

ORDINANCE NO. 1490

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, repealing Ordinance No. 1429 and declaring certain City property located within the Port of Seattle "Buy-Out" area commonly known as portions of South 208th Street, South 210th Street, and 20th Avenue South as surplus to the needs of the City and authorizing the sale of these properties to the Port of Seattle, subject to the applicant's compliance with requirements set forth herein.

WHEREAS, the Port of Seattle has filed a petition to vacate all City-controlled streets and rights-of-way within a specific territory which have been acquired by the Port of Seattle for purposes related to Sea-Tac International Airport and aircraft noise mitigation, and

WHEREAS, City staff researched the origin of City streets requested to be vacated and determined that some streets are not dedicated as public rights-of-way, but rather are deeded property for public street purposes, and

WHEREAS, the Port of Seattle has been notified of the disposition of ownership of these streets and it desires to purchase these deeded properties as well as vacate the remaining City-controlled streets determined to be public rights-of-way, and

WHEREAS, a Development Agreement between the Port of Seattle and City of Des Moines (the First Development Agreement) executed on July 11, 2005 contemplates the acquisition of public streets to provide for future redevelopment of property in the Port of Seattle "Buy-Out" area, and

WHEREAS, no apparent municipal use of the said public streets continues to exist, but the Port has reason to convert the rights-of-way for Business Park commercial development purposes, and

WHEREAS, the Midway Sewer District and the Highline Water District have existing facilities in portions of the city owned streets requested to be surplussed which will continue to provide service to other properties and require easements to be granted to allow for their continued use, and

WHEREAS, RCW 39.33.010 specifies, "The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned," and

WHEREAS, the City of Des Moines and the Port of Seattle are political subdivisions of the State and as such are eligible to transfer and sell properties to each other pursuant to RCW 39.33.010, and

WHEREAS, RCW 39.33.020 states that the City of Des Moines must hold a public hearing to provide public notice

prior to disposing of surplus property having an estimated value greater than fifty thousand dollars, and

WHEREAS, The City Council conducted a public hearing on February 14, 2008 and provided for public testimony regarding the declaration to surplus public property and the sale of said property to the Port of Seattle, and

WHEREAS, notice of the public hearing was given in accordance with RCW 39.33.020 including a news release to printed and electronic media, providing a description of the future intended use of said property declared surplus, and providing notice within at least ten (10) days but no greater than twenty-five (25) days prior to the hearing, and

WHEREAS, the City Council of the City of Des Moines passed this Ordinance to a second reading on February 28, 2008, and

WHEREAS, the City Council continued the second reading of this ordinance to March 6, 2008, and

WHEREAS, no objections to surplus the public properties in question or sell these properties to the Port of Seattle were filed by any abutting property owners prior to the hearing, and the Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property, and

WHEREAS, the Council voted to adopt Ordinance No. 1429 on February 28, 2008 subject to certain conditions of approval, and

WHEREAS, progress toward completing conditions of approval related to Ordinance 1429 has been achieved, but full and complete satisfaction of these conditions is contingent upon release of funds for compensation of surplus property described herein and the execution of deeds to transfer said property, and

WHEREAS, since the passage of Ordinance No. 1429, the City of Des Moines and Port of Seattle have developed an alternate legal description that integrates better with recent efforts by the City to expand and improve right-of-way for South 216th Street and 24th Avenue South adjacent to Port of Seattle property, and

WHEREAS, supplemental title research since the passage of 1429 has also resulted in some corrections to the descriptions of property requested to be surplus, and

WHEREAS, a new public hearing is required modify Ordinance No. 1429, and

WHEREAS, public noticing requirements related to surpassing of public property under RCW 39.33.020 have been completed, and

WHEREAS, the Council finds that there is no public need sufficient to maintain City ownership of the streets legally described herein and as depicted on the map marked

Exhibit "A" to this ordinance and it is in the public interest to surplus these properties and sell them to the Port of Seattle to allow for redevelopment for Business Park purposes subject to the conditions of approval contained herein; now therefore,

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

Sec. 1. Findings adopted. Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public properties which are the subject of this ordinance consist of strips of property used for street purposes (South 208th Street, South 210th Street, and 20th Avenue South) that are located within the "Buy-Out" area which is geographically bounded on the north by the Des Moines city limits, on the east by 24th Avenue South, on the south by South 216th Street, and on the west by the SR-509 right-of-way and property largely consisting of Des Moines Creek and its associated slopes and open spaces.

(2) The public properties which are the subject of this ordinance are improved for transportation purposes, have previously been opened for transportation purposes, and are not subject to vacation by operation of law under the Laws of 1889-90.

(3) City ownership of the public properties which are the subject of this ordinance is not necessary for present and future use by public utilities because present and future needs for use by public utilities can and will be met by appropriate easements retained by the City or granted by the Port of Seattle which owns property abutting the properties proposed for surplus.

(4) The public properties which are the subject of this ordinance are surplus to the present and future needs of the citizens of the City of Des Moines for transportation purposes, and it is in the public interest to sell these properties and allow them to be aggregated with surrounding properties owned by the Port of Seattle to provide for future redevelopment for Business Park use which in turn will provide for a diversification of and an increase to City tax base.

(5) Modifying Ordinance No. 1429 to improve the legal description of property requested to be surplussed with respect to future street work related to South 216th Street and 24th Avenue South and to reflect updated title information is necessary and in the public interest.

Sec. 2. Repealer. Sections 1 through 6 of Ordinance No. 1429 (uncodified) are each repealed.

Sec. 3. Surplus and sale of public property. Subject to the requirements set forth in this ordinance, the following legally described public properties as depicted on the attached map entitled Exhibit "A" are declared surplus:

THAT PORTION OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, INCLUDED WITHIN A STRIP OF LAND DESCRIBED AS FOLLOWS:

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR THE NORTH HALF OF SOUTH 208TH STREET, LYING WEST OF A LINE THAT IS 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M. AND ITS NORTHERLY EXTENSION (SAID EAST LINE ALSO BEING THE CENTERLINE OF 24TH AVENUE SOUTH) AND LYING EAST OF THE NORTH-SOUTH CENTERLINE OF SAID SOUTHWEST QUARTER; TOGETHER WITH

THAT PORTION OF THE NORTHWEST QUARTER, SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, WASHINGTON, INCLUDED WITHIN STRIPS OF LAND DESCRIBED AS FOLLOWS:

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR THE SOUTH HALF OF SOUTH 208TH STREET, LYING WEST OF A LINE THAT IS 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER AND ITS NORTHERLY EXTENSION (SAID EAST LINE ALSO BEING THE CENTERLINE OF 24TH AVENUE SOUTH) AND LYING EAST OF THE NORTH-SOUTH CENTERLINE OF SAID NORTHWEST QUARTER; TOGETHER WITH

ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 210TH STREET, LYING WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24TH AVENUE SOUTH AND LYING EAST OF THE NORTH-SOUTH CENTERLINE OF SAID NORTHWEST QUARTER; TOGETHER WITH

ALL THAT RIGHT OF WAY FOR 20TH AVENUE SOUTH CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NO. 5441946, RECORDS OF SAID COUNTY;

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 4 AND THE NORTHWEST QUARTER OF SECTION 9, ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A MONUMENT IN CASE AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER, ALSO BEING THE INTERSECTION OF 24TH AVENUE SOUTH AND SOUTH 208TH STREET;

THENCE NORTH 88° 26' 01" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, 30.00 FEET TO THE NORTHERLY EXTENSION OF A LINE THAT IS 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER (SAID EAST LINE ALSO BEING THE CENTERLINE OF 24TH AVENUE SOUTH), AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 01° 06' 35" EAST ALONG SAID NORTHERLY EXTENSION, 30.00 FEET TO A LINE THAT IS 30.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER;

THENCE NORTH 88° 26' 01" WEST ALONG SAID PARALLEL LINE, 37.50 FEET TO THE NORTHERLY EXTENSION OF A LINE THAT IS 67.50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER (SAID EAST LINE ALSO BEING THE CENTERLINE OF 24TH AVENUE SOUTH);

THENCE SOUTH 01° 06' 35" WEST ALONG SAID NORTHERLY EXTENSION AND ALONG SAID PARALLEL LINE, 1751.88 FEET;

THENCE SOUTHERLY ON A CURVE TO THE LEFT WHOSE CENTER BEARS SOUTH 88° 53' 25" EAST, 6049.50 FEET, AN ARC DISTANCE OF 226.75 FEET;

THENCE SOUTH 01° 02' 16" EAST, 255.41 FEET;

THENCE SOUTHERLY ON A CURVE TO THE RIGHT WHOSE CENTER BEARS SOUTH 88° 57' 44" WEST, 5950.50 FEET, AN ARC DISTANCE OF

223.04 FEET TO A LINE THAT IS 49.50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER (SAID EAST LINE ALSO BEING THE CENTERLINE OF 24TH AVENUE SOUTH);

THENCE SOUTH $01^{\circ} 06' 35''$ WEST ALONG SAID PARALLEL LINE, 119.10 FEET;

THENCE SOUTH $46^{\circ} 25' 19''$ WEST, 42.84 FEET TO A LINE THAT IS 63.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER (SAID SOUTH LINE ALSO BEING THE CENTERLINE OF SOUTH 216TH STREET);

THENCE NORTH $88^{\circ} 15' 56''$ WEST ALONG SAID PARALLEL LINE, 1172.31 FEET;

THENCE NORTH $01^{\circ} 18' 27''$ EAST, 2.00 FEET TO A LINE THAT IS 65.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER (SAID SOUTH LINE ALSO BEING THE CENTERLINE OF SOUTH 216TH STREET);

THENCE NORTH $88^{\circ} 15' 56''$ WEST ALONG SAID PARALLEL LINE, 1.00 FEET;

THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WHOSE CENTER BEARS NORTH $01^{\circ} 44' 04''$ EAST, 19.50 FEET, AN ARC DISTANCE OF 30.49 FEET;

THENCE NORTH $01^{\circ} 18' 27''$ EAST, 17.04 FEET;

THENCE NORTH $88^{\circ} 41' 33''$ WEST, 39.36 FEET TO THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER;

THENCE SOUTH $01^{\circ} 06' 10''$ WEST ALONG SAID WEST LINE, 71.60 FEET TO A LINE THAT IS 30.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER (SAID SOUTH LINE ALSO BEING THE CENTERLINE OF SOUTH 216TH STREET);

THENCE SOUTH $88^{\circ} 15' 56''$ EAST ALONG SAID PARALLEL LINE, 1281.85 FEET TO A LINE THAT IS 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER (SAID EAST LINE ALSO BEING THE CENTERLINE OF 24TH AVENUE SOUTH);

THENCE NORTH $01^{\circ} 06' 35''$ EAST ALONG SAID PARALLEL LINE, 2609.79 FEET TO THE TRUE POINT OF BEGINNING.

Sec. 4. Conditions of surplus and sale of public property. The public properties subject to surplus and sale under this ordinance shall be subject to the following conditions:

(1) The Port of Seattle shall compensate the City of Des Moines for the strips of real public properties legally described in this ordinance consistent with the terms of the Draft Second Addendum to the First Development Agreement incorporated herein by this reference as Exhibit "B", unless the terms of this agreement are specifically directed to be modified by the City Manager and/or at the direction of the City Council prior to the Port of Seattle and City of Des Moines executing this agreement.

(2) The purchase of surplus public property under this ordinance shall include ownership of all inactive and non-functioning improvements to city streets, including but not limited to, pavement and drainage systems. It is the sole responsibility of the purchaser to remove and properly dispose of these inactive and non-functioning improvements.

(3) The City Manager is directed to finalize this property surplus ordinance in accordance with the escrow agreement.

(4) The Port of Seattle shall preserve public access to the public trail located on abutting land owned by the City. The Port shall provide access improvements within the natural open space areas adjacent to the upper critical area buffer associated with Des Moines Creek.

(5) The Port of Seattle shall contact all utility purveyors serving this site to identify and grant desired easements, if any, for active and permanent utility systems and improvements within property vacated under this ordinance.

(6) An easement is granted by the City of Des Moines to the Highline Water District and its successors and assigns for the operation, construction, repair, and maintenance of existing underground public water system improvements as constructed across and through the following described property:

THAT PORTION OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, INCLUDED WITHIN A STRIP OF LAND DESCRIBED AS FOLLOWS:

THE NORTHERLY 20 FEET OF THE NORTH HALF OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 208TH STREET LYING WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24TH AVENUE SOUTH AND EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 70 FEET OF LOT 9, PLAT OF MAYVALE NO. 2, AS RECORDED IN VOLUME 77 OF PLATS, PAGE 19, RECORDS OF SAID COUNTY.

(7) An easement is granted by the City of Des Moines to the Midway Sewer District and its successors and assigns for the operation, construction, repair, and maintenance of existing underground public water system improvements as constructed across and through the following described property:

THAT PORTION OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST AND THE NORTHWEST QUARTER, SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, INCLUDED WITHIN STRIPS OF LAND DESCRIBED AS FOLLOWS:

THE SOUTH 20 FEET OF THE NORTH 40 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 208TH STREET, LYING WEST OF THE NORTHERLY EXTENSION OF THE WESTERLY RIGHT OF WAY MARGIN OF 24TH AVENUE SOUTH AND EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST RIGHT OF WAY MARGIN OF 22ND AVENUE SOUTH; TOGETHER WITH

THE NORTH 25 FEET OF THE SOUTH 30 OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 208TH STREET, LYING EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST RIGHT OF WAY MARGIN OF 22ND AVENUE SOUTH AND EAST OF THE NORTHERLY EXTENSION OF THE EASTERLY RIGHT OF WAY MARGIN OF 21ST AVENUE SOUTH; TOGETHER WITH

THE SOUTH 10 FEET OF THE NORTH 30 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 208TH STREET, LYING WEST OF THE NORTHERLY EXTENSION OF THE EASTERLY RIGHT OF WAY MARGIN OF 21ST AVENUE SOUTH AND EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 70 FEET OF LOT 9, PLAT OF MAYVALE NO. 2, AS RECORDED IN VOLUME 77 OF PLATS, PAGE 19, RECORDS OF SAID COUNTY; TOGETHER WITH

THE NORTH 10 FEET OF THE SOUTH 30 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 208TH STREET, LYING WEST OF THE NORTHERLY EXTENSION OF THE EASTERLY RIGHT OF WAY MARGIN OF 21ST AVENUE SOUTH AND EASTERLY OF THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 9.

Sec. 5. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 6. Recordation. Upon satisfactory compliance with section 4 of this Ordinance, the City Clerk shall cause a certified copy of this Ordinance to be recorded in the records of the King County Recorder.

Sec. 7. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 30th day of September, 2010 and signed in authentication thereof this 30th day of September, 2010.



M A Y O R

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk

Published: October 6, 2010

Effective Date: October 30, 2010

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1490, Adopted September 30, 2010.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

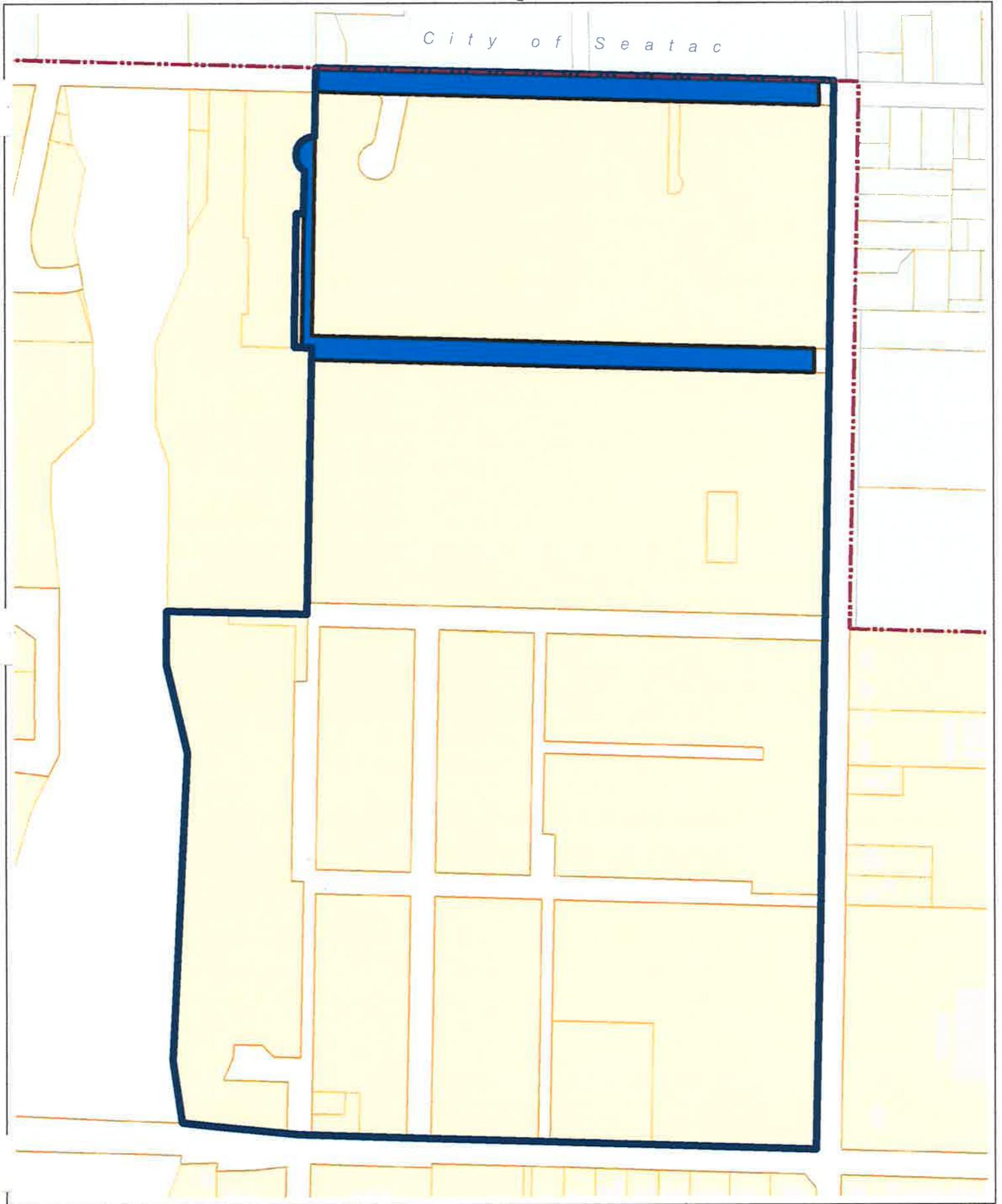
This ordinance repeals Ordinance No. 1429 and declares certain City property located within the Port of Seattle "Buy-Out" area commonly known as portions of South 208th Street, South 210th Street, and 20th Avenue South as surplus to the needs of the City and authorizes the sale of these properties to the Port of Seattle, subject to the applicant's compliance with requirements set forth herein.

The full text of the ordinance will be mailed without cost upon request.

Sandy Paul, CMC
City Clerk

Published: October 6, 2010

Des Moines Creek Business Park Streets By Deed



City of Seatac



Map Generated: Apr 29, 2010
File Name: Port_Row.mxd



Produced by
Development Services



Exhibit A

AS APPROVED BY DES MOINES CITY COUNCIL ON 9/30/10

**SECOND ADDENDUM TO THE FIRST DEVELOPMENT AGREEMENT
REGARDING COMPENSATION FOR DEDICATED AND DEEDED RIGHTS OF
WAY AND PURCHASE OF RIGHT OF WAY FRONTAGE**

WHEREAS, this Second Addendum to the First Development Agreement Regarding Compensation for Dedicated and Deeded Rights of Way" (hereinafter "Second Addendum") is entered into between the City of Des Moines (hereafter "City") and the Port of Seattle (hereafter "Port") to amend the terms and conditions under which the Port will acquire from the City the surplus rights of way within the Des Moines Creek Business Park site (hereafter "DMCBP") and the City will acquire from the Port the land needed to complete expansion of 24th Avenue South and South 216th Street fronting the DMCBP; and

WHEREAS, the City and the Port entered into the "First Development Agreement – City of Des Moines and Port of Seattle – Development of the Des Moines Creek Business Park Property" (hereinafter the "First Development Agreement") on July 11, 2005; and

WHEREAS, the following section of the First Development Agreement and First Addendum to the First Development Agreement is superseded by this Second Addendum for purposes of this Agreement:

"Step 3. Street Vacation Process.

(1) Street vacation will be requested. The parties recognize that the Port will request that certain city streets located on the property be vacated before beginning work. The parties recognize that the work to be performed by the Port, including but not limited to rough and final grading, utility installation or removal, surface water facilities, street and road construction, and building construction, will be more difficult and costly if the streets are not vacated. The parties agree that the street vacations shall be reviewed in concert with review of the Second Development Agreement - Conceptual Master Plan. The parties agree that no decision on the street vacations shall occur prior to a decision on the Second Development Agreement - Conceptual Master Plan."

WHEREAS, the City Council adopted Resolution 1049 on July 5, 2007, which proposed to modify the sequence of approvals and agreements for street vacation approval by the City as set forth in the First Development Agreement in part by completing vacation of the Dedicated Streets and conveyance to the Port of the Deeded Streets *prior* to final developer selection and completion of the Second Development Agreement; and

WHEREAS, the City Council held a public hearing on February 14, 2008 to vacate the Dedicated Streets and concurrently approve transfer of the Deeded Streets contingent on approval of the developer's master plan and full execution of the Second Development Agreement; and

WHEREAS, in May 2008 the City and the Port entered into the First Addendum to the First Development Agreement Regarding Compensation for Dedicated and Deeded Rights of Way (the "First Addendum") to establish the terms and conditions for vacation of Dedicated Streets and transfer of the Deeded Streets from the City to the Port, including adoption of a payment schedule consistent with DMMC 12.12.060 and Chapter 35.79 RCW; and

WHEREAS, DMMC 12.12.060 establishes conditions precedent to passage of an ordinance providing for vacation of a right of way; and

WHEREAS, the City Council in its discretion agreed to waive the timing of the compensation provisions of DMMC 12.12.060 for the purposes of this First Addendum only, to allow compensation to be paid for the Properties rather than pursuant to the cash sale terms of DMMC 12.12.060, understanding that the City shall receive fair market value for the Properties under the terms of this First Addendum and that Ordinance No. 1428 and Ordinance No. 1429 shall only be effective upon payment to the City in accordance with this First Addendum; and

WHEREAS, the City Council determined that it would be in the public interest to vacate the Dedicated Streets and sell the Deeded Streets in the Project property area; and

WHEREAS, in 2008 the Port solicited proposals through a competitive process from real estate development firms interested in developing the DMCBP site, and ultimately selected a developer and began negotiating the terms of a land lease agreement; and

WHEREAS, in fall 2008 the Port and the selected developer did not come to an agreement on the land lease because of the national recession and other factors; and

WHEREAS, since 2008 the Port has continued with planning efforts to better position the DMCBP for development as the regional economy improves; and

WHEREAS, since 2008 the City has invested nearly \$2 million in the planning and design of offsite infrastructure supporting the DMCBP, and is actively pursuing federal and state funds to construct this infrastructure; and

WHEREAS, the City's roadway design efforts have identified the Right of Way Acquisition needed by the City, which acquisition will improve the City's ability to acquire grants and loans and begin construction of the Roadway Improvements as early as 2011 if such funds become available; and

WHEREAS, the parties have now concluded based on this additional Port and City planning and design that approval of the developer's master plan and full execution of the Second Development Agreement, as required by the First Development Agreement and First Addendum, is no longer necessary to complete transfer of the Properties, and that transfer of the Properties at this time along with the Right of Way Acquisition would benefit both the Port and the City; and

WHEREAS, the Port's planning work and the City's design efforts have identified the need for some changes to Ordinance No. 1428 and Ordinance No. 1429 from 2008, effecting the right of way vacations and deeded street transfers; and

WHEREAS, the City Council held a public hearing on June 10, 2010 to repeal Ordinance No. 1428 and Ordinance No. 1429, and to enact new ordinances that vacate the Dedicated Streets and concurrently approve transfer of the Deeded Streets, subject to execution of this Second Addendum; and

WHEREAS, the City Council also discussed accepting statutory warranty deeds for Right of Way Acquisition, and a related Slope and Utility Easement needed for the Roadway Improvements, subject to execution of this Second Addendum; and

WHEREAS, the City and the Port now enter into this Second Addendum to establish the terms and conditions for the vacation of Dedicated Streets, transfer of the Deeded Streets from the City to the Port and acquisition of rights of way and easements needed for the Roadway Improvements, including agreement on a payment schedule consistent with DMMC 12.12.060 and Chapter 35.79 RCW; and

NOW, THEREFORE, the City and the Port agree as follows:

I. Definitions

As used in this Second Addendum, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

"City" means the City of Des Moines.

"Closing" means the date described in Section III (E) below.

“Construction License” means the temporary construction license needed by the City from the Port to construct the Roadway Improvements.

“DMMC” means the Des Moines Municipal Code.

“Dedicated Streets” means the streets identified in **Exhibit I** that were dedicated to King County or the City as part of the subdivision approval process for the neighboring properties.

“Deeded Streets” means the streets identified in **Exhibit II** that the City owns in fee simple.

“Easement” means that slope and utility easement needed by the City to facilitate construction of the Roadway Improvements and the Project.

“Escrow Agreement” means instructions to an escrow agent prepared by the parties to effect the simultaneous recording of City ordinances, deeds, easements and licenses vacating rights of way, transferring properties between the parties, and facilitating construction of roadway improvements.”

“Ordinances” means Ordinance Nos. 1489 and 1490 (1) setting out the revised legal descriptions for the Dedicated Streets and (2) setting out the revised legal descriptions of the Deeded Streets. These Ordinances are hereby incorporated by this reference.

“Port” means the Port of Seattle.

“Project” means the Des Moines Creek Business Park (DMCBP).

“Properties” means the Dedicated Streets and the Deeded Streets.

“Right of Way Acquisition” means the Port property identified in **Exhibit III** needed by the City to complete the Roadway Improvements.

“Roadway Improvements” means the widening of 24th Avenue S. and S 216th Street as generally identified in the Transportation Gateway Project Design Report, December, 2009.

II. Introduction and Purpose

This Second Addendum establishes a written agreement between the City and the Port regarding the responsibilities of the parties and procedures to be followed in the preparation and processing of all necessary documents needed to achieve transfer of

the Properties and the Right of Way Acquisition. The parties intend that the Project proceed in such a manner to satisfy the applicable ordinances, resolutions, policies, and environmental requirements of the City and the Port.

III. Terms

- A. Description of the Properties.** The Properties consist of 497,738 s.f +/- (approximately 11.43 acres), which are 334,387 s.f +/- (approximately 7.68 acres) of Dedicated Streets and 163,351 s.f. +/- (approximately 3.75 acres) of Deeded Streets as depicted and more fully described in the Ordinance No. 1489 (Dedicated Streets - **Exhibit I**) and Ordinance No. 1490 (Deeded Streets – **Exhibit II**).
- B. Right of Way Acquisition.** The Right of Way Acquisition needed for the Roadway Improvements consists of 123,889 s.f. +/- (approximately 2.84 acres). This acquisition shall be effected by the Port's execution of the Statutory Warranty Deed attached as **Exhibit III**. The Port's execution of the Statutory Warranty Deed is contingent upon approval of the Right of Way Acquisition by the Federal Aviation Administration (FAA).

To further facilitate construction of the Roadway Improvements and the Project, the City also requests the Port's execution of the Easement attached as **Exhibit IV** and the Construction License attached as **Exhibit V**.

- C. Compensation Due:** The parties agree to a fair market value for the Properties and the Right of Way Acquisition of \$6.00 per square foot. This valuation is based on the "*Complete Appraisal Presented as a Summary Report, Des Moines Creek Business Park, as of September 21, 2010*", prepared by GVA Kidder Mathews dated September 21, 2010.
- (i) Properties. The Port's payment to the City for the Properties is determined by the total square footage of the Properties (497,738 square feet) multiplied by the per square foot fair market value of the Properties (\$6.00) which equals \$2,986,428.
 - (ii) Right of Way Acquisition. The compensation that the City will pay the Port for the Right of Way Acquisition is determined by the total square footage of the needed frontage (123,889 square feet) multiplied by the per square foot fair market value of the frontage (\$6.00) which equals \$743,334. This amount shall be deducted from the compensation to be paid by the Port resulting in a net payment to the City of \$2,243,094.
 - (iii) Easement; Construction License. The Port and the City acknowledge that the Easement is mutually beneficial, and the Port agrees to convey

the Easement at no cost to the City. In addition, the Port agrees to grant the Construction License to the City at no cost.

- D. Payment.** The Port shall pay the City at Closing the net payment as described in paragraph III(C)(ii) above from funds currently in escrow as a result of the First Addendum, and in accordance with the Escrow Agreement to be provided..
- E. Closing; Closing Costs.** Closing shall occur within thirty (30) days of the Port's receipt of the FAA's approval of the Right of Way Acquisition. The parties agree each will pay one-half of the escrow fee and recording fees.
- F. Closing Documents.**
- a. Port's Documents. At Closing, the Port shall deliver the following documents:
 - i. Executed original Statutory Warranty Deed reflecting the Right of Way Acquisition;
 - ii. Executed original Slope and Utility Easement;
 - iii. Executed original Construction License; and
 - iv. Such other documents as the escrow agent requires for Closing.
 - b. City's Documents. At Closing, the City shall deliver the following documents:
 - i. City of Des Moines Ordinances Nos. 1489 and 1490.
 - ii. Executed original Statutory Warranty Deed reflecting the Deeded Street Sale
 - iii. Such other documents as the escrow agent requires for Closing.
- G. Second Development Agreement.** The City and the Port agree that a Second Development Agreement shall provide for City cost reimbursement for the Port's proportionate share of the design, right of way and construction costs related to the Roadway Improvements, future transportation impact fees and other project related improvements.

IV. Entire Understanding, Modification, and Authority

- A. Modification.** This Second Addendum may be amended or modified only by mutual agreement of the parties expressed in writing.
- B. Jurisdictional Authority.** This Second 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.

V. Termination

To the extent Closing fails to occur as provided in Section III(E) above, the City may repeal any applicable ordinances and they shall be considered a nullity, and the City's ownership interest in the Properties shall revert to the status the City enjoyed prior to entering into this Second Addendum.

VI. Effective Date

This Second 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.

VII. Exhibits

This Second Addendum includes the following Exhibits and each is fully incorporated herein.

Exhibit I - Ordinance No. 1489 - Dedicated Streets

Exhibit II - Ordinance No. 1490 - Deeded Streets

Exhibit III – Statutory Warranty Deed – Right of Way Acquisition

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Exhibit IV – Slope and Utility Easement

Exhibit V – Temporary Construction License

CITY OF DES MOINES

At the direction of the Des Moines City Council taken at an open public meeting on September 30, 2010.

Anthony A. Piasecki, City Manager

Date: _____

APPROVED AS TO FORM

Pat Bosmans, City Attorney
City of Des Moines

Date: _____

PORT OF SEATTLE

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

Tay Yoshitani, Chief Executive Officer

Date: _____

APPROVED AS TO FORM

Soojin E. Kim
Senior Port Counsel
Port of Seattle

Date: _____