West Des Moines

1205_1207 Locust st - Developer Experience

Greater Des Moines Habitat for Humanity (GDM Habitat) has over 35 years of experience in addressing the lack of decent and affordable housing for qualified, low-income families. Through volunteer labor and donations of money and materials, GDM Habitat builds and rehabilitates simple, decent houses in conjunction with our homebuyer families. In addition to a down payment and monthly mortgage payments, homeowners invest hundreds of hours of their own labor (sweat equity) into building or renovating their Habitat house and other Habitat houses. The houses are sold to partner families and financed with affordable loans. GDM Habitat's process of investing in the well-being of neighborhoods, as well as its residents, helps create and sustain healthy, thriving communities.

GDM Habitat completed its first project in 1987 and has served more than 2,500 low-income households to date. In 2024, GDM Habitat plans to create 45 affordable homeownership opportunities and complete at least 250 critical homeowner-occupied repairs through the home preservation program. Home preservation provides a path for residents, organizations, volunteers, and GDM Habitat to come together to assist low-income residents with needed repair, maintenance, weatherization, safety, accessibility, and beautification of homes.

Greater Des Moines Habitat for Humanity builds 25-35 homes per year and fully renovates 5-10.



To: City of West Des Moines

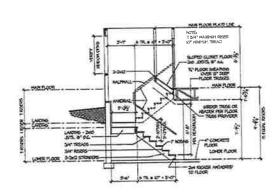
1205_1207 Locust st - Buyer selection

GDM Habitat serves families earning 30-80% of the Area Median Income (AMI) for Polk County. The average Habitat Homebuyer family has 4.4 members and would likely not qualify for a traditional mortgage, often leaving them with substandard, high-cost housing options.

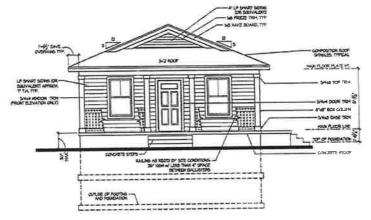
Applicants' annual income is targeted to be between 30-80% of Polk County's AMI for their family size, and they must have two years of stable income history. Their debt-to-income ratio including the estimated monthly mortgage payment should be less than 40%, and the estimated monthly mortgage payment cannot be more than 30% of an applicant's income. Applicants must also have a social security number and be eligible to work in the United States with a three-year history of employment authorization.

Applicants must be willing to complete 300-400 hours of sweat equity and the Blueprint to Homeownership Education program. Partner Families are required to meet with their GDM Habitat Family Services contact while working on financial goals to demonstrate financial self-sufficiency and readiness for homeownership. Qualified buyers will be presented with a list of available properties for selection. Once selected, buyers will complete program requirements as final preparations for home closing are made.

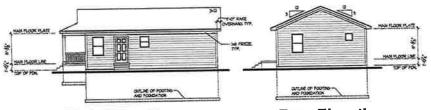
Restrictive Covenants. Habitat agrees to sell each of the properties to a buyer with a combined maximum income for all household members less than or equal to 80% of the Area Median Income limits established each year by the United States Department of Housing and Urban Development (adjusted for household size), and as further determined by Habitat. Habitat further agrees to a place restrictive covenants with the same income restrictions on all homes for the maximum period allowable by Iowa Code.



Stair Section

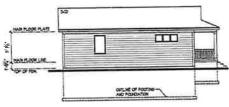


Front Elevation



Right Elevation

Rear Elevation



Left Elevation

ATTIC VENTRATION SCHEDULE

SECULTARIA SOUTHAND OF SECULTARIA SOUTHAND OF

Grate Des Molnes

Habitat

for Humanity

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1330-24 Ranch Elevation C Reversed

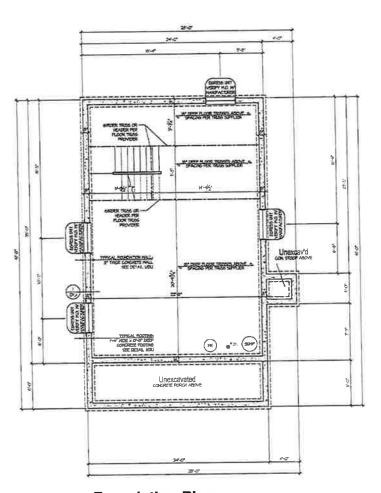


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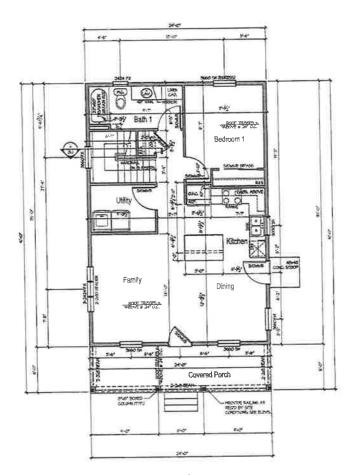
ESTATION TO SERVICE AND SERVIC

Elevation C
Reversed

3.1C



Foundation Plan



Main Floor Plan

AREA SCHEDULE

FLOOR FLAN NOTES



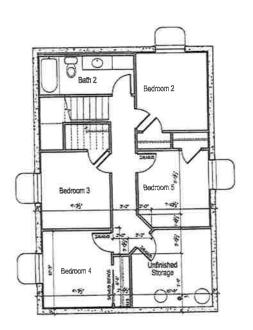


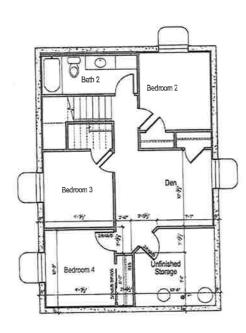
Ranch Elevation (Reversed 1330-24

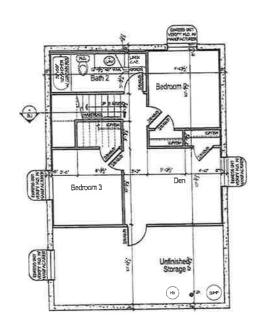


AND HOUSE

Elevation C Reversed 2.1C







Bedroom 5 Option Lower Floor Plan

Bedroom 4 Option Lower Floor Plan

Standard Lower Floor Plan

FLOOR PLAN NOTES

- STARS.
 SEE ELECTRICAL DRAWNS BY COURS
 FOR ELECTRICAL LATES.
 SEE SERVICAL LATES FOR ADDITIONAL
 MEDISHATION.





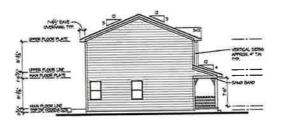


Ranch **Elevation C** Reversed 1330-24

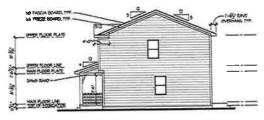


LOHER PLOOR PLAN LOHER PLOOR PLAN OFFICES

Elevation C Reversed 2.2C





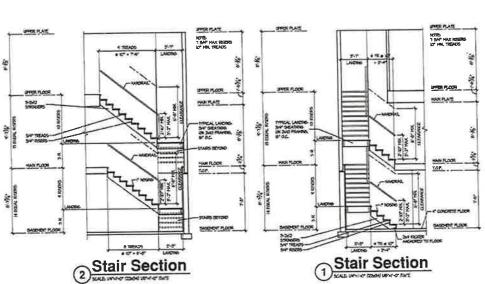


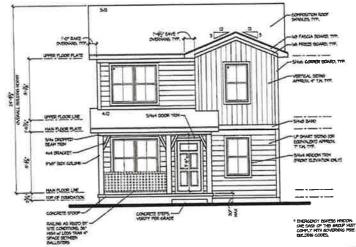
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Left Elevation

Rear Elevation

Right Elevation





Front Elevation

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FLOOR PLAN NOTES





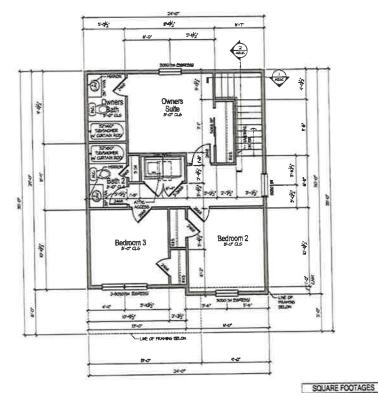


1348-24 2-STORY ELEVATION C



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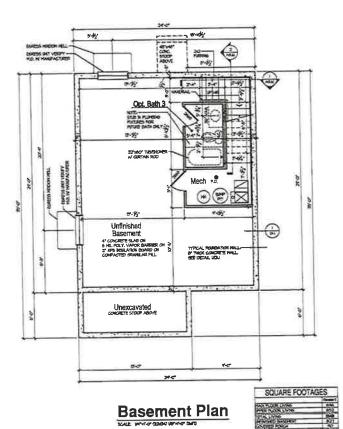
Upper Floor Plan

Elevation - C

Bedroom 4 Unfinished Storage Rec

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FLOOR PLAN NOTES



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1348-24 2-STORY ELEVATION C



BASEMENT PLAN

ELEVATION C A0.1C

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Greater Des Moines Habital for Humanity [515] 47**LB886** ERT 125

Ptoject No.: 35100121 05,11,21

Drown By: JA/SH/IK Persons 07.09.19 10.30.19

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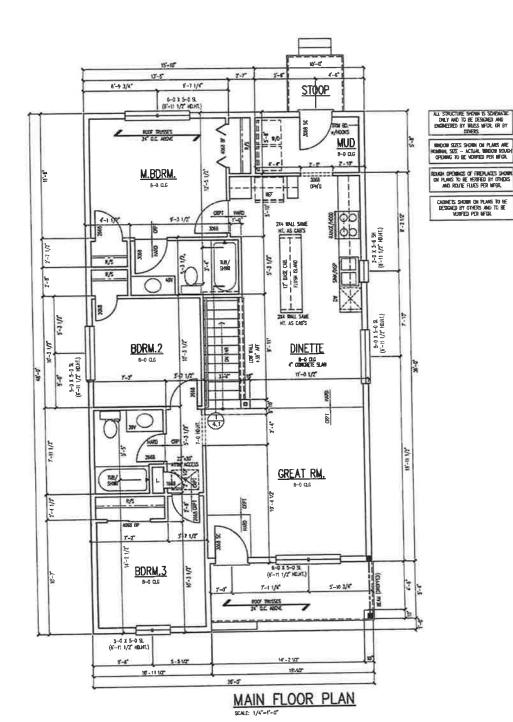
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Greater Des Moines Habitat for Humanity [325] 47L9000 EXT 125

Project No.: 35100121 Date 05,11.21

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Sheet Title:

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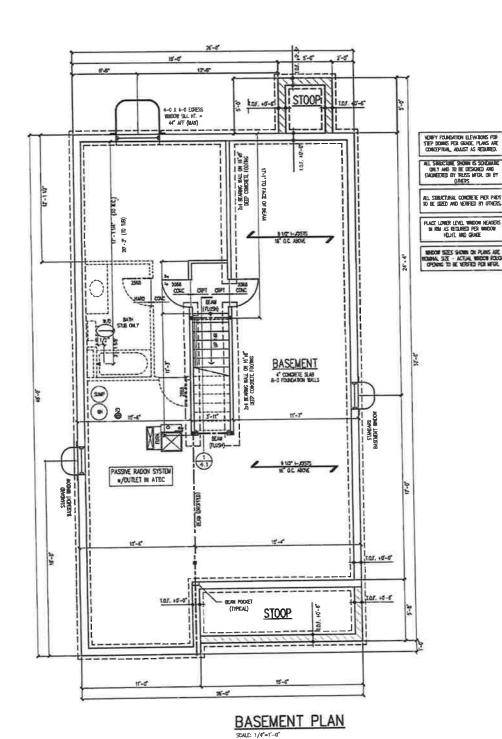
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Greater Des Moines Habitat for Humanity (315) 471,8696 EST 125

Project No.: 35100121 05.11.21 Date Drown By, JA/SH/TK

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Sheet Title BASTMENT PLAN

Sheet Ma.:

1.1

PURCHASE AGREEMENT 1205 and 1207 Locust Street, West Des Moines, Iowa

lega City City 120	THIS AGREEMENT IS MADE AND ENTERED this
pro by a (80	e CITY purchased the PROPERTY with the intent that it be re-platted into three (3) lots per outline vided by the City, and three (3) single-family residential structures constructed on the PROPERTY a developer and resold to new buyers with an annual household incomes of less than eighty percent %) of the Area Median Income ("AMI"). The BUYER and the CITY have reached an agreement to centers around that intention and both parties agree to the following:
1.	SELLER agrees to sell and transfer ownership to BUYER via Quit Claim deed the PROPERTY for the full proposal price of \$ ("Purchase Price") as set forth in the attached proposal solicitation and response, and for other valuable consideration, including, but not limited to, BUYER performing all obligations as set forth below. The Quit Claim deed will have a restriction requiring the SELLER'S written consent to lease, sell, or otherwise sell the PROPERTY, until the BUYER has completed all improvements the BUYER is obligated to perform. This Agreement must be executed by the BUYER, as evidenced below, no later than 5:00 p.m. (CST), April 19, 2024, or the BUYER'S proposal will be deemed rejected.
2.	BUYER shall deposit the Purchase Price in cash, cashier's check, or certified check payable to the City of West Des Moines no later than 5:00 p.m. (CST), April 19, 2024. Failure of BUYER to comply with this provision will constitute a breach of this Agreement resulting in forfeiture of the five hundred dollars (\$500.00) submitted as proposal security to SELLER and termination of any and all rights of BUYER to ownership and possession of the PROPERTY.
3.	BUYER shall remove all existing structures on the PROPERTY, subdivide the PROPERTY into three lots of record, and construct three (3) single-family residential structures to completion on the PROPERTY no later than November 30, 2025, unless otherwise agreed to in writing by the SELLER. BUYER agrees that failure complete these obligations by November 30, 2025, shall constitute a material breach of this Agreement.
	BUYER shall obtain from the applicable jurisdiction(s) all required permits to demolish and remove the existing structures and construct the single-family residential structures and any other improvements on the PROPERTY.
4.	The BUYER shall pay for all costs and obligations associated with removal of the existing

structures, subdivision of the PROPERTY, and construction the three (3) single-family residential structures, including, but not limited to, the establishment of all required utility connections; the

installation of sidewalks; and the installation a concrete driveway of sufficient length to allow for the parking of at least one (1) legally parked vehicle and all permits and inspections. The SELLER agrees to reimburse BUYER up to \$100,000.00 for reasonable demotion, removal, platting, and utility connection expenses.

- 5. BUYER shall resell the PROPERTY to new buyers with an annual household incomes of less than eighty percent (80%) of the Area Median Income (AMI) by November 30, 2025, subject to the following conditions:
 - A. Prior to resale, BUYER shall provide, at BUYER'S cost, housing counseling and financial education programming to the new buyers; and
 - B. BUYER shall comply with local, state and federal laws, including, but not limited to, those laws regarding fair housing; and
 - C. BUYER shall make available affordable optional mortgage services to the new buyers; and
 - D. BUYER shall place a deed restriction on the PROPERTY that for ten years following the resale of the PROPERTY to the new buyer, title may only be transferred to a buyer with an annual household income of less than eighty percent (80%) AMI.
- 6. BUYER shall comply with all City of West Des Moines regulations and ordinances.
- 7. BUYER shall provide and maintain erosion control from the time the BUYER takes possession of the property until the time construction is completed and grass has been established. BUYER shall complete necessary grading to the property lines.
- 8. BUYER shall acquire, possess, and maintain homeowners' insurance for the PROPERTY and in sufficient amounts to protect the residential dwelling and for liability purposes, for as long as BUYER owns the PROPERTY. Said insurance must be purchased and maintained as soon as this Agreement has been approved by both parties.
- 9. SELLER shall refund to BUYER the proposal security of five hundred dollars (\$500.00) upon fulfillment of the terms and conditions of this Agreement to the reasonable satisfaction of the CITY.
- 10. Unless otherwise specifically addressed herein, in the event BUYER defaults in the performance or observance of any covenant, agreement, or obligation set forth in this Agreement, and if such default remains uncured or steps are not taken to address the default within three (3) business days after notice of default has been given by SELLER to BUYER, SELLER may pursue all legal remedies including, but not limited to, specific performance.
- 11. INDEMNIFICATION/HOLD HARMLESS AGREEMENT. BUYER acknowledges and agrees that the PROPERTY is being sold in "AS IS" condition. BUYER acknowledges that the CITY, as SELLER, has not inspected the PROPERTY for any deficiencies or defects.

With that acknowledgment and understanding, BUYER agrees to indemnify, hold harmless and defend the CITY, as SELLER, its officials, employees, agents, contractors and assigns, from any and all claims, demands, causes of action, liabilities, losses, damages, or injuries, both to person and property, arising out of, related to, or connected with this Agreement, including but not

limited to, acquisition, demolition, construction, and resale of the PROPERTY. This indemnification and hold harmless applies to and includes, but is not limited to, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, expert witness fees, investigation fees, settlements, related costs or expenses, interest, and any reimbursements to the SELLER, its officials, employees, agents, contractors, and assigns for all legal expenses and costs incurred by it.

This indemnification and hold harmless agreement is effective upon execution and shall be unlimited as to amount or duration. This instrument binds the BUYER and the BUYER'S executors, administrators, successors, assignees, and heirs.

- 12. The terms and conditions of this Agreement shall run with the land and be binding upon the BUYER'S executors, administrators, successors, assignees, and heirs. It is the BUYER'S responsibility to notify any executors, administrators, successors, assignees, and heirs of the existence of this Agreement.
- 13. The Parties agree that the Polk County 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 Agreement and said parties shall consent to the jurisdiction of Polk County, Iowa.
- 14. This Agreement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa City Council.
- 15. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neutral gender, according to the context.
- 16. This Agreement shall constitute the entire agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both Parties.

BUYER'S SIGNATURE

I, the undersigned, hereby represent that I possess the requisite authority to sign this Agreement on behalf of the BUYER, either in an individual or representative capacity, and agree that the BUYER shall be bound by all of the terms and conditions set forth in this Agreement.

Signed by: Date:
(Print Name and Title, if applicable)
STATE OF IOWA)) ss
COUNTY OF) ss)
Individual capacity: This record was acknowledged before me on the day of, 2024, by
Representative capacity: This record was acknowledged before me on the day of, 2024, by as of, on behalf of whom this record was executed.
was executed.
Notary
CITY OF WEST DES MOINES, IOWA
Signed by: Date: (Print Name and Title, if applicable)
STATE OF IOWA)) ss
COUNTY OF POLK)
This record was acknowledged before me on the day of, 2024, by
Notary

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM:

Public Hearing (5:35 p.m.) 2023 Parking Lot Repair Program

FINANCIAL IMPACT:

The Engineering Estimate of Construction Cost was estimated to be \$475,196.00 for the 2023 Parking Lot Repair Program. There were five (5) bids submitted with the low bid of \$400,687.50 being submitted by Brothers Cleaning Corporation dba Brothers Concrete of Des Moines, Iowa. Payments will be made from account no. 500.000.000.5250.490 with the ultimate funding intended to come from General Obligation Bonds. The current anticipated total costs for the 2023 Parking Lot Repairs Program is \$460,000. Although the low bid of the 2023 Parking Lot Repair Program came in under the Engineer's Estimate, the project as a whole is over budget by approximately \$160,000 and that was anticipated in advance of the bidding as some projects were merged for cost savings measures. City Staff wish to use the full \$300,000 allotted in FY 23-24 for Parking Lot Repairs (Ongoing Maintenance), utilize anticipated remaining funds in the amount of \$85,000 in FY 23-24 for the Valley Junction Alleys (Neighborhood Redevelopment) as the Valley Junction Alleys Phase 8 project came in under budget, and utilize \$75,000 of the \$150,000 allotted in FY 23-24 and proposed in FY 24-25 for the Supplemental Remodel Needs (City Facilities) at the Fire Administration Building located at 318 5th Street. The 5th-6th Street alley repairs in the 200 Block (Maple Street to Elm Street), the repairs to the sidewalk/pavers adjacent to 325 5th Street, and a portion of the parking lot repairs behind the Fire Administration Building adjacent to the alley will all be funded with remaining funds from the Valley Junction Alleys Phase 8 project. All of these projects listed are funded by General Obligation Bonds.

BACKGROUND:

The 2023 Parking Lot Repair Program includes Portland Cement Concrete (PCC) patching, installation of subdrain, and associated work for the repair of the parking lots at Public Safety Station No. 18 located at 5025 Grand Avenue, Public Safety Station No. 19 located at 8055 Mills Civic Parkway, Public Safety Station No. 22 located at 1801 68th Street, and the Fire Administration Building located at 318 5th Street as well as the sidewalk/pavers adjacent to 325 5th Street and portions of the 5th-6th Street alley in the 200 Block (Maple Street to Elm Street). The project is anticipated to be completed by October 18, 2024.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution adopting Plans, Specifications, Form of Contract, and Estimate of Costs for the 2023 Parking Lot Repair Program;
- Motion receiving and filing Report of Bids;

- Resolution awarding the construction contract to Brothers Cleaning Corporation dba Brothers Concrete.

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

STAFF REVIEWS

DITEL I TELL I I I	
Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Greta Truman, City Attorney
Agenda Acceptance	ad

PUBLICATION(S) (if applicable)

10001111101.(0)	Carried Decision N
Published In	Des Moines Register
Dates(s) Published	March 15, 2024

SUBCOMMITTEE KEVIEW (II applicable)					
Committee	Public Services				
D. t. Davierred	March 25 2024				

Date Reviewed March 25, 2024

Recommendation Yes No Split

RESOLUTION APPROVING ADOPTING PLANS, SPECIFICATIONS, FORM OF CONTRACT, AND ESTIMATE OF COST

WHEREAS, on March 4, 2024, Plans, Specifications, Form of Contract, and Estimate of Cost were filed with the City Clerk for the following described public improvement:

2023 Parking Lot Repair Program Project No. 0510-010-2023

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,

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 1st day of April, 2024.

		Russ Trimble, Mayor
ATTEST:		
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Ryan T. Jacobson, City Clerk	- s	

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:

2023 Parking Lot Repair Program Project No. 0510-010-2023

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 Brothers Cleaning Corporation dba Brothers Concrete in the amount of \$400,687.50 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 2023 Parking Lot Repair Program is hereby awarded to Brothers Cleaning Corporation dba Brothers Concrete in the amount of \$400,687.50 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 1st day of April, 2024.

ATTEST:	Russ Trimble, Mayor	
Ryan T. Jacobson, City Clerk		

TABULATION OF BIDS
2023 PARKING LOT REPAIR PROGRAM
CITY OF WEST DES MOINES
IONWAVE
ISG PROJECT NO. 23-29839
WOM PROJECT NO. 0510-010-2023
March 20, 2024 @ 2:00PM



217 East 2nd Street Des Moines, IA 50309 (515) 243-9143

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	Description	Unit	Chanting	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Pilce	Amount	Unit Price	Amount	Unit Price	Amount
-	DIVISION 2 - EARTHWORK						STATE OF THE PERSON.	(2 N)							
1	CLEARING AND GRUBBING	LS	1	\$1,500.00	\$1,500.00	\$4,500.00	\$4,500.00	\$9,494.00	\$9,494.00	\$25,170.00	525,170.00	\$15,985,00	515,985.00	\$2,000.00	\$2,000.00
2	EXCAVATION, CLASS 10	CY	130	\$100.00	\$13,000.00	\$25,00	\$3,250.00	\$50.00	\$6,500.00	\$50 DO	56,500.00	\$50,00	\$6,500.00	\$110.00	\$14,100.00
3	SUBGRADE PREPARATION	SY	362	\$8.00	\$2,896.00	\$5,50	\$1,991.00	\$5.00	\$1,810.00	\$3.00	\$1,086.00	\$10.00	53,620.00	\$10,00	\$3,620.00
	DIVISION 5 - WATERMAINS AND APPURTENANCES	ALC: UNKNOWN	100						11322000		120000000000000000000000000000000000000		-		*********
4	VALVE BOX ADJUSTMENT, MINOR	EA	1	\$1,100.00	\$1,100.00	\$1,850,00	\$1,850.00	\$750.00	\$750.00	\$500.00	\$500.00	\$850.00	\$850.00	\$1,000.00	\$1,000.00
- 2	INTAKE ADJUSTMENT, MINOR	EA	2	\$2,400.00	\$4,800.00	\$2,450,00	\$4,900,00	\$1,500,00	\$3,000.00	\$2,000,00	\$4,000.00	\$2,950.00	\$5,900.00	\$2,500.00	\$5,000.0
-	DIVISION 6 - STRUCTURES FOR SANITARY AND STORM SEWERS								The same of the sa	4 56			*******	A422.00	****
6	PAVEMENT, PCC, 6 INCH, C-SUD MIX	5Y	262	\$120,00	531,440.00	\$98,00	525,676.00	\$90,00	\$23,580.00	\$75,15	\$19,689.30	\$95.00	\$24,890.00	\$130.00 \$150.00	\$34,060.00 \$13,500.00
7	2.5' PCC CURB AND GUTTER, B INCH, WITH 1.5' CONCRETE BANDING, 12" THICK	UF	90	\$150,00	513,500.00	\$120,00	\$10,800.00	\$100,00	9,000.00	\$75,10	\$6,759.00	\$63,00	\$5,670.00	\$75.00	\$7,725.0
8	Z.S' PCC CURB AND GUTTER, 8 INCH	UF	103	\$80.00	\$8,240.00	\$68.50	\$7,055.50	\$55.00	\$5,665.00	\$50,12	\$5,162.36	\$56.00 \$85.00	\$5,768.00 \$765.00	\$75.00	\$675.0
9	2.5' PCC CURB AND GUTTER, DROP CURB 8" THICK	LF	9	\$80,00	\$720.00	\$120,00	\$1,080.00	\$100.00	\$900.00	\$100,00	\$900.00	\$15,00	53,510.00	\$85.00	\$19,890.0
10	REMOVAL OF SIDEWALK, STAIRS AND RAMP	SY	234	\$60.00	514,040.00	\$35_00	\$8,190.00	\$45,00	\$10,530.00	\$30,00	\$7,020.00	\$15,00	53,300.00	\$32.00	57,040.0
11	REMOVAL OF PARKING LOT PAVEMENT	YZ	220	\$25,00	\$5,500.00	\$23.00	55,060.00	\$27,00	\$5,940.00	\$10,00	\$2,200.00	\$15,00	\$13,440.00	\$110.00	524,640.0
12	SIDEWALK, PCC, S INCH	SY	224	\$100,00	\$22,400.00	\$85.00	\$19,040.00	\$90,00	520,160.00	\$67,26	515,066.24 51,900.00	\$150,00	\$7,850.00	\$300.00	\$5,700.0
13	REMOVE, SALVAGE, AND REINSTALL PAVER SIDEWALK	5Y	19	\$150.00	\$2,850.00	\$85,00	\$1,615.00	\$250,00	\$4,750.00	\$100,00	\$810.00	\$150,00	\$1,485.00	\$130.00	\$1,170.0
14	FULL DEPTH PATCHES, PCC, C-SUD, 6 INCH MINIMUM	SY	9	\$120.00	\$1,080.00	\$100,00	\$900.00	\$150,00	\$1,350.00	\$90.00		\$115.00	\$127,420.00	\$140.00	\$155,120.0
15	FULL DEPTH PATCHES, PCC, M-4 MIX, B INCH MINIMUM	5Y	1108	\$135,00	\$149,580.00	\$98,50	\$109,138.00	\$125,00	\$138,500.00	\$119.98	5132,937.84	\$200.00	\$45,200.00	\$200.00	\$46,200.0
16	FULL DEPTH PATCHES, PCC, 5-HOUR MIX, B INCH MINIMUM	SY	231	\$180,00	\$41,580.00	\$135,00	\$31,185.00	\$180,00	\$41,580.00	\$135,15	\$31,219.65	\$4.35	\$1,740.00	\$15.00	\$6,000.0
17	CRACK CLEANING AND FILLING, EMULSION	1.F	400	\$7,00	\$2,800.00	\$4.25	51,700.00	\$16,50	\$6,500.00	\$6.25	\$2,500.00	\$12.00	52,004.00	\$20.00	53,340.0
18	CURB AND GUTTER REMOVAL	LF	167	\$15,00	\$2,505.00	\$21,00	\$3,507.00	\$15,00	\$2,505.00	\$6,00	\$1,002.00	\$12,00	52,004.00	320.00	33,300
-	DIVISION 8 - TRAFFIC CONTROL				3 0000000	-				444.74	44 mm 24	\$3.00	51,278.00	\$10.00	\$4,260.0
19	PAINTED PAVEMENT MARKINGS, SOLVENT/WATERBORNE	LF	426	\$15,00	\$6,390.00	\$25,00	510,650.00	\$11,00	\$4,686,00	\$11.74 \$250.00	\$5,001.24	\$180.00	\$180.00	\$200.00	\$200.0
20	PAINTED SYMBOLS AND LEGENDS, SOLVENT/WATERBORNE	EA	1	\$3,500,00	\$3,500.00	\$950.00	\$950.00	\$500,00	\$500,00	\$1,000.00	\$1,000.00	\$8,500.00	\$8,500.00	\$20,000.00	520,000.0
21	TEMPORARY TRAFFIC CONTROL	کا	1	\$10,000.00	\$10,000.00	\$15,000.00	\$15,000.00	\$7,500.00	\$7,500.00	\$1,000.00	52,000 DU	\$8,500,00	20,200.00	240,000.00	
-	DIVISION 9 - SITE WORK AND LANDSCAPING				non-reportion	4400.00	44 300 00	\$500.00	55,000.00	\$150.00	\$1,500.00	\$135.00	\$1,350.00	\$800.00	\$8,000.0
22	SOO	SQ	10	\$750,00	\$7,500.00	\$130,00	\$1,300.00	\$100.00	512,000.00	\$300.00	536,000.00	\$190.00	522,800.00	\$100.00	\$12,000.0
23	HANDRAIL, GALVANIZED STEEL	LF	120	\$75.00	59,000.00	\$75.00	\$9,000.00	\$100,00	512,000.00	2200.00	930,000 00	3130,00	222,000.00	2200,00	
	DIVERON 11 - MISCELLANEOUS	-					\$11,200.00	\$1,500.00	\$6,000.00	\$2,250.00	\$9,000.00	\$3,475.00	\$13,900.00	\$3,000.00	\$12,000.0
24	4' PCC FLUME WITH CURB AND GUTTER, 6 INCH	EA	4	\$2,500.00	\$10,000.00		51,950.00	\$1,500,00	\$2,500.00	\$4,000.00	\$4,000 CD	\$2,850.00	52.850.00	\$2,100,00	52,100.0
25	SIDEWALK TRENCH WITH STEEL PLATE, FIRE STATION 19	EA	3	\$1,750,00	\$1,750.00		53,500.00	\$2,500.00	\$3,500.00	\$4,000.00	\$4,000.00	\$5,875.00	\$5,875.00	\$4,500.00	\$4,500.0
26	SIDEWALK TRENCH WITH STEEL PLATE, FIRE STATION 22	EA	3	\$3,500,00	\$3,500,00		\$3,500.00	\$3,500.00	57,500.00	\$80,000.00	\$80,000 00	\$23,695.00	\$23,695.00	\$9,000,00	\$9,000.0
27	SIDEWALK TRENCH WITH GRATES AND STEEL PLATE, 325 5TH STREET	EA		\$7,500,00	\$7,500,00 \$225.00		\$1,350.00	\$100.00	5300.00	\$400.00	\$1,200.00	\$325.00	\$975.00	\$200.00	\$600.0
28	REMOVAL OF EXISTING CONCRETE BOLLARDS	EA	3	\$75,00			520,000.00	\$750.00	\$12,000.00	5750.00	\$12,000.00	\$1,375,00	\$22,000.00	\$2,000.00	\$32,000.0
29	BOLLARD, 6" PRIMED AND PAINTED STEEL FILLED WITH CONCRETE	EA	16	\$1,250.00	\$20,000.00		51,350.00	\$10.00	5900.00	\$12.00	\$1,080.00	\$85.00	\$7,650.00	\$50.00	\$4,500.0
30	REMOVAL OF HANDRAILS	LF	90	\$20,00	51,800.00 523.000.00		523,000.00	\$15,000.00	\$15,000.00	\$5,000.00	\$5,000.00	\$10,000.00	\$10,000.00	\$30,000.00	\$30,000.0
31	LANDSCAPE PLANTER WALL REPAIR	15	2	\$23,000.00	\$18,000.00		\$18,000.00	\$20,000.00	\$20,000.00	\$7,600.00	\$7,600 00	\$24,565.00	\$24,565,00	\$25,000.00	\$25,000.0
32	ACCESSIBLE FRONT ENTRY LANDING, RAMP, AND STAIRS, PCC	LS		\$19,000.00	\$14,000.00		\$14,000.00		\$15,000.00	\$6,000.00	\$6,000.00	\$30,375.00	\$30,375.00	\$15,000,00	\$15,000.0
33	ACCESSIBLE WEST ENTRY LANDING, RAMP, AND STAIRS, PCC	LS		\$14,000,00 \$12,000.00	\$12,000.00		\$14,000.00	\$10,000.00	\$10,000.00	\$4,000.00	\$4,000.00	\$27,864.00	527,864.00	\$16,000.00	\$16,000.0
34	ACCESSIBLE SOUTH ENTRY LANDING, RAMP, AND STAIRS, PCC	L5	2	\$12,000,00	\$7,500.00		\$6,500.00	\$25,000.00	\$25,000.00	\$18,692.00	\$18,692.00	\$3,500,00	\$3,500.00	\$10,000.00	\$10,000
35	SAWCUTTING DUST AND SLURRY MANAGEMENT	LS		\$1,500,00	37,500.00	\$6,500.00	30,300.00	\$23,000,00	-100			20			
	TOTAL BASE BID				\$475,196.00		\$400,687.50		\$440,000.00	_	\$460,745.63		\$479,254.00	-	\$556,140.0



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

Licensed Professional Engine

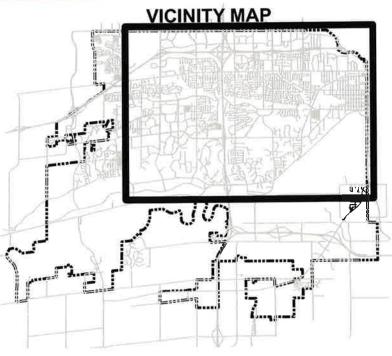
3/20/2024 Date

License Number | P27483

My License Renewal Date is 12 31 2025

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LEGEND

PROJECT LOCATION





2023 Parking Lot Repairs Program

1			
LOCATION:		Exhibit 'A'	
DRAWN BY: JPM	DATE: 2/19/2024	PROJECT NUMBER/NAME: 0510-010-2023	SHT. 1 of 1

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: <u>April 1, 2024</u>

ITEM:

Public Hearing (5:35 p.m.) Valley Junction Alleys Phase 8

FINANCIAL IMPACT:

The Engineering Estimate of Construction Cost was estimated to be \$417,508.00 for the Valley Junction Alleys Phase 8. There were six (6) bids submitted with the low bid of \$294,670.55 being submitted by MPS Engineers, P.C. dba Kingston Services, P.C. of Des Moines, Iowa. Payments will be made from account no. 500.000.000.5250.490 with the ultimate funding intended to come from General Obligation Bonds.

BACKGROUND:

Phase 8 includes the paving of Valley Junction Alleys in the 200 Block (Elm Street to Maple Street) between 1st-2nd Street and 3rd-4th Street that previously had storm sewer improvements completed on them and fall within a commercial area. Phase 8 also includes storm sewer improvements and the paving of the 13th-14th Street alley in the 100 Block (Maple Street to Railroad Avenue, southern portion only), which falls within a commercial area. Each alley closure shall be limited to a consecutive four (4) week period. No more than one (1) alley may be closed at a time, excluding restoration. Work must be completed on an actively closed alley before proceeding to close the next alley, unless sufficient progress is being made. The project is anticipated to be completed by September 30, 2024.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution adopting Plans, Specifications, Form of Contract, and Estimate of Costs for the Valley Junction Alleys Phase 8;
- Motion receiving and filing Report of Bids;
- Resolution awarding the construction contract to MPS Engineers, P.C. dba Kingston Services, P.C.

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

STAFF REVIEWS

Daniel Dineston	Brian J. Hemesath, P.E., City Engineer
Department Director	
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Greta Truman, City Attorney
Agenda Acceptance	A)

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	March 15, 2024

SUBCOMMITTEE REVIEW (if applicable)					
Committee	Public Services				
Date Reviewed	March 25, 2024				

RESOLUTION APPROVING ADOPTING PLANS, SPECIFICATIONS, FORM OF CONTRACT, AND ESTIMATE OF COST

WHEREAS, on March 4, 2024, Plans, Specifications, Form of Contract, and Estimate of Cost were filed with the City Clerk for the following described public improvement:

Valley Junction Alleys Phase 8 Project No. 0510-021-2023

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,

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 1st day of April, 2024.

	Russ Trimble, Mayor
TTEST:	
112011	

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:

Valley Junction Alleys Phase 8 Project No. 0510-021-2023

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 MPS Engineers, P.C. dba Kingston Services, P.C. in the amount of \$294,670.55 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 Valley Junction Alleys Phase 8 is hereby awarded to MPS Engineers, P.C. dba Kingston Services, P.C. in the amount of \$294,670.55 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 1st day of April, 2024.

ATTEST:	Russ Trimble, Mayor
Ryan T. Jacobson, City Clerk	



BID TABULATION Valley Junction Alleys - Phase 8 City of West Des Moines, Iowa Project No. 0510-021-2023



FAX: 515-278-1846																
Bid Date: March 20, 2024 - 2:00 PM HR Green Project No. 2302692			Engineer's Opinio		MPS Engli	neers	Alliance Construc	tion Group, LLC	All Star Co	oncrete	Shekar Engin	eering, PLC	BROTHERS CONC Cleaning Cor		The Concrete Compan	
	Unit	Qty	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
DIVISION 2 - EARTHWORK																
2.1 TOPSOIL, OFF-SITE		117.5	\$ 75.00 1	8,812.50	\$ 62.00 \$	7.285.00	\$ 75.00		5 75.00	8,812.50	\$ 75.00		5 25.00 \$	2,937,50	\$ 45.00 5	5,287.50
2.2 EXCAVATION, CLASS 13, WASTE		751.3	\$ 45.00	33,808,50	\$ 40.00 \$	30,052,00			\$ 30.00 \$	22,539,00	\$ 25.00				\$ 45.00 \$	33,808,50
2.3 SUBGRADE PREPARATION, 6 IN.	SY		\$ 10.00	18,080.00	\$ 1.00 \$	1,898,00			\$ 4,00 5							54,240.00
2.4 SUBBASE, MODIFIED, 6 IN.	SY	1808	5 20.00	36,160.00	\$ 17.50 \$	31,640.00			\$ 15.00 5						\$ 25.00 \$	45,200.00
	SY	413.1	\$ 25.00	10,327.50		7,229.25			\$ 16,00 5	6,609,60				8,262.00	\$ 65.00 5	26,851.50
	CY	60	\$ 60,00 !	3,600.00	\$ 8.00 \$	480,00	\$ 50.00	\$ 3,600,00	\$ 60.00 5	3,600.00	\$ 70.00	\$ 4,200.00	5 50.00 S	3,000.00	\$ 50,00 \$	3,600.00
DIVISION 4 - SEWERS AND DRAINS									- 7722744							0.000.00
4.1 STORM SEWER, TRENCHED, RCP, 12 IN.	LF		\$ 150,00	1,950.00	\$ 248.00 \$	3,224.00			5 160.00 5		\$ 110,00	\$ 1,430.00		1,950.00	\$ 160,00 \$	2,080.00
4.2 STORM SEWER, TRENCHED, RCP, 15 IN.	LF	11.0	\$ 150.00	1,650.00	\$ 248.00 \$	2,728.00			\$ 170.00 5		\$ 125.00	\$ 1,375.00		2,035.00	\$ 200,00 \$	2,200.00
4.3 SUBDRAIN, PERFORATED PVC, 10 IN.	LF	310.0	\$ 50.00	15,500.00		14,260.00			\$ 70.00		\$ 42.25			13,950.00	\$ 40.00 5	12,400.00
	EACH		\$ 800,00	5 800,00		800,00			\$ 1,850.00	1,850.00		\$ 1,750.00		1,850.00	\$ 2,000.00 \$	2,000.00
4.5 SUBDRAIN OUTLETS AND CONNECTIONS	EACH	1.0	\$ 2,000.00			2,000.00			\$ 2,300.00	\$ 2,300,00	\$ 1,225.00	\$ 1,225.00		1,500.00	\$ 2,500.00 1	
4.6 STORM SEWER SERVICE STUB, PVC, 6 IN.	UF	10	\$ 80,00	\$ 600,00		1,000.00			\$ 140.00 1			\$ 1,350,00		15,000.00	\$ 120.00 1	1,200.00
	EACH	4	\$ 500.00	2,000,00	5 400,00 \$	1,600.00	\$ 250.00	\$ 1,000.00	\$ 1,450.00	\$ 5,800.00	\$ 850.00	\$ 3,400.00	\$ 850.00 \$	3,400.00	\$ 2,500.00 \$	10,000.00
DIVISION 5 - STRUCTURES FOR SANITARY AND STORM SEWERS																
	EACH		\$ 5,000.00	5,000.00	\$ 6,250,00 \$	6,250.00	5 3,165.00	\$ 3,165.00	\$ 3,675,00	3,675.00	\$ 6,550.00	\$ 6,550.00	\$ 5,480.00 \$	5,480,00	\$ 17,500.00 \$	17,500,00
	EACH	1	\$ 5,000.00			4,300.00			\$ 2,300,00	\$ 2,300,00		\$ 5,250.00	\$ 5,280.00 \$	5,280,00	\$ 5,000.00 4	5,000.00
	EACH	2	\$ 1,500,00			3,500.00		\$ 2,400,00	\$ 1,550,00				\$ 2,400.00 \$	4,800.00	\$ 2,000.00 \$	4,000,00
	EACH	2	\$ 4,000.00			7,500,00		\$ 3,000.00						10,800.00	\$ 6,000.00 \$	12,000.00
5.5 REMOVE INTAKE	EACH	1	\$ 1,000.00	1,000.00	\$ 1,500.00 \$	1,500.00	\$ 1,200.00	\$ 1,200,00	\$ 950.00	\$ 950,00	\$ 3,250,00	\$ 3,250.00	5 1,000.00 3	1,000.00	\$ 1,000.00 3	1,000.00
DIVISION 7 - STREETS AND RELATED WORK				- I I I I I I I I I I I I I I I I I I I												
7.1 REMOVAL OF PAVED ALLEY AND DRIVEWAY	SY	123.6	\$ 35,00			2,595.60	\$ 40.00	\$ 4,944.00				\$ 2,472.00	\$ 21.00 \$	2,595,60	\$ 15.00 \$	1,854.00
7.2 DRIVEWAY, TYPE A. PCC, 6 IN.	SY	260.5	\$ 80.00	\$ 20,840.00	\$ 69.00 \$	17,974,50	\$ 63.25		\$ 70.00		\$ 74,75		s 75.00 s	19,537,50	\$ 73.00	19,016.50
7.3 ALLEY, REINFORCED PCC, 6 IN.	SY	1553.5	\$ 105.00			102,531.00							\$ 95.35 \$	148,126,23		
7.4 ENGINEERING FABRIC	SY	40.7	\$ 10,00	\$ 407.00	\$ 10.00 \$	407.00	\$ 4.00	\$ 162.80	5 3,00	5 122.10	\$ 3,60	\$ 146.52	\$ 5.50 \$	223.85	\$ 15.00 5	610.50
DIVISION 8 - TRAFFIC CONTROL											- Vancous					90.00
8.1 PAINTED PAVEMENT MARKINGS, SOLVENTAWATERBORNE	LF	30.0	\$ 15,00	\$ 450.00	\$ 55.00 \$	1,650.00	\$ 35.00	\$ 1,050.00		\$ 900,00	\$ 107.50		\$ 55.00 \$ \$ 20,000.00 \$	1,650.00	\$ 3.00 S \$ 9,500,00 S	9,500.00
8.2 TEMPORARY TRAFFIC CONTROL	LS	1.0	\$ 20,000.00	\$ 20,000.00	\$ 7,600.00 \$	7,600.00	\$ 18,200.00	\$ 18,200,00	5 1,500,00	\$ 1,500.00	\$ 9,875,00	\$ 9,875,00	\$ 20,000,00 \$	20,000.00	\$ 9,500,00 1	8,500.00
DIVISION 9 - SITE WORK AND LANDSCAPING													\$ 2.52 \$	10,621.80	S 1.25 1	5,268.75
9.1 HYDRAULIC SEEDING, SEEDING, FERTILIZING AND MULCHING		4215	\$ 1.00	5 4,215,00	\$ 0.52 3	2,191,80	\$ 0.55							2,700.00		\$ 4,900.00
92 SOD	SQ	20	\$ 210,00	\$ 4,200.00	\$ 105.00 \$	2,100.00	\$ 197.00				\$ 240.00		\$ 135.00 \$	4,025.00	\$ 4.00	9,200.00
9.3 FILTER SOCK, 9 IN.	LF	2300	\$ 3,00	\$ 6,900.00	\$ 1.85 3	4,255.00							\$ 0.50 5		\$ 1.50	3,450.00
9.4 FILTER SOCK, REMOVAL	LF	2300	\$ 1.00	\$ 2,300.00	S 0.50 S	1,150.00					\$ 0.60		\$ 225.00 5	1,150,00	5 950.00	\$ 4.750.00
	EACH	5	5 250,00	\$ 1,250.00		925.00										1,500.00
9.6 INLET PROTECTION DEVICE, MAINTENANCE	EACH		\$ 100,00	\$ 500.00		125.00				5 125.00						3 2,238.50
9.7 RIVER ROCK	SY	40.7	\$ 20.00								\$ 44.40		\$ 35.00 \$			\$ 2,720.00
9.8 REMOVAL AND REINSTALLATION OF EXISTING FENCE, STEEL	LF	160	\$ 50.00			4,000.00					\$ 45.60					
9.9 SAFETY FENCE	LF	70	\$ 10,00	\$ 700.00	\$ 10,00 3	700.00	\$ 5.00	3 350.00	\$ 5.00	\$ 350.00	\$ 12.50	\$ 875.00	10.00	/00.00	a 11.00 S	a 17.0.00
DIVISION 11 - MISCELLANEOUS													- 00 000 CT	20 000 00	* 49,000,00	£ 42,000.00
11.1 CONSTRUCTION SURVEY	LS	1.0	\$ 20,000.00	\$ 20,000.00	\$ 15,100.00 3	15,100.00	\$ 9,000.00	\$ 9,000.00			\$ 8,160,00		\$ 20,000.00	20,000.00	\$ 12,000.00 \$ 6,850.00	\$ 12,000,00 \$ 6,850,00
11.2 MAINTENANCE OF SOLID WASTE COLLECTION	LS	1.0	\$ 2,000,00	\$ 2,000,00	\$ 2,600.00 \$	2,500.00	\$ 4,987,95	\$ 4,987,95	\$ 1,500,00	\$ 1,500,00	\$ 5,000,00	\$ 5,000.00	\$ 1,000.00	1,000.00	\$ 0,650,00	0.850.00
TOTAL	_	_		417,508.00		294,670,55		304,347,43	-	310,320,63		343,656,24	1 4	399.174.48	•	493,363.75



HR GREEN, INC.

5525 MERLE HAY RD., STE. 200 JOHNSTON, IOWA 50131 PH: 515-278-2913

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.

Date: 03/20/24

ERIN K. TYRRELL, P.E.

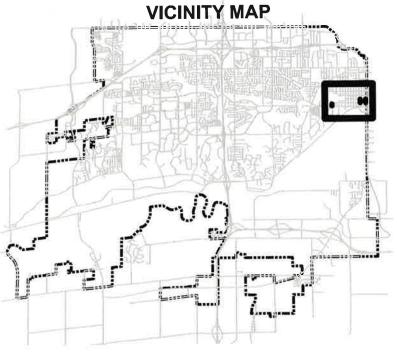
License No. 25062

My renewal date is December 31, 2025

Pages or sheets covered by this seal:

Entire Document





LEGEND

PROJECT LOCATION





PROJECT:

Valley Junction Alleys Phase 8

LOCATION:		Exhibit 'A'	
DRAWN BY: JPM	DATE: 2/19/2024	PROJECT NUMBER/NAME: 0510-021-2023	SHT. 1 of 1

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM:

Public Hearing (5:35 p.m.) 2023 Pavement Markings & On-Street Bike Markings Program

FINANCIAL IMPACT:

The Engineering Estimate of Construction Cost was estimated to be \$245,497.26 for the 2023 Pavement Markings & On-Street Bike Markings Program. There were two (2) bids submitted with the low bid of \$265,939.40 being submitted by Quality Striping, Inc. of Des Moines, Iowa. Payments will be made from account no. 500.000.000.5250.490 with the ultimate funding intended to come from Road Use Tax Funds.

The project is being funded from \$175,000 allocated in FY 23-24 for Durable Pavement Markings (Ongoing Maintenance category) and \$100,000 allocated in FY 23-24 for On-Street Bike Markings (Ongoing Maintenance category).

BACKGROUND:

This project includes durable pavement markings and on-street bike markings (sharrows) at various locations throughout the City of West Des Moines. The project is anticipated to be completed by October 25, 2024.

The low bid from Quality Striping, Inc. was in excess of the Engineer's Estimate by \$20,442.14 (10.57%). Total project costs, including professional services, is currently estimated to be \$295,739.40 which is in excess of the allocated budget by \$20,739.40 (7.54%). Ample budget is expected to exist in the 2024 Pavement Management Program (funded by Road Use Tax and General Obligation Bonds) to cover these additional costs. The higher than anticipated low bid may be the result of shorter more dispersed pavement markings across the City that would increase mobilization costs. Rebidding the project will likely not result in any costs savings, and the costs could increase if rebidding were to be delayed. City Staff recommend awarding a contract to Quality Striping, Inc.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution adopting Plans, Specifications, Form of Contract, and Estimate of Costs for the 2023 Pavement Markings & On-Street Bike Markings Program;
- Motion receiving and filing Report of Bids;
- Resolution awarding the construction contract to Quality Striping, Inc.

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

STAFF REVIEWS

STAFF KEVIEWS		
Department Director	Brian J. Hemesath, P.E., City Engineer	
Appropriations/Finance	Tim Stiles, Finance Director	
Legal	Greta Truman, City Attorney	
Agenda Acceptance	AA	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	March 15, 2024

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services				
Date Reviewed	March 25, 2024				
Recommendation	Yes	No	Split		

RESOLUTION APPROVING ADOPTING PLANS, SPECIFICATIONS, FORM OF CONTRACT, AND ESTIMATE OF COST

WHEREAS, on March 4, 2024, Plans, Specifications, Form of Contract, and Estimate of Cost were filed with the City Clerk for the following described public improvement:

2023 Pavement Markings & On-Street Bike Markings Program Project No. 0510-004-2023

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,

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 1st day of April, 2024.

발	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:

2023 Pavement Markings & On-Street Bike Markings Program Project No. 0510-004-2023

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 Quality Striping, Inc. in the amount of \$265,939.40 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 2023 Pavement Markings & On-Street Bike Markings Program is hereby awarded to Quality Striping, Inc. in the amount of \$265,939.40 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 1st day of April, 2024.

	Russ Trimble, Mayor
ATTEST:	
Ryan T. Jacobson, City Clerk	

TABULATION OF BIDS

2024 WEST DES MOINES PAVEMENT MARKINGS & ON-STREET BIKE SYMBOLS CITY OF WEST DES MOINES IONWAVE BY PROJECT NO. 24-29840 WDM PROJECT NO. 0510-004-2023 March 20, 2024 @ 2:00PM 217 East 2nd Street
Des Moines, IA 50309
(515) 243-9143



Item				Engineer's ISO		Quality St Des Mo			ns Signing er, IA
No.	Description	Unit	Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
	DIVISION 8 - TRAFFIC CONTROL								4
1	PAINTED PAVEMENT MARKINGS, DURABLE	STA	569.77	\$98.00	\$55,837.46	\$100.00	\$56,977.00	\$210.00	\$119,651.70
2	PAINTED SYMBOLS, BIKE SHARROW, SOLVENT/WATERBORNE	EA	1010	\$75.00	\$75,750.00	\$75.00	\$75,750.00	\$115.00	\$116,150.00
3	PAINTED SYMBOLS AND LEGENDS, SOLVENT/WATERBORNE	EA	3	\$75.00	\$225.00	\$100.00	\$300.00	\$125.00	\$375.00
4	PAINTED SYMBOLS AND LEGENDS, DURABLE	EA	144	\$230.00	\$33,120.00	\$230.00	\$33,120.00	\$650.00	\$93,600.00
5	PAINTED PAVEMENT MARKINGS, THERMOPLASTIC	STA	2.05	\$400.00	\$820.00	\$1,400.00	\$2,870.00	\$1,500.00	\$3,075.00
6	PAVEMENT MARKINGS REMOVED	STA	17.59	\$55.00	\$967.45	\$150.00	\$2,638.50	\$325.00	\$5,716.7
7	SYMBOLS AND LEGENDS REMOVED	EA	2	\$60.00	\$120.00	\$300.00	\$600.00	\$200.00	\$400.00
8	GROOVES CUT FOR PAVEMENT MARKINGS	STA	569.77	\$55.00	\$31,337.35	\$70.00	\$39,883.90	\$135.00	\$76,918.9
9	GROOVES CUT FOR SYMBOLS AND LEGENDS	EA	144	\$155.00	\$22,320.00	\$200.00	\$28,800.00	\$250.00	\$36,000.00
10	TEMPORARY TRAFFIC CONTROL	LS	1	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$47,500.00	\$47,500.00
11							1		
	TOTAL BASE BID			_	\$245,497.26		\$265,939.40	-	\$499,387.4
_		A STATE OF LINE	A STATE OF THE PARTY OF THE PAR	A COLUMN TWO IS NOT THE OWNER.	CONTRACTOR				State of the same



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

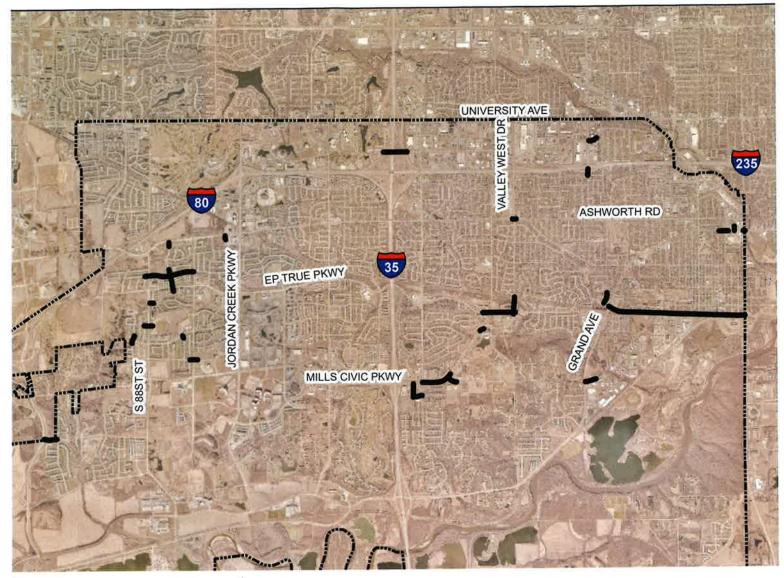
Joseph A. Whitehouse

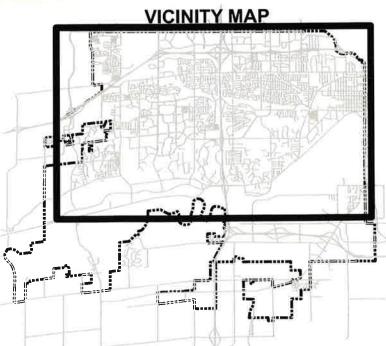
3/20/2024 Date

License Number: P27483

My License Renewal Date is 12/31/2025

Pages or sheets covered by this seal: Bid tabulation





LEGEND

PROJECT LOCATION





ROJECT:

2023 Pavement Markings & On-Street Bike Markings Program

LOCATION:		Exhibit 'A'	
DRAWN BY: JPM	DATE: 2/19/2024	PROJECT NUMBER/NAME: 0510-004-2023	SHT. 1 of 1

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: April 1, 2024

ITEM: South Branch Business Park Plat 2, Southwest Corner of SE 42nd Street and SE Army Post Road – Accept Surety and Release Final Plat to create three (3) lots for Industrial development – SBBP JV21, L.L.C. – FP-006346-2024

RESOLUTION: ACCEPT SURETY AND APPROVE AND RELEASE FINAL PLAT

Background: The property owner, SBBP JV21, L.L.C., an lowa limited liability company, requests approval of a Final Plat for the approximately 29.6-acre property generally located at the southwest corner of SE Army Post Road and SE 42nd Street. The owner proposes to subdivide the property into three (3) lots for Industrial development.

Staff Review & Comment:

- <u>Financial Impact</u>: The City entered into an agreement with the developer for a phasing of improvements on the property. Phase I improvements were to be either a 60,000 sq. ft. self-storage or to be 58,000 sq. ft. of industrial building on Lot 2 of South Branch Business Park Plat 2, which is now Lot 1 of South Branch Business Park Plat 2. Phase 1 improvements were expected to be completed by end of year 2025.
 - This phasing of improvements was in lieu of using TIF revenues to install 21" sewer main. The sewer main was installed by the City and is complete. There also was significant cost for West Des Moines Water Works to bring water main to the site for this development.
- <u>History</u>: The associated Preliminary Plat was approved by the Plan and Zoning Commission on November 27, 2023, and the City Council on December 4, 2023. This Final Plat has been determined to be consistent with the associated Preliminary Plat.
- <u>Plat Validity</u>: 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 notes 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 public sidewalk along SE 42nd Street, with construction of the sidewalk occurring when SE 42nd Street is reconstructed. This was discussed during the City Council's consideration of the associated Preliminary Plat.
- 60/40 Trail Agreement. This is an agreement between the City and the Property Owner in cases where the normal four (4) foot public sidewalk also is designated as a public trail that is ten (10) feet in width. The agreement provides that the property owner install the full ten (10) feet of trail/sidewalk and the City will reimburse the property owner sixty percent (60%) of the cost, which equates to the extra six (6) feet for the trail that the developer in constructing above their obligation for the four (4) foot sidewalk.

<u>Recommendation</u>: accepting surety and approving and releasing the Final Plat, subject to the applicant meeting all City Code requirements.

Lead Staff Member: Kara Tragesser

Approval N	leeting Dates:		
	oning Commission	n/a	
City Counci			April 1, 2024
2	·		
Staff Repo	rt Reviews:		
City Counci	I ⊠ Di	irector	□ Legal Department
		propriations/Finance	Agenda Acceptance
			-01
Publication	ns (if applicable)	Council Subcomr	nittee Review (if applicable)
Published	Des Moines Register	Subcommittee	Development & Planning

No Discussion

I apiloation	o (ii appiioasio)					_
	Des Moines Register Community Section	Subcommittee	Develo	pment	& Plan	ni
Date(s) Published	n/a	Date Reviewed	n/a			
Date(s) of Mailed Notices	n/a	Recommendation	Yes	No	Split	

Location Map



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, ACCEPTING SURETY AND APPROVING AND RELEASING THE SOUTH BRANCH BUSINESS PARK PLAT 2 FINAL PLAT FOR THE PURPOSE OF CREATING THREE (3) LOTS FOR INDUSTRIAL DEVELOPMENT

WHEREAS, pursuant to the provisions of Title 9, Zoning and Title 10, Subdivision Regulations, of the West Des Moines Municipal Code, the property owner, SBBP JV21, L.L.C., an Iowa limited liability company, requests approval of a Final Plat for the approximately 29.6-acre property generally located at the southwest corner of SE 42nd Street and SE Army Post Road and legally described in attached Exhibit "B". The applicant proposes to subdivide the property into three (3) lots for Industrial Development; 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, 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 November 27, 2023; 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 December 4, 2023 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 public sidewalk along SE 42nd Street within the plat boundaries and a 60/40 Trail Agreement; and

WHEREAS, there are no new public easements being established with this plat; and

WHEREAS, the City Council approves of the following address assignment(s);

Lot 1 = 3075 SE 42nd Street

Lot 2 = 4500 SE Army Post Road

Lot 3 = 3155 SE 42nd Street

WHEREAS, the property which is the subject of this action is zoned Business Park under the South Branch Business Park Planned Unit Development and meets all requirements of the City's Zoning Code.

NOW, THEREFORE, the City Council does approve the South Branch Business Park Plat 2 Final Plat (FP-006346-2024), 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.

Russ Trimble, Mayor	_
ATTEST:	
Ryan Jacobson City Clerk	

PASSED AND ADOPTED on April 1, 2024.

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 April 1, 2024, by the following vote.

Exhibit A: Conditions of Approval

1. None.

Exhibit B: Legal Description

Lot 2 South Branch Business Park Plat 1, an official plat now in and forming a part of the City of West Des Moines, Polk County, Iowa

INDEX LEGEND

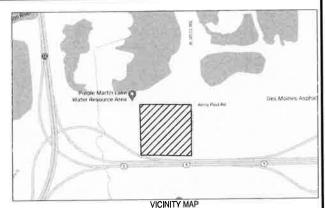
LOCATION:

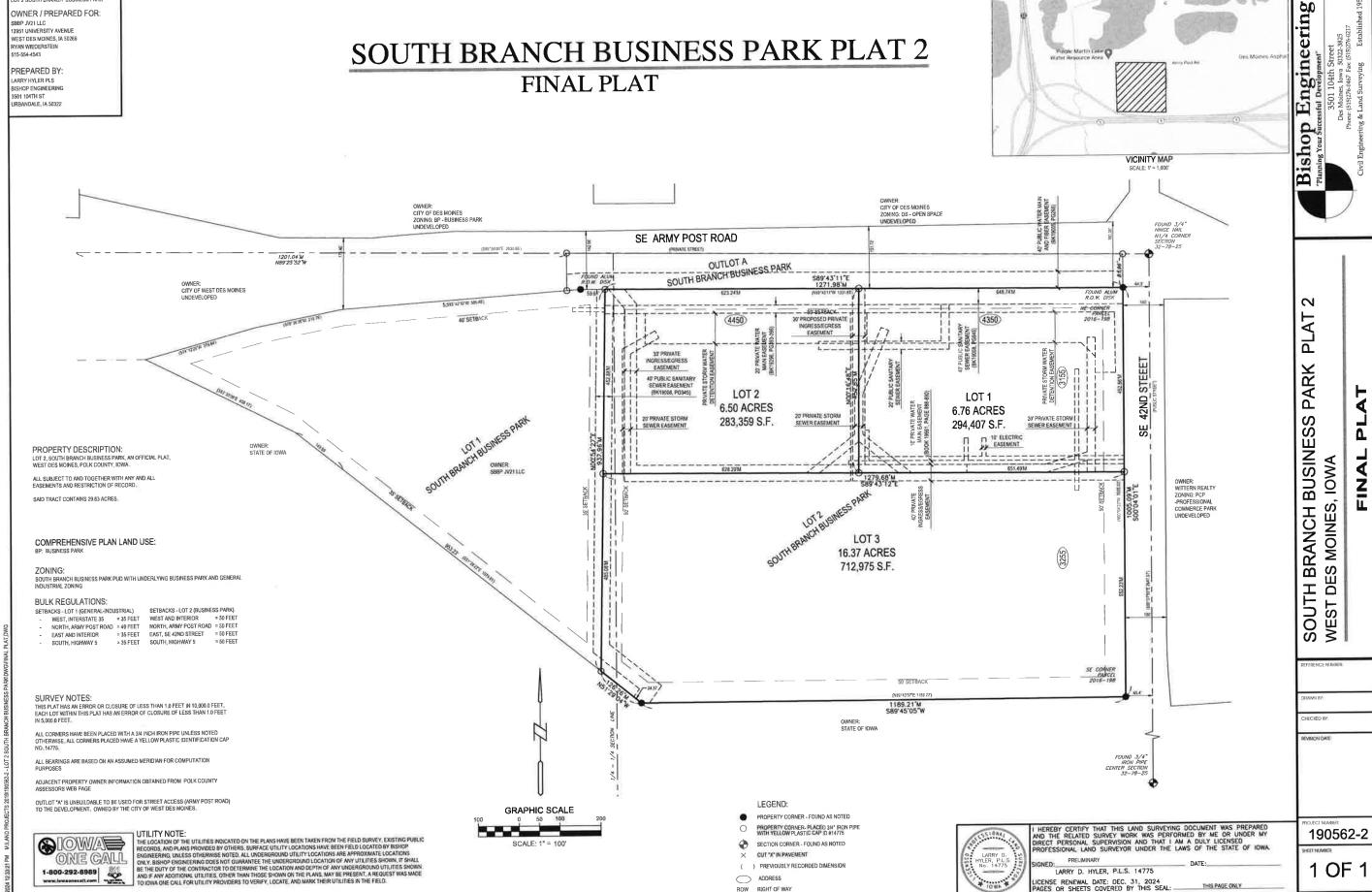
OWNER / PREPARED FOR: SBBP IV2111C 12951 UNIVERSITY AVENUE WEST DES MOINES, IA 50266

RYAN WIEDERSTEIN 15-554-4543 PREPARED BY

LARRY HYLER PLS BISHOP ENGINEERING 3501 104TH ST URBANDALE, IA 50322

SOUTH BRANCH BUSINESS PARK PLAT 2 FINAL PLAT





ROW RIGHT OF WAY

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

ITEM: FY 2024-25 FY Hotel/Motel Tax Allocations

DATE: April 1, 2024

FINANCIAL IMPACT: The projected FY 2024-25 hotel/motel tax revenues are \$5,000,000 and the allocated expenditures are \$5,047,160, which would result in an ending Fund Balance of \$805,967 on June 30, 2025. The Finance & Administration Committee has recommended \$397,318 in grants to applicant non-profit organizations.

BACKGROUND: Although a significant portion of the City's annual Hotel/Motel Tax revenue is committed through established policy or through previous Council actions, the Council can use discretion when allocating the remainder. It has historically directed funds to non-profit organizations which demonstrate a public purpose for the funding. This is accomplished through an application process facilitated by the City Council Finance & Administration Subcommittee.

For the upcoming fiscal year 2024-25, staff advertised the grant application process and ultimately received grant applications from 17 separate non-profit organizations. These organizations each made a presentation and answered questions regarding their funding request in front of the Finance and Administration Committee at public meetings held on January 10, 2024, January 17, 2024, and January 24, 2024. The Committee then further reviewed the applications based on the City's established criteria. Ultimately the committee is recommending grant awards to 16 of the 17 applicants.

Highlights of their recommendation include:

- Central lowa Shelter and Services will receive \$15,000 to be used in their emergency shelter for supportive services and job training programs. They were able to demonstrate that homelessness directly affects residents of West Des Moines.
- Tallgrass Theatre Company, a volunteer-led community theatre company based in West Des Moines, will receive \$16,320, which will be used to purchase twelve LED Fresnel lights to expand lighting capabilities in the theater.
- The West Des Moines Chamber of Commerce will receive a total of \$96,000. The funding will focus
 on Diversity, Equity, & Inclusion, workforce development, economic development, communication
 among business leaders, including their facilitation of multiple programs such as West Lab and the
 WDM Leadership Academy.
- 4. The Historic Valley Junction Foundation will receive \$80,000. This funding is intended to support the Valley Junction Foundation's ongoing mission to provide events and services to the district.
- 5. Ballet Des Moines, located at 121 S.11th St, Suite 100, will receive \$5,000. Funds will be used to continue and expand performance and outreach programming in West Des Moines. The company enhances quality of life for residents through their performances and they also provide participation opportunities by hosting instructional sessions for youth.
- 6. The Eddie Davis Community Center will receive \$12,000. Funds will be used primarily for continued delivery of programming which includes essential services such as a food pantry and clothing closet. The center also provides a community gathering space.
- Junior Achievement of Central Iowa will receive \$1,000. Funds will be used to support educational programs for students, many of whom are West Des Moines residents. The primary focus of their

- funding will be to support the ongoing operation of BizTown, which gives students an opportunity to learn how various components of a community interact with each other.
- 8. The West Des Moines Girls Softball Association will receive \$70,000. Funds will be used to purchase equipment needed for the continued maintenance of the playing fields as well as fund capital projects to increase foul ball netting and updating the sprinkler system. The Softball Association operates a city-wide recreational softball program which provides opportunities for hundreds of the city's youths each year.
- Tiger Softball will receive \$1,000 to purchase performance-enhancing equipment used by players and coaches in the softball program.
- 10. The West Des Moines Soccer Club will receive \$20,000 to assist in the upkeep of facilities and equipment used by players and coaches, as well as funding scholarship opportunities for players and families who otherwise could not afford to participate in their program. The Soccer Club operates a city-wide recreational soccer program which provides opportunities for hundreds of the city's youths each year.
- 11. The Rugby Foundation will receive \$18,000 to make needed capital improvements to their fields and clubhouse, including parking lot maintenance, new HVAC units, electrical wiring and LED lighting, women's locker and rest room remodeling, and painting goal posts.
- 12. The Des Moines Children's Museum, located at Valley West Mall, will receive \$18,000 to support operations, programming, and exhibit maintenance and improvements. The Museum provides educational and quality-of-life opportunities for our residents and visitors to the metro.
- 13. The Girl Scouts of Greater Iowa will receive \$5,000 to support the 2025 Circle of Excellence event that will be hosted in West Des Moines. This event is anticipated to bring together over 500 members from 67 counites in Iowa, 2 counties in South Dakota, and 1 county in Nebraska.
- 14. Living History Farms Foundation will receive \$15,000, which will be allocated \$3,000 for each of the next five years. This will be used towards their local match on construction of new \$6.2 million complex consisting of a new "Cultivation Center", a reconstructed "Learning Center", a connecting courtyard and a picnic pavilion. The commitment from the City of West Des Moines will improve the chances for Living History Farms to receive a major Destination lowa grant for the project.
- 15. National Speech & Debate Association will receive \$30,000 to be used to for costs associated with hosting the National Speech & Debate Tournament that will be held in the Greater Des Moines area in June of 2024. One of the primary locations for the tournament will be Valley High School
- 16. West Des Moines Community School Robotics will receive \$8,998 to be used to host an off-season robotics competition at Valley Southwoods, this competition is expected to include robotics teams from various surrounding states.

Each of the external awardees will be required to enter into a written Grant/Service Agreement with the City prior to receiving the award in July These agreements will spell out the terms of the City's funding, including the amount and schedule for payments. They will also make clear what the city is expecting in return for the funding, which must include a benefit to the taxpaying public. Finally, the agreement will build in transparency and provide a means for oversight of the organization's activities.

In addition to the grants being proposed to those external non-profit organizations, Staff is also recommending the use of Hotel/Motel funds to support these internal programs:

The West Des Moines Public Art program will be allocated \$120,000 towards installation and purchase
of art, the "maximum" calculated contribution based on previous Council directive.

- The West Des Moines Sister Cities Commission will be allocated \$3,000 to finance their planned activities.
- The West Des Moines Human Rights Commission will receive funding of \$7,500 to support the Annual Martin Luther King Jr. Day events.
- Iowa Confluence Water Trails (ICON) will receive funding of \$50,000 as part of the City's continued commitment towards Central Iowa Water Trails.
- The Des Moines Airport will receive \$210,000 from the Hotel/Motel Tax fund as part of the City's pledge towards construction of a new terminal. It has been determined that 42% of the airport passengers are entering the metro community as visitors, thus 42% of the City's \$2 million obligation will come from Hotel/Motel funds. This contribution will be year two of a four-year commitment.
- The MidAmerican Energy RecPlex Enterprise Fund will be allocated \$50,000 to be set-aside as a
 repairs and replacement reserve. This eventually will be used towards future capital improvements and
 major replacement of equipment and other infrastructure of the facility. It is anticipated that this amount
 could be set aside each year from Hotel/Motel Funds and also Local Option Sales Tax Fund to grow
 this reserve fund.

OUTSTANDING ISSUES: none

RECOMMENDATION: Motion approving the Finance and Administration Committee recommendations regarding FY 24-25 allocation of Hotel/Motel tax revenues. This action will also direct staff to begin the process of completing grant agreements with each of the organizations awarded funding.

Lead Staff Member: Chris Hamlett, Senior Budget Analyst

STAFF REVIEWS

Department Director	Tim Stiles, Finance Director
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

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Published In	n/a
Dates(s) Published	n/a

SUBCOMMITTEE REVIEW	(if applicable)
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Committee	Finance & Administration		
Dates Reviewed	1/10/24, 1/17/24, 1/24/24		, 1/24/24
Recommendation	(Yes)	No	Split

Hotel Motel Tax - Historical Activity / Budgeted Activity

Actual	Actual	Actual	Revised Budget	Proposed Budget
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566,895	242,197	(714)	10,658	(49,160
34,091	600,986	843,183	842,469	853,127
600,986	843,183	842,469	853,127	803,967
	138,804 26,000 2,950 1,030 3,189 171,973 16,500 20,000 15,000 10,000 20,000 20,000 10,000 25,000 25,000 12,000 25,000 21,000	783,912 1,331,532 783,912 1,331,532 - 40,836 10,000 1,577,824 2,703,901 138,804 138,000 26,000 30,000 2,950 - 120,000 2,950 - 1,063,200 - 10,625 - 171,973 1,414,765 16,500 24,500 20,000 100,000 11,500 3,750 150,000 100,000 - 10,000 2,500 20,000 2,000 25,000 22,000 - 25,000 22,000 - 120,000 25,000 - 15,000 3,750 150,000 100,000 - 10,000 2,500 20,000 2,500 20,000 25,000 25,000 25,000 - 12,000 3,000 5,000 1,250 20,000 25,000 21,000 3,000 25,000 25,000 25,000 25,000 25,000 25,000 20,000 299,500 21,000 3,000 25,000 299,500 21,000 3,000 25,000 299,500 21,000 3,000 25,000 25,000 25,000 25,000 25,000 299,500	783,912 1,331,532 1,363,110 783,912 1,331,532 1,363,110 -	783,912 1,331,532 1,363,110 1,428,571 783,912 1,331,532 1,363,110 1,428,571 - 210,000 210,000 10,000 - 10,000 10,000 1,577,824 2,703,901 2,991,016 3,127,142 138,804 138,000 150,000 157,500 - 50,000 50,000 50,000 26,000 30,000 - 35,000 26,000 30,000 - 35,000 2,950

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

Date: April 1, 2024

ITEM: Amendment to City Code – Title 6 (Motor Vehicles and Traffic), Chapter 6 (Parking Authorized to Remove), Section 12 (Officers Authorized to Remove), to add the power to remove illegally parked vehicles on public/city owned parking lots by the Police department.

Ordinance: Approval of First Reading

FINANCIAL IMPACT: Undetermined.

BACKGROUND: There have been ongoing issues with individuals parking in a manner prohibited by City Code in public/city-owned parking lots; however, current code only allows for the issuance of a parking ticket for such violations. In certain circumstances, it is necessary for City staff to be able to remove illegally parked vehicles. Staff is initiating an amendment to the chapter and section identified below in Title 6 (Motor Vehicles and Traffic) to add the authority to remove or tow illegally parked vehicles from public/city owned parking lots by the Police department.

Specifically, the following changes are proposed with this request:

- Title 6: Motor Vehicles and Traffic
 - Chapter 6: Parking Authorized to Remove, Section 12: Officers Authorized to Remove, to add the authority to remove or tow illegally parked vehicles from public/city owned parking lots by the Police department.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: City Staff recommends the City Council approve the first reading of the amendment to City Code, Title 6 (Motor Vehicles and Traffic), Chapter 6 (Parking Authorized to Remove), Section 12 (Officers Authorized to Remove).

Lead Staff Member: Jody Hayes, Assistance Chief of Police

STAFF REVIEWS:

TAFF KEVIEWS.	
Department Director	Chris Scott, Chief of Police
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Greta Truman, City Attorney
Agenda Acceptance	$\langle \lambda \rangle$

PUBLICATION(S) (if applicable)

Published In	Des Moines Register	
Date(s)		
Published		
Letter sent to	surrounding	
property own	ers	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes □	No □	Split □

ORDINANCE NO.	ORDINANCE	NO.
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AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2024, BY AMENDING TITLE 6, (MOTOR VEHICLES AND TRAFFIC), CHAPTER 6, (PARKING AUTHORIZED TO REMOVE).

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

SECTION 1. <u>AMENDMENT</u>. Title 6 (Motor Vehicles and Traffic), Chapter 6 (Parking Authorized to Remove), Section 12 (Officers Authorized to Remove) is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in current adopted portion of code not reflected below shall remain as is.

Whenever any peace officer finds a vehicle standing upon a *public* highway *or in a publicly-owned parking lot* in violation of any of the provisions of section 6-6-11-of this chapter, such officer is hereby authorized to *remove or* move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to *be parked in compliance with this chapter*. a position off the paved or improved or main traveled part of such highway.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

SECTION 3. <u>SAVINGS CLAUSE.</u> If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

SECTION 4. <u>VIOLATIONS AND PENALTIES.</u> Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Title 6, Chapter 6, Sections 16 of the City Code of the City of West Des Moines, Iowa.

SECTION 5. OTHER REMEDIES. In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

SECTION 6. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by the City Council on the day of	day of, 2024.	_, 2024, and approved
	Russ Trimble, Mayor	_
ATTEST:		
Ryan T. Jacobson, City Clerk	-	
The foregoing Ordinance No	was adopted by the Council, 2024, and was published in the Do	for the City of West Deses Moines Register on
	Ryan T. Jacobson, City Clerk	<u></u>

CITY OF WEST DES MOINES CITY COUNCIL MEETING COMMUNICATION

DATE: April 1, 2024

ITEM:

Motion - Approval of Traffic Code Amendment Allow Parking on North Side of Streets and remove Parking on South Side of the Street: Cedar Drive - Woodland Avenue East to Woodland Avenue West

First Reading

FINANCIAL IMPACT: None.

BACKGROUND:

Cedar Drive currently has no parking allowed on the north side of the street. The homeowner's association for the area will be installing cluster mailboxes on the south side of Cedar Drive and has requested that parking be moved to the north side of Cedar Drive. The association conducted a parking survey of residents along the street and over 60% of the residents were in favor of changing the parking to the north side of Cedar Street. This Traffic Code Amendment would remove parking on the south side of Cedar Drive and move it to the north side of the street,

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Motion approving First Reading

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

STAFF REVIEWS

Department Director		Brian Hemesath, PE, City Engineer				
Appropriations/Finance		Tim Stiles, Finance Director				
Legal		Greta Truman, City Attorney				
Agenda Acceptance		L A/d				
		VV				
PUBLICATION(S) (if applicable)			SUBCOMMITTE	SUBCOMMITTEE REVIEW (if applicable)		
Published In		oines Register	Committee	Public Services		
Dates(s) Published			Date Reviewed	March 2	25, 2024	
			Recommendation	Yes		

ORDINANCE NO.

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2019, BY AMENDING PROVISION PERTAINING TO THE TRAFFIC CODE RELATING TO OFFICIAL TRAFFIC CONTROLS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

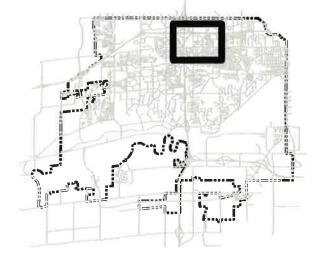
SECTION 1. TITLE 6 (MOTOR VEHICLES AND TRAFFIC), CHAPTER 9, SECTION 6-9-5-1: NO PARKING ZONES: No one shall stop, stand or park a vehicle in any of the following specifically designated no parking zones except when necessary to avoid conflict with other traffic or in compliance with the direction of a peace officer or traffic control signal: is hereby amended by the following changes:

Add:			
Street	From	<u>To</u>	<u>Side</u>
Cedar Drive	Woodland Avenue East	Woodland Avenue West	South
NO PARKING ON NO	6 (MOTOR VEHICLES AND ORTH SIDE OF STREETS: e City, running in an east to w following changes:	Parking of vehicles in the st	reet on the north
Add:			
<u>Street</u>	From	<u>To</u>	
Cedar Drive	Woodland Avenue East	Woodland Avenue West	
Ordinance are hereby respectively. SECTION 4. SEVER Ordinance shall be adjust the Ordinance as a who adjudged invalid or unconstitution. SECTION 5. VIOLA conviction, shall be pure	ABILITY. If any section, providged invalid or unconstitutionable or any provision, section, sub-	visions, sentence, clause, phra- l, such adjudication shall not osection, sentence, clause, phra- es the provisions of this Ordin	se or part of this affect the validity of case or part hereof not
SECTION 5. WHEN passage, adoption, and	EFFECTIVE. This Ordinance publication as required by law.	e shall be in full force and effe	ect from and after its
PASSED AND APPR	OVED this day of	2024	k.
ATTEST:		Russ Trim	ble, Mayor
1111101.			

Ryan T. Jacobson City Clerk		
City Clork		
Published in the Des Moines Register this	day of	, 2024



VICINITY MAP



LEGEND

PROJECT LOCATION



PROJECT:

Traffic Code Amendment - No Parking Zone

LOCATION:	Cedar Dr - Woodland Ave East to Woodland Ave West

DRAWN BY: JPM DATE: 3/20/2024 SHT. 1 of 1