

EXECUTION COPY**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF DES MOINES AND THE PORT OF SEATTLE****For****SOUTH 216TH STREET IMPROVEMENTS FRONTING PORT OF SEATTLE AND
WSDOT PROPERTY REFERRED TO AS DES MOINES CREEK - -WEST**

This Interlocal Agreement (“Agreement”) is entered, by and between the CITY OF DES MOINES (“City”) and the PORT OF SEATTLE (“Port”), both Washington municipal corporations, collectively referred to in this Agreement at the “Parties”.

RECITALS

WHEREAS, the City is a non-charter optional municipal code city organized under the laws of the State of Washington, with authority to enact laws and enter into interlocal and right-of-way agreements to promote the health, safety, and welfare of its citizens, and

WHEREAS, the Port is a municipal corporation, with authority under the Revised Airports Act, Chapter 14.08 RCW; the Airport Zoning Act, Chapter 14.12 RCW, the State Environmental Policy Act (SEPA), Chapter 43.21C RCW; certain port district enabling statutes; and other state and local laws, to exercise discretionary land use jurisdiction over real property located with its boundaries, and

WHEREAS, Chapter 39.34 RCW (“The Interlocal Cooperation Act”) permits municipal corporations to contract with one another to perform any act that each is independently authorized to perform, and

WHEREAS, the City and Port recognize the public benefits that will accrue to the City, the Port, and the community from construction of the Project, which are the improvements on South 216th Street fronting the Des Moines Creek West (“DMC-W”) property described in this Agreement, including accelerating the potential development of the DMC-W, and

WHEREAS, the Port and City share the goals of leasing the DMC-W on a long-term ground lease to allow for creation of a modern, quality commercial development that provides family wage jobs, a new source of direct and indirect long-term revenue for both the Port and the City and increasing trade opportunities for the region, and

WHEREAS, pursuant to RCW 36.70B.200, the City Council has authorized the City Manager to enter into this Agreement, and

WHEREAS, the Parties are entering into this Agreement for the purpose of memorializing their agreement concerning the payment of \$1.5 million by the Port to the City for improvements on the frontage of South 216th Street and the receipt of credit by the Port of \$1.5 million toward

any future transportation impact fees that the City might impose with respect to the development of the DMC-W, and

WHEREAS, the Port Commission voted on July 24, 2018 to authorize the Port Executive Director to enter into an agreement substantially in the form of this Agreement, and

NOW THEREFORE, in consideration of mutual promises and covenants and promises set forth in this Agreement, and in the exercise of authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW, the Parties hereto agree to the terms and conditions as follows:

AGREEMENT

1.0 DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations are defined below as follows:

- 1.1 **Agreement.** “Agreement” means this Interlocal Agreement approved by appropriate action of the City and Port of Seattle.
- 1.2 **DMC-W.** Des Moines Creek - West, an approximately [20+-acre] property owned by the Port that includes a parcel under purchase option with the Washington State Department of Transportation (“WSDOT”) within the City, which can be generally described as the area bounded by South 216th Street to the south, the City-owned Des Moines Creek Trail property to the north, the Des Moines Creek Business Park to the east and the Des Moines Terrace Addition residential subdivision to the west.
- 1.3 **DMMC.** The City of Des Moines Municipal Code, Des Moines, Washington.
- 1.4 **Transportation Gateway Project.** The City’s project to construct transportation improvements to South 216th Street right-of-way to accommodate multiple modes of travel (pedestrians, bicycles, transit, automobiles, & freight) in support of the DMC-W as well as accommodating future growth as reflected in the City’s Comprehensive Transportation Plan. The project limits for that segment fronting DMC-W is Segment 3 or South 216th Street between 11th Avenue South and 20th Avenue South as shown in Exhibit A.
- 1.5 **Permitted Uses.** The uses allowed on properties zoned Business Park (B-P) as established by DMMC 18.52.010B.
- 1.6 **Project.** South 216th Street physical improvements, also known as South 216th Street – Segment 3, fronting Port and WSDOT property referred to as DMC-W”. Work to also include project administration, design, ROW, and construction and construction management.

2.0 DES MOINES CREEK -- WEST

- 2.1 General. The DMC-W is envisioned as a thriving center for diverse light industrial and commercial activities developed in phases in accordance with a Des Moines City Council-approved Master Plan developed consistent with DMMC 18.105.050.
- 2.2 Project Phases. The DMC-W will be developed in the following three phases:
- 2.2.1 Execution of this Agreement with acknowledgement that this Agreement may need to be amended as subsequent phase details for the Project are developed.
- 2.2.2 Completion of frontage Project on South 216th Street connecting corridor improvement between 11th Avenue South and 20th Avenue South by the City and financed by the City, State Transportation Improvement Board, and this early In-Lieu \$1.5 million payment by the Port.
- 2.2.3 Solicitation of a developer and development of a DMC-W Master Plan consistent with DMMC 18.105.050.
- 2.3 Future Agreements: The Parties acknowledge that this Agreement may contemplate the execution and delivery of future agreements, documents, instruments, and permits, the final form and contents of which are not presently determined. The Parties agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, agreements, instruments, and permits, and to execute and deliver the same promptly.

3.0 BACKGROUND DOCUMENTATION AND PREVIOUS AGREEMENTS

- 3.1 General. The terms of this Agreement and the development envisioned for the DMC-W are influenced by a number of previous documents relied on to complete DMCBP phases 1-3 including but not limited to the DMCBP Conceptual Master Plan, DMCBP Draft and Final EIS, Traffic Trip Thresholds Technical Memoranda, and Wetlands Delineation reports.
- 3.2 Development Requirements. The Port shall comply with all applicable Development Regulations, except as modified by this Agreement or previous agreements between the Parties.
- 3.3 Recreation Requirements. The Port, or an entity assigned this work by the Port under a separate agreement, shall complete a Des Moines Creek Trail connection starting from the north side of S 216th Street and going north through the DMC-W property (Exhibit A). Specifications for construction of the new trail shall be to

City Standards, consistent with those of the existing trails within Des Moines adjacent to this property. The location of this trail within the property shall be determined by the Port, and included as part of the DMC-W Master Plan. The Parties anticipate that the Port will dedicate an easement for the area of the trail to the City by the Port after the construction of the trail has been completed.

4.0 TRANSPORTATION INFRASTRUCTURE IMPROVEMENTS

- 4.1** Access and Internal Roadways. Roadways on the Property accessing South 216th Street and 20th Avenue South shall be built to City of Des Moines Street Development Standards (Street Design and Construction Standards) as described in this Section. An access tract approximately 50 feet wide has been preserved for a connection from the DMC-W to 20th Ave South to the east and shown in Exhibit A. This connection would provide the DMC-W access to the recently constructed traffic signal at South 216th Street and 20th Avenue South. The final roadway location will be determined after the planning for the DMC-W development has been agreed with the Port and the City. [The Port intends to include this road construction as a requirement of the future developer under the terms of the ground lease.]
- 4.2** Frontage Improvements for the Project.

 - 4.2.1** Consistent with DMMC 12.20.050(2) and in advance of the future development of the DMC-W property, the Port will agree to make a one-time advance payment totaling \$1,500,000 (One Million, five hundred thousand Dollars) to the City to fulfill the Port's obligations regarding the frontage improvements on South 216th Street for the Project.
 - 4.2.2** The Parties acknowledge that due to the magnitude and complexity of the Project, completing its construction in incremental stages would be significantly more costly than constructing it as one integrated project, given its alignment, comprehensive storm drainage systems, and other utility improvements. Therefore, the Parties agree that in order to minimize the overall roadway improvement costs, the improvements are best completed at one time as part of an integrated project with advance payment by the Port. In accepting the advance cash payment from the Port, the City will take the lead and assume full financial responsibility for the construction of the frontage improvements adjacent to South 216th Street. As a result, payment of \$1.5 million as provided for in this Agreement shall fulfill the Port's total obligations in reference to the Project being constructed by the City.
 - 4.2.3** The City will notify the Port once the City's Construction Contract for the Project has been executed, and the Port will then make the \$1.5million payment to the City for the Project.

- 4.3** Credit Towards Transportation Impact Fees. In consideration for the Port contributing \$1.5 Million to the City for the Project, the City shall credit the Port with \$1.5 million towards future Transportation Impact Fees (TIF) pursuant to RCW 82.02.060 related to any improvements along DMC-W Street frontage that the City may impose for the development of the DMC-W by the Port.
- 4.4** Project and System Improvements. The Port shall require the future ground lease tenant to be fully responsible for the construction of other project related improvements (the east-west roadway access to 20th Avenue South for example), and any other physical and system improvements that may be identified in the traffic impact analysis to be submitted as part of the Master Plan for the buildout of the DMC-W.

5.0 VESTED RIGHTS AND TERM

- 5.1** Duration and Termination. This Agreement shall remain in effect for a period of ten (10) years unless either (a) the Parties both agree to extend the Agreement for an additional time period to be defined, or (b) the Project is fully developed consistent with Master Plans approved by the City, or (c) the Agreement is sooner terminated by the Parties.

6.0 CERTAINTY OF AGREEMENT

- 6.1** Agreement Deemed Controlling. This Agreement and any terms, conditions, maps, notes, references, or regulations which are a part of the Agreement shall be considered enforceable. In the event of a specific conflict with any provisions of the DMMC, this Agreement shall take precedence. Unless otherwise provided by this Agreement, the City's ordinances, resolutions, rules and regulations, and official policies governing permitted land uses, density, design, improvement, and construction standards shall be those City ordinances, resolutions, rules and regulations, and official policies in force at the time of the execution of this Agreement.
- 6.2** Subsequent Actions. This Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the Property nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies.
- 6.3** Changes in the Law. In the event that City, state or federal laws or regulations, enacted after this Agreement has been entered into, prevent or preclude compliance with one or more of the provisions of the Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply

with such state or federal laws or regulations following modification procedures in Section 10 for an amendment or cancellation.

7.0 GENERAL PROVISIONS

7.1 This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of six (6) pages and one (1) attached Exhibit and constitutes the entire understanding and agreement of the Parties.

CITY OF DES MOINES



Michael Matthias
City Manager

By direction of the Des Moines City Council
in Open Public Meeting
on 7-19-2018
Dated: 8-21-18

Approved as to Form:



City of Des Moines Attorney

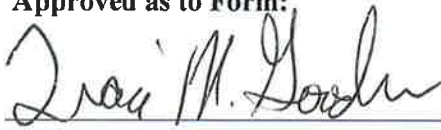
PORT OF SEATTLE



Stephen Metruck
Executive Director

By direction of the Port Commission
in Open Public Meeting
on July 24, 2018
Dated: 8/30/2018

Approved as to Form:



Port of Seattle Legal Department

EXHIBIT LIST

Exhibit A: Planned Path to Des Moines Creek Trail and Access via S. 214th Street to 20th Ave S.

EXHIBIT A

