

RESOLUTION NO. 1278

A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON clarifying the terms and conditions of the Amended & Restated Second Development Agreement for the Port of Seattle's development of the Des Moines Creek Business Park (DMCBP).

WHEREAS, the Port owns property located in the City of Des Moines on which the DMCBP is to be located that is bounded by South 216th Avenue on the south, 24th Avenue South on the east, South 208th on the north, and the former SR-509 right-of-way to the west, and

WHEREAS, the property is being developed to create an attractive and safe community asset, a vibrant employment center, 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, the City Council adopted Resolution 1252 on February 20, 2014, approving the Amended & Restated Second Development Agreement By & Between (hereinafter the "Second Development Agreement") the City of Des Moines and Port of Seattle in connection with the Development of the Des Moines Creek Business Park (hereinafter the "DMCBP") property, and

WHEREAS the Port Commission approved the Second Development Agreement on June 10, 2014 thereby finalizing the Agreement, and

WHEREAS, the Port's lease negotiations with its developer have identified the need for some clarification and changes to the Amended & Restated Second Development Agreement regarding the management of identified environmentally critical area tracts and the transfer of stormwater detention tracts, and

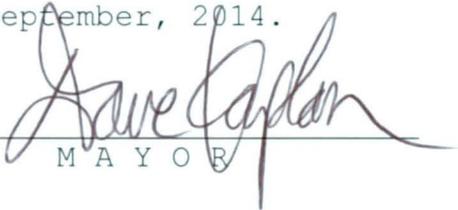
WHEREAS, the City and the Port now enter into this First Addendum to the Amended & Restated Second Development Agreement to clarify the terms and conditions for the management of environmentally critical areas and transfer of stormwater detention tracts when completed; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

The City Council hereby authorizes the City Manager to enter into the First Addendum to the Amended & Restated Second

Development Agreement By and Between the City of Des Moines and Port of Seattle, substantially in the form as attached hereto as Attachment "A" and incorporated herein by reference, for the development of the Des Moines Creek Business Park once Draft Ordinance No. 1606 becomes effective.

ADOPTED BY the City Council of the City of Des Moines, Washington this 25th day of September, 2014 and signed in authentication thereof this 25th day of September, 2014.


MAYOR

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk

ATTACHMENT "A" TO RESOLUTION NO. 1278

**FIRST ADDENDUM TO THE AMENDED & RESTATED SECOND
DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF DES MOINES AND THE PORT OF SEATTLE**

WHEREAS this First Addendum to the Amended & Restated Second Development Agreement (hereinafter "First Addendum") is entered into between the City of Des Moines (hereafter "City") and the Port of Seattle (hereafter "Port") in connection with the real property described herein (hereinafter referred to as the "Property"), and development of the Property by its assigns for the purposes and on the terms and conditions set forth herein; and

WHEREAS the City and the Port entered into the Amended & Restated Second Development Agreement By & Between the City of Des Moines and Port of Seattle (hereinafter the "Second Development Agreement") in connection with the Development of the Des Moines Creek Business Park (hereinafter the "DMCBP") property on June 10, 2014; and

WHEREAS the following sections of the Second Development Agreement are superseded by this First Addendum for purposes of this Agreement:

(1) SECTION 12. DRAINAGE REQUIREMENTS AND INFRASTRUCTURE. Subsections 12.1, General, and 12.2, Detention Tracts, amended.

(2) SECTION 13. ENVIRONMENTALLY CRITICAL AREAS. Subsection 13.5, Tracts, amended.

WHEREAS, the City Council adopted Resolution 1252 on February 20, 2014, which proposed to expedite the review and approval of plans to develop the DMCBP; and

WHEREAS, the Port's lease negotiations with its developer have identified the need for some clarification and changes to the Second Development Agreement regarding the transfer of stormwater detention tracts and the management of identified environmentally critical areas; and

WHEREAS, the City and the Port now enter into this First Addendum to clarify the terms and conditions for the transfer of stormwater detention tracts when completed and management of environmentally critical areas;

NOW, THEREFORE, the City and the Port agree to amend Section 12, Drainage Requirements and Infrastructure, and Section 13, Environmentally Critical Areas, as follows:

I. SECTION 12. DRAINAGE REQUIREMENTS AND INFRASTRUCTURE

The following sections are amended to read as follows:

12.1 General. The Port shall provide stormwater facilities to address surface water runoff created as the result of development of the Property. All stormwater facilities shall be located in separate public tracts. The stormwater facilities will be built by the Port, and, upon completion, deeded to the City for long-term ownership and maintenance.

12.2 Detention Tracts. Pursuant to DMMC 17.35.130, the two proposed detention facilities are to be located within separate tracts (Tracts A and B) as part of the DMCBP Short Plat. Tracts A and B are to be deeded to the City upon completion of the facility on each respective Tract, whereupon the City shall assume all maintenance and ownership responsibilities. A private access easement to the detention tracts shall also be provided to allow access to the facilities for water quality testing that may be required in order to meet any issued industrial NPDES permits. Prior to City acceptance of the detention facilities, the Port will provide the City with an operations and maintenance manual for the care of the facilities, including any special instructions for maintaining any protective netting or plantings required to satisfy FAA regulations.

II. SECTION 13. ENVIRONMENTALLY CRITICAL AREAS

The following section is amended to read as follows:

13.5 Tracts. The Port agrees to place the wetlands and corresponding buffers, streams buffers, and ravine sidewalls and corresponding buffer into separate tract (Tracts X, Y, and Z) as part of the DMCBP Short Plat (the "Environmentally Critical Area Tracts"). The City and the Port agree that the Port will retain ownership of Environmentally Critical Area Tracts X, Y and Z in accordance with DMMC 17.35.190 (2) as amended by Ordinance No. 1606, and that the Port shall retain all maintenance and other ownership responsibilities of such tracts through their ground leases with the Developer which require that the tracts be managed in accordance will all applicable federal, state and City environmental and critical area regulations.

III. Entire Understanding, Modification, and Authority

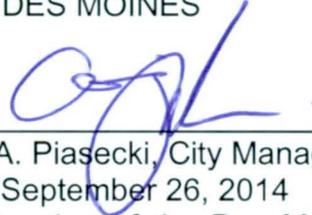
A. Modification. This First Addendum may be amended or modified only by mutual agreement of the parties expressed in writing.

B. Jurisdictional Authority. This First Addendum is specific to the Project and is not intended to transfer any degree of jurisdictional authority held by one party to the other party, nor is it to be misconstrued as recognition of jurisdictional authority which either party may duly claim.

VI. Effective Date

This First Addendum must be approved by the City Council of the City of Des Moines and the Port Commission of the Port of Seattle and shall become effective on the date of final signature below.

CITY OF DES MOINES

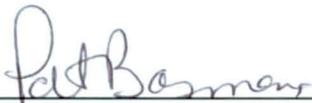


Anthony A. Piasecki, City Manager

Date: September 26, 2014

By the direction of the Des Moines City Council
taken at an open public meeting on
September 25, 2014.

APPROVED AS TO FORM



Pat Bosmans, City Attorney
City of Des Moines

Date: September 26, 2014

PORT OF SEATTLE

_____, Chief Executive Officer

Date: _____

At the direction of the Port Commission of the
Port of Seattle taken at an open public meeting on

_____.

APPROVED AS TO FORM

Soojin E. Kim
Senior Port Counsel
Port of Seattle

Date: _____