

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 16-6-15B

**RESOLUTION AUTHORIZING DEVELOPER EXTENSION AGREEMENT
DES MOINES CREEK BUSINESS PARK - PHASE III
24XX S 216TH STREET, DES MOINES, WA**

Be It Resolved by the Board of Commissioners of Highline Water District:

1. The District has received the application, plans and specifications for an extension to the Water District's system, subject to compliance with the District's standards and procedures for developer extensions.
2. The extension hereinafter described is an addition and betterment to the water system of the District and is hereby authorized.

Name of Extension: DES MOINES CREEK BUSINESS PARK - PHASE III
Name of Developer: DES MOINES CREEK BUSINESS PARK III, LLC

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an open public meeting held this **15th** day of **June 2016**.

BOARD OF COMMISSIONERS

Vince Koester, President



Daniel Johnson, Commissioner



Kathleen Quong-Vermeire, Commissioner



Todd Fultz, Secretary



George Landon, Commissioner

**HIGHLINE WATER DISTRICT
DEVELOPER EXTENSION CONTRACT**

THIS CONTRACT entered into as of this 15 day of June, 2018, is between Highline Water District, a municipal corporation of King County, Washington (herein referred to as "District") and Des Moines Creek Business Park Phase III, LLC ("Developer").

Developer is the owner of and desires to develop the following described real property situated in King County, Washington:

See attached legal

("Property").

In the course of the development, the Developer desires to install water mains and appurtenances (herein referred to as "Developer Extension" or "Extension"), and connect them to the main lines of the District, all in accordance with plans which have been reviewed and authorized by the District.

NOW THEREFORE, in consideration of the benefits each party shall derive from this Agreement, it is agreed between the District and the Developer as follows:

1. The Developer shall construct the Developer Extension in accordance with all District requirements. Any variations from the District's standards must be corrected prior to the District's acceptance of the Developer Extension.
2. All permits required at any time for prosecution of the Developer Extension or any portion thereof, whether or not obtained by the District, shall be at the Developer's expense, and copies of all such permits obtained by the Developer shall be delivered to the District.

FEES

3. In consideration of services provided by the District in conjunction with this agreement the Developer shall submit a deposit of \$10,000 to the District. Costs incurred by the District in administering the terms of this agreement shall be charged against the deposit during the term of the project. District costs shall be based on the actual time and expenses expended by the District or its consultant.

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The District shall charge Developer for all services performed by the District which shall include, but not be limited to, the following:

- 3.1. Contract Administration;
- 3.2. Engineering;
- 3.3. Inspections by District Personnel;
- 3.4. Revisions of the Contract plans and specifications and work occasioned by an act of the Developer relating thereto;
- 3.5. Additional Inspections (County, State, District, Other);
- 3.6. Re-inspection of deficient work;
- 3.7. Any permit or franchise acquired by District;
- 3.8. Acts by the Developer that necessitates the District's Manager, staff or District consultants such as engineering and legal to spend extraordinary time on the Developer Extension;
- 3.9. Water sampling, testing and water loss;
- 3.10. District materials used by the Developer;
- 3.11. Miscellaneous expenses and/or costs incurred by the District for the Developer related to the project;
- 3.12. Cost of flow testing the system.

Unused balances will be returned to the Developer within 60 days following final acceptance of the Extension by Resolution of the Board of Commissioners. Amounts due in excess of the initial deposit shall be paid prior to project acceptance. A 10% late fee will be added to billed amounts not paid within 30 days. After 60 days of non-payment, water service to the property will be locked and a lien for the balance due plus interest will be placed on the property.

PLANS

4. Prior to submitting plans for the District to review, the plans shall have a current fire marshal's stamp and signature.

HIGHLINE WATER DISTRICT DEVELOPER EXTENSION CONTRACT

5. All plans and profiles, including major and minor redesigns and changes, as-built plans, easements and all estimated and final direct total project costs shall be certified by a professional engineer (or surveyor for easements) in good standing and licensed to practice in the State of Washington.
6. The Developer shall, concurrent with delivering the easements, bill of sale and warranties, deliver to the District a complete and accurate set of as-built plans on 24" x 36" mylar, as well as an AutoCad® (District compatible) computer disk of the as-built plans. The plans shall be in conformance with all District requirements.

INSURANCE AND BONDING

7. The Developer shall furnish to the District prior to the preconstruction conference a performance guarantee of a type and in a form, as determined by the District in its sole discretion, in an amount equal to one hundred (100) percent of the engineer's estimated extension construction cost or Five Thousand Dollars (\$5,000), whichever is greater. If the performance guarantee is a surety performance bond, the bond shall be issued by a surety acceptable to the District. The cost of the performance guarantee shall be the responsibility of the Developer.
8. The Developer shall require its Contractors to secure and maintain, during the term of this contract the following insurance:
 - 8.1. General liability insurance for bodily injury and property damage liability, including without limitation, coverage for explosion, blasting, collapse and destruction of underground utilities (X.C.U.) and coverage for premises, operations, independent contractors, products, contingent liability, including products and completed operations and blanket contractual liability at a combined single limit of at least \$2,000,000 per occurrence with a per project aggregate of \$3,000,000. This insurance shall cover the Developer, the District, the Contractor and all subcontractors for claims or damages of any nature whatsoever, including, but not limited to bodily injury, including wrongful death, as well as other claims for property damage which may arise from operations under this contract, whether such operations be by themselves or by any subcontractor.
 - 8.2. Comprehensive automobile liability, bodily injury and property damage combined single limit of at least \$1,000,000.

HIGHLINE WATER DISTRICT DEVELOPER EXTENSION CONTRACT

- 8.3. Insurance for claims under worker's compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and stop gap liability insurance (employer's contingent liability) with coverage of at least \$1,000,000 each accident/occurrence.

The Contractor shall have the District specifically added as an additional named insured in said policies, all at no cost to the District. The Contractor's insurance shall be designated primary coverage for both indemnity and defense, the District's insurance shall be excess.

9. The Developer shall not permit the Contractor to cause any policy to be canceled or allow any policy to lapse, and all policies shall include a clause to the effect that neither the policy nor certificate of insurance shall be subject to cancellation or reduction from the required limits of liability of amounts of insurance or any other material change until notice has been mailed to the District stating when, not less than 30 days thereafter, such cancellation reduction or change shall be effective.
10. All certificates of insurance and endorsements authenticated by the proper officers of the insurer shall state in particular those insured, the extent of the insurance and the location, character and extent of the work to be performed by the Contractor or subcontractor and said certificates of insurance and endorsements shall be delivered to the District.
11. The Developer shall post a maintenance bond (attachment A) covering a period of two years from the date of acceptance of the Developer Extension. The Bond shall be in an amount equal to 50% of the water system's construction costs or \$5,000, whichever is great for the project in order to:
- 11.1. Insure compliance with the District's standards and specifications and the terms and conditions of this contract.
 - 11.2. Insure the District against any damage to its existing system or the Developer Extension as a result of the Developer's failure to properly perform under this contract.
 - 11.3. Insure the District against any damages or claims by other agencies or private ownership.
12. If the Developer completes the extension(s) and desires service prior to the final paving of streets within the development, then at the District's option and as a

HIGHLINE WATER DISTRICT DEVELOPER EXTENSION CONTRACT

condition of service, a cash completion or substantial completion bond shall be deposited with the District in an amount to be determined by the District Engineer. The amount will be 125% of the cost of work yet to be completed.

CONSTRUCTION

13. Construction shall be performed on behalf of the Developer by a knowledgeable and competent contractor in water system construction (herein referred to as "Contractor") who must be registered in the State of Washington under the Contractor's Registration Act (Chapter 18.27 of the Revised Code of Washington (RCW)), and insured as set forth herein. If the Developer is acting as its own contractor, the Developer must be similarly knowledgeable, competent, registered and insured.
14. Construction shall be performed in compliance with the District's "Standard Specifications" and the current APWA/WSDOT specifications which are both incorporated herein by this reference. The District shall provide a digital copy of the Special Provisions to the Developer. It shall be the obligation of the Developer to obtain its own copy of the specifications.
15. Construction shall be performed in compliance with resolutions, ordinances, rules and requirements of the District and appropriate municipal, county, state and federal agencies.
16. The Developer and the Contractor shall not allow any water to flow through mains or facilities constructed by the Developer unless authorized by the District for temporary use. Permanent water availability to the Developer Extension through the existing lines of the District shall not be made until all provisions and requirements of this contract have been fully complied with and the District has provided written notice of acceptance to the Developer.
17. The Developer shall construct all roads and/or easements to the design sub-grade elevation prior to the start of water system installation. The District shall be advised in writing of any changes in project design that would affect the water system during construction. If the Developer changes the sub-grade elevation of water system installation areas before or after any road completion, the Developer shall be responsible for all costs incurred for the reinstallation of the water system as a result of such change in sub-grade elevation.

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ADMINISTRATIVE COMPLIANCE

18. The Developer Extension shall be complete and accepted within 18 months of the date the Board of Commissioners adopts its resolution accepting Developer's application. If the Developer Extension is not completed and accepted within the 18 month time period, the Developer's rights under this Agreement shall cease and no water services shall be connected to such extension. The District may consent to the extension of the existing Application or the District may require the Developer to submit a new application, in either event, the Developer may be required to pay additional administrative fees and additional legal, engineering, and inspection costs as determined by the District. The District will make its determination of whether an extension is warranted, in the District's sole discretion, based on the projects progression.
19. In the event repairs, restorations or corrections become necessary during the two year maintenance bond period, the Developer upon notification from the District shall make all repairs, restorations and corrections, at the Developer's sole expense within five (5) working days. The District may extend the five day period if, in its sole discretion, conditions warrant such an extension.
20. The District may require immediate (within 24 hours) action by the Developer, or, if the situation requires, the District may respond itself to an emergency situation. The Developer shall reimburse the District within 30 (thirty) days of the date of an invoice from the District for its expenditures in making any and all corrections to the Developer Extension and for restoration of other properties or public rights-of-way.
21. All easement documents for the Developer Extension shall be delivered to the District after construction and prior to acceptance by the District of the Developer Extension. Easements shall be at least twenty feet in width and centered on the water lateral except as expressly allowed by the District. No other lines, mains, services, buildings, or appurtenances shall encroach within the easement, except as expressly allowed by the District. Encroachments shall be removed at no cost to the District. The District's form shall be used for recording of easements.
22. As a condition of the District's acceptance of a Developer Extension the Developer shall execute a Bill of Sale in a form approved by the District that provides for transfer of title of the waterlines and appurtenances of the Developer Extension from the Developer to the District. The Bill of Sale shall include the following warranties:

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DEVELOPER EXTENSION CONTRACT**

- 22.1. That Developer is the lawful owner of said property, and that it is free from all encumbrances.
 - 22.2. That all bills for labor and materials in connection therewith have been fully paid.
 - 22.3. That Developer has the right to transfer the same and that it shall warrant and defend the same against lawful claims and demands of all persons following the date of acceptance of the Bill of Sale by the District.
 - 22.4. That Developer conveys and transfers the waterlines and appurtenances in the Developer Extension to the District for the consideration of incorporating them into the District's water distribution system.
 - 22.5. That for a period of two years from the date of acceptance, the Developer Extension remains in good working order and condition acceptable to the District, and that the Developer shall repair or replace at its own expense any work or materials that may prove to be defective during said two-year period.
23. Upon the District's sole determination, and if warranted, at completion of the Developer Extension, the District and the Developer shall both execute and acknowledge a Latecomer's Agreement which shall be recorded with the King County Recorder at the Developer's expense. The Latecomer's Agreement and procedures are available from the District upon request.

If the Developer anticipates a need for a Latecomer's Agreement, please check the adjacent box. Yes

24. No part of the water main extension or related appurtenances may be constructed without attending a pre-construction meeting to be held at the District's office. The meeting shall be attended by the Developer, Project Contractor and a designated District representative unless otherwise directed by the District. The District's assigned inspector must receive job start notification no fewer than 72 hours in advance of the beginning of construction.

MISCELLANEOUS

25. Throughout this contract, unless the contract requires otherwise, words denoting the singular may be construed as denoting the plural and vice versa, and words of one gender may be construed as denoting such other gender as is appropriate.

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26. The laws of the State of Washington shall govern the interpretation and enforcement of this contract. Any litigation relating to the performance of non-performance of this contract shall be filed in King County Superior Court.
27. The Developer's rights and obligations arising out of this contract are not assignable or transferable without the District's express written consent as conditioned by the District, such consent to be given in the District's sole discretion.
28. In the event this contract is referred to or placed in the hands of an attorney for enforcement of any portion of this contract, or if an arbitration or lawsuit is instituted with respect to this contract, the prevailing party shall be entitled to be paid its reasonable attorneys fees and costs by the other party, including attorney's fees and costs incurred in any appeal.
29. The Developer shall indemnify and defend the District and its elected and appointed officials, employees and agents harmless from and against all claims, losses, demands, payments, suits, actions, costs and judgments of every nature and kind brought or recovered against the District by reason of the act or omission of the Developer and its contractor(s) and agents in the performance of the Developer Extension and for any cost or expense incurred by the District in connection therewith, including, but not limited thereto, attorney fees, expert witness fees and the cost of the services of engineering and other personnel whose time is reasonably devoted to the preparation and attendance at depositions, hearings, settlement conferences, trials and appeals. The Developer shall, at the District's request, furnish satisfactory evidence that all obligations of the foregoing nature have been paid, discharged, or waived.
30. Prior to the acceptance of the Extension, the Developer shall deliver to the District a written release in a form acceptable to the District, of all liens that might arise out of the performance of the work or such other evidence as may be acceptable to the District that there are no liens against the Extension. If any lien arises or remains unsatisfied after the acceptance of the Extension, the Developer shall reimburse the District for any costs and expenses, including attorneys' fees and costs incurred on account of the lien(s).
31. This contract is made entirely for the benefit of the District and the Developer and successors and assigns in interest and no third person or party shall have any rights hereunder whether by agency, as a third party or otherwise.

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DEVELOPER EXTENSION CONTRACT**

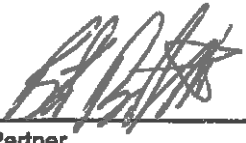
32. The originals of the Extension plans and design ("Plans") shall be delivered to the District in the form required by the District upon completion of the Plans and shall become the property of the District. Neither the Developer nor the Developer's engineer shall have any rights of ownership, copyright, trademark or patent in the Plans.

IN WITNESS WHEREOF the parties have entered into this contract the date first above written.

HIGHLINE WATER DISTRICT

By: _____
Its General Manager

23828 30th Ave S
Kent, WA 98032
Phone: 206-824-0375
Fax: 206-824-0806

By:  _____
Its Local Partner

900 SW 16th Street, Suite 330
Renton, WA 98057
Phone: 206-248-0555
Fax: 916-438-1593

Des Moines Creek Business Park – Phase 3

Legal Description

Lots 4 and 5, City of Des Moines Short Plat No. LUA2013-0036 Alteration, as recorded under recording No. 20160426900009, records of King County, Washington

Polly Daigle

From: Allison Warren <AWarren@panattoni.com>
Sent: Thursday, June 09, 2016 12:42 PM
To: Polly Daigle
Subject: Developer Extension Agreements for Des Moines Creek Phase II and III

Hi Polly,

Per our conversation, the extension agreements were signed by Bart Brynestad. He is the Local Partner and Managing Member of both Des Moines Creek Business Park Phase II, LLC and Des Moines Creek Business Park Phase III, LLC. He will be signing all the Panattoni/Ownership paperwork.

Thank you,

Allison Warren, LEED AP BD+C
Assistant Development Manager
Panattoni Development Company
900 SW 16th Street, Suite 330
Renton, WA 98057
Direct (206) 248-0284
Cell (206) 214-6558
Fax (916) 438-1593
awarren@panattoni.com



Agenda Item No.: 5.2
Agenda Date: 6/15/16
Reviewed By: POD

Subject: Developer Extension – Authorize Developer Extension Agreement
Des Moines Creek Business Park – Phase III (Warehouses)

ATTACHMENTS:

1. Resolution
2. Contract
3. Legal Description
4. Map

BACKGROUND:

Name of DE: Des Moines Creek Business Park – Phase III
Name of Developer: Des Moines Creek Business Park III, LLC
Plat or Subdivision:
Scope of Work: Provide and install approximately 2141 lf 12" water main, 3567 lf 8" water main, 17 fire hydrants, two 1 1/2" services/meter, two 2" services, one 3" service, one 8" fire device, one 10" fire device and related appurtenances needed to supply fire suppression, domestic and irrigation water to 2 new warehouses.

GENERAL LOCATION OF DE: 24XX S 216th Phase 3 - Warehouses

Bill of Sale Dated:

Signed by:

Requesting Latecomers No

Payback Agreement?: Yes No N/A

Deposit Paid?: Yes No N/A

Amt. of Deposit: \$10,000