# RESOLUTION NO. 3545, as AMENDED

**A RESOLUTION** of the Port Commission of the Port of Seattle authorizing the Chief Executive Officer to execute the First Development Agreement between the Port of Seattle and the City of Des Moines to develop property located in the City.

**WHEREAS**, the Port and the City of Des Moines share the economic objective of attracting businesses to the airport vicinity to create family wage jobs, increase the local tax base, and redevelop vacant noise-impacted development near the airport;

**WHEREAS**, in 1996 the City and the Port conducted extensive work on the proposed 55 acre "Des Moines Creek Technology Campus" (DMCTC) project on property located near the airport, but determined that the conditions were unfavorable for development at that time and did not build the project;

**WHEREAS**, the City and the Port seek to encourage the development of the former DMCTC property, now called the "Des Moines Creek Business Park" property, for commercial development in order to achieve the economic development purposes described above;

**WHEREAS**, in order to achieve these purposes, the City and the Port propose to enter into the "First Development Agreement" attached to this resolution to establish the land use regulatory parameters for development of the Des Moines Creek Business Park property

**NOW, THEREFORE, BE IT RESOLVED** by the Port Commission of the Port of Seattle that:

Section 1. The Chief Executive Officer is authorized to execute the First Development Agreement between the City of Des Moines and the Port substantially in the form attached to this Resolution as Exhibit "A".

Section 2. A fully executed copy of the First Development Agreement between the City of Des Moines and the Port will be attached to this Resolution as Exhibit "B".

**ADOPTED** by the Port Commission of the Port of Seattle at a ~~regular~~ special meeting thereof, held this 28th day of June, 2005, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

BOB EDWARDS

LAWRENCE T. MOLLOY

ALEC FISKEN

PATRICIA DAVIS

PAIGE MILLER

Port Commission

# Exhibit "A" to Resolution No. 3545, as Amended

## FIRST DEVELOPMENT AGREEMENT
## CITY OF DES MOINES AND PORT OF SEATTLE
## DEVELOPMENT OF THE DES MOINES CREEK BUSINESS PARK PROPERTY

In accordance with RCW 36.70B.170-.210, and under the authority granted to municipal corporations under the Interlocal Cooperation Act, RCW Chapter 39.34, to enter into agreements for joint performance of actions within their separate powers, this DEVELOPMENT AGREEMENT (Agreement) is entered into effective the __ day of _____, 2005 between the City of Des Moines ("City"), a Washington municipal corporation and the Port of Seattle ("Port"), a Washington municipal corporation.

### RECITALS

**WHEREAS,** the City of Des Moines is a municipal corporation with authority under the Growth Management Act, Chapter 36.70A RCW; the Planning Enabling Act, Chapter 35.70 RCW; the State Environmental Policy Act (SEPA), Chapter 43.21C RCW; and other state and local laws, to exercise discretionary land use jurisdiction over real property located within its boundaries, and

**WHEREAS,** the Port of Seattle 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,** the Port has acquired property located in the City of Des Moines located on South 216th Avenue on the South and 24th Avenue South on the east, a map of which is included as Exhibit 1 of the agreement, under the Federal Aviation Administration "Part 150 regulations" for the purposes of aircraft noise mitigation, and

**WHEREAS,** the property is currently vacant and the Port would like to make the property available for commercial development, the types of which are further detailed in Exhibit 2 of the agreement, that is compatible with the airport, buffers the community from airport impacts, and provides a source of revenue for the airport noise mitigation program, and

**WHEREAS,** the City and the Port are partners with other local cities in the Central Puget Sound Economic Development District's "New Economic Strategy Triangle" (NEST) study that evaluated the potential for economic growth associated with vacant industrial and commercial areas surrounding Seattle-Tacoma International Airport, and

**WHEREAS,** the Port and City share the economic objective of attracting and retaining businesses to the region to create family wage jobs, seeking to increase the local and regional tax

base, providing goods and services that benefit the public and redeveloping vacant noise-impacted property near the airport, and

**WHEREAS,** failure to redevelop this site would continue to have a negative economic impact to both the City of Des Moines and the Port of Seattle, and

**WHEREAS,** in 1996, the City and the Port conducted extensive work on the proposed 55 acre "Des Moines Creek Technology Campus" (DMCTC) project, and

**WHEREAS,** in 1996 the City of Des Moines adopted an environmental impact statement (EIS), master plan and conditions of approval for the DMCTC project, but the economic conditions were unfavorable for development and the project was not built, and

**WHEREAS,** the City and the Port now seek to encourage the development of Port property for commercial purposes in order to achieve the airport noise mitigation, airport community buffer, and economic development objectives described above, and

**WHEREAS,** the Port intends to select a private developer to develop and build a commercial development project on the property, and

**WHEREAS,** entering into this Development Agreement under RCW 36.70B.170-.210 is within the authority granted to municipal corporations under the Interlocal Cooperation Act, RCW Chapter 39.34, to enter into agreements for joint performance of actions within their separate powers, and

**WHEREAS,** this Development Agreement is consistent with the applicable development regulations adopted by the City and by the Port as modified pursuant to the authority of RCW 36.70B.180, and

**WHEREAS,** the Des Moines City Council, as the City's legislative body or when sitting as a quasi-judicial body cannot make any additional advance commitments and cannot pre-judge the consistency of any proposed development of the property with the public health, safety and welfare, and

**WHEREAS,** the Federal Aviation Administration must review and approve the use or disposal of Airport property, payment of airport funds for any purpose and agreements pertaining to leases of airport property, and

**WHEREAS,** both the City and the Port are investing in and risking substantial financial, real property, construction-related and political resources on the success of this collaborative project, with the Port's investment and risk including use of restricted FAA funds, costs of

development planning, and the City's investment and risk including loss of control of its public streets, environmental concerns, public support or opposition, and its future economic development; such that both parties recognize the necessity of good-faith completion of all steps of the process and anticipated subsequent agreements set forth in this Agreement;

**NOW, THEREFORE,** for good and valuable deliberation, the adequacy of which is acknowledged here, the Port and the City agree as follows:

## AGREEMENT

### I. Purpose of This Agreement.

This agreement will:

(1) Address jurisdictional authority issues;

(2) Set forth permitted uses of the property (Exhibit 2);

(3) Set forth and authorize an overall development process for development of this property;

(4) Set forth a recommended time schedule for implementation of this development (Exhibit 3);

(5) Authorize use of a Second Development Agreement-Conceptual Master Plan between the City of Des Moines and the Port of Seattle for development of this property, and set forth a process for SEPA review associated with the Second Development Agreement-Conceptual-Master Plan;

(6) Set forth additional detail applicable to the process for the Des Moines City Council legislative decision on street vacations that will be requested by the Port of Seattle;

(7) Authorize use of the Master Plan process under Des Moines Municipal Code Chapter 18.25, between the City (as decision maker) and a developer (as applicant) selected by the Port, as the appropriate process to implement actual development of the property;

(8) Set forth agreements concerning SEPA authority for all phases of development of this property;

(9) Set forth standards and processes governing the relationship between the parties; and

(10) Set forth miscellaneous agreements to date.

## II. Definitions.

(1) **"Agreement"** means this First Development Agreement, governed by provisions of Chapter 36.70B RCW.

(2) **"City"** means the City of Des Moines.

(3) **"Conceptual Master Plan"** means a section of the second Development Agreement under RCW 36.70B.170-.210 between the City and the Port that, among other actions, will set forth concept level development plans for, and impacts of development, including but not limited to traffic, surface water, building mass, general building location, associated parking, general open space areas, loading facilities and square footage of buildings, of the proposed commercial development of the property.

(4) **"Consultant"** means the business entity with whom the Port contracts to assist it in developing the property.

(5) **"Environmental documents"** means documents prepared pursuant to the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA).

(6) **"Lead agency"** means the agency responsible for carrying out SEPA's procedural requirements as defined by WAC 197-11-758.

(7) **"Master Plan"** means the development process set forth in Des Moines Municipal Code Chapter 18.25, between the City (as decision maker) and the developer (as applicant) selected by the Port to implement development of the property with uses as detailed in Exhibit 2.

(8) **"Party" or "parties"** means the City and the Port.

(9) **"Port"** means the Port of Seattle.

(10) **"Property"** means the real property located on the map in Exhibit 1 which is attached to this agreement and incorporated by reference.

(11) **"Responsible Official"** means the officials for the City, the Port or both who are designated to undertake SEPA's procedural responsibilities.

(12) **Second Development Agreement – Conceptual Master Plan"** means one subsequent Agreement entered into between the City and the Port, governed by the provisions of Chapter 36.70B.RCW.

## III. Jurisdictional Authority: Agreements Concerning Land Use Jurisdiction.

(1) **Property ownership.** The Port owns the property which is located within the City limits and is detailed in Exhibit 1.

(2) **Land use discretionary authority.** As municipal corporations, the City and the Port each have statutory authority to exercise discretionary land use jurisdiction over comprehensive planning, zoning, grading, critical areas, regulatory controls, and SEPA review. The City of Des Moines is a municipal corporation with authority under the Growth Management Act, Chapter 36.70A RCW; the Planning Enabling Act, Chapter 35.70 RCW; the State Environmental Policy Act (SEPA), Chapter 43.21C RCW; and other state and local laws, to exercise discretionary land use jurisdiction over real property located with its boundaries. The Port of Seattle 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 the Port owns.

(3) **Scope and extent issues.** The parties recognize that they may not agree upon the scope and extent to which they might exercise their respective legal authority concerning the development of the property.

(4) **Agreement governs.** In order to avoid conflicts over their respective authority and to avoid delay in developing the property, the parties agree to allow the provisions of this Agreement and any subsequent agreements or governmental actions entered into as contemplated in this Development Agreement to govern the development of the property.

(5) **Non-waiver.** In entering into this Development Agreement and any subsequent agreements or governmental actions entered into as contemplated in this Development Agreement, the parties do not concede any authority or waive any argument they might make in any legal proceeding concerning the scope and nature of their respective legal authorities concerning discretionary land use jurisdiction.

## IV. Permitted Uses.

(1) **List of uses adopted.** As authorized pursuant to RCW 36.70B.180, under this Development Agreement, and under the subsequent Second Development Agreement - Conceptual Master Plan entered into as contemplated in this Development Agreement, the property may be used for any of the uses identified in Exhibit 2, which is attached to this Agreement and incorporated by reference.

(2) **List of uses allowed.** Both parties agree that in lieu of the uses listed in DMMC 18.25, only the uses set forth in Exhibit 2, and others similar in nature as determined by the Community Development Director or city designee under the process set forth in Des Moines Municipal Code Section 18.25.020 shall be allowed in this development.

(3) **No additional use approvals required.** Under this Development Agreement, and under the subsequent Second Development Agreement-Conceptual Master Plan as contemplated in this Development Agreement, the Port and its developer shall not be required to obtain any other use approvals or use-related permits from the City to use the property for any of the uses listed in Exhibit 2 except those administrative permits required for building construction, including but not limited to, right-of-way permits, land clearing and grading permits, building permits, etc.

## V. Overall Development Process

(1) **Order.** The following major steps will be taken in the process of planning for potential development of the property, in the following general order. To expedite time-consuming processes, later steps in the process may be initiated by filing appropriate applications and required supporting documentation prior to completion of earlier steps in the process, but neither party may be required to complete a later step in the process until completion of all earlier steps in the process by both parties. For example, the Port may prepare an application for street vacations at any time (Step 3), but the parties agree that the City will not approve street vacations until the parties have approved a binding Second Development Agreement - Conceptual Master Plan (Step 2).

(2) **Time Schedule.** The parties agree that the terms and conditions of this Development Agreement shall be implemented pursuant to the recommended time schedule set forth in the Proposed Des Moines Creek Development Timeline attached to this agreement as Exhibit 3. While both parties acknowledge the proposed Des Moines Creek Development Timeline reflects their mutual desire to expeditiously move towards development at this site, the parties agree to use the timeline for guidance only.

(3) **Steps.**

**Step 1. First Development Agreement.** This First Development Agreement shall be presented to the City Council and the Port Commission for review and approval, as provided for in RCW 36.70B.200.

**Step 2. Second Development Agreement-Conceptual Master Plan.**

(1) **Subsequent Second Development Agreement-Conceptual Master Plan.** The parties contemplate that this Development Agreement will be followed by a Second Development Agreement-Conceptual Master Plan executed under RCW 36.70B.170-.210 and entered into between the City and the Port as owner of the property, setting forth certain provisions governing the development of the property.

(2) **Description.** The Conceptual Master Plan will be a section of the Second Development Agreement – Conceptual Master Plan under RCW 36.70B.170-.210 between the City and the Port that will set forth conceptual site plans for and impacts of development, including but not limited to traffic, surface water, building mass, general building location and open space, square footage of buildings, and associated parking and loading facilities of the proposed commercial development of the property. In developing the Conceptual Master Plan portion of the Second Development Agreement, the parties may utilize the master plan site plan and associated SEPA analysis developed during the DMCTC process, as well as additional master planning work that they may agree is appropriate and meets the intent of the proposed SEPA planned action and the requirements of that section of the Second Development Agreement – Conceptual Master Plan.

(3) **SEPA.** SEPA review of the Conceptual Master Plan will be conducted on a "planned action" basis as authorized under RCW 43.21C.031 and WAC 197-11-164 through WAC 197-11-172. Both parties agree that, except for the identification of new probable significant adverse environmental impacts as determined by the SEPA responsible official, no other SEPA review will be necessary if development occurs within the parameters evaluated in the planned action.

(4) **Parties Acknowledge Permits Regarding Critical Areas.** The parties agree that within the City of Des Moines there are certain environmentally critical areas that are special concerns to the City. The parties agree that the preservation, restoration and development within these areas are regulated by 18.86 DMMC. The parties further recognize specifically that the areas within the business park may also be subject to separate state and federal regulations and permits. The parties acknowledge that in the event that state or federal permits regarding these critical areas are issued, these permits shall control over the provisions of Chapter 18.86 DMMC. Nothing in this paragraph shall prevent either party from utilizing the Conflict Resolution

procedures of this Agreement, including any additional legal remedies, in the event of disagreement concerning environmentally critical areas.

**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.

(2) **Port to apply for street vacation.** The Port will apply to the City for vacation of the streets pursuant to the provisions of Chapter 35.79 RCW and Chapter 12.12 Des Moines Municipal Code (DMMC). The City shall process the application pursuant to the provisions of Chapter 35.79 RCW and Chapter 12.12 Des Moines Municipal Code (DMMC). The Des Moines City Council shall make its discretionary legislative decision concerning the Port's petition for street vacation in compliance with the provisions of Chapter 35.79 RCW and Chapter 12.12 Des Moines Municipal Code (DMMC) and applicable case law. Nothing in this Agreement commits the City to any particular decision with respect to the Port's petition for street vacation.

(3) **Valuation of any vacated streets.** If the City does not agree with the valuation of any street proposed for vacation, as determined by an independent appraiser hired by the Port and approved by the City, the parties will jointly hire another appraiser and will share equally the costs of this appraisal. If the parties jointly hire an appraiser to determine the fair market value of the streets, the parties agree to accept this joint appraisal as the reasonable fair market value of the streets.

**Step 4. Master Plan.** The parties contemplate that this Development Agreement and the subsequent Second Development Agreement-Conceptual Master Plan will be followed by a Master Plan as defined in 18.25 DMMC, between the City (as decision maker) and the developer (as applicant) who is selected by the Port to develop and build the commercial development on the property. That Master Plan will be based upon and shall incorporate by reference the provisions of this Development Agreement and of the Second Development Agreement-Conceptual Master Plan.

(1) **Additional Development Agreement.** Nothing in this Agreement precludes the City and the developer who is selected by the Port from entering into an additional development agreement under Chapter 36.70B RCW to complete development of the property.

(2) **Master Plan SEPA Review.** Both parties agree that except for identification of new probable significant adverse environmental impacts as determined by the SEPA responsible official, no additional SEPA review of the Master Plan or any additional development agreement will be required if development occurs within the parameters evaluated in the planned action review set forth in Step 2, Item 3 above, authorized under RCW 43.21C.031 and WAC 197-11-164 through WAC 197-11-172.

## VI. SEPA Review For All Project Phases.

(1) **SEPA Review for the First Development Agreement.** The parties agree that adoption of this Agreement by the City and by the Port is categorically exempt from SEPA review, as a governmental procedural action pursuant to WAC 197-11-800(19).

(2) **SEPA Review for the Second Development Agreement – Conceptual Master Plan.** The parties agree that SEPA review is likely required for consideration and adoption of the second development agreement which will include the conceptual master plan. In the event that an environmental impact statement (EIS) is required, the parties further agree that as authorized under WAC 197-11-164-172, the EIS shall be a "planned action". The parties also agree that in development of the planned action, as is authorized by WAC 197-11-600, a thorough assessment of existing EIS documents, including but not limited to, the Sea-Tac International Airport Master Plan Update EIS, the Des Moines Creek Technology Campus EIS and the Greater Des Moines Comprehensive Plan EIS shall be conducted as part of the environmental review for the planned action. Both parties agree that except for the identification of new probable significant impacts as determined by the SEPA responsible official, no other SEPA review will be necessary if development occurs within the parameters evaluated in the planned action.

(3) **Available Environmental Review Documents.** The parties acknowledge that several environmental review documents have already been prepared for certain proposals concerning the property. These are set forth in Exhibit 4, attached hereto and incorporated by reference.

(4) **Co-lead Agencies.** The parties agree to act as co-lead agencies for the purposes of environmental review of the proposals that are the subjects of this Agreement as per WAC 197-11-944.

(5) **Additional Environmental Review.** As co-lead agencies, the parties will determine whether the existing environmental review documents as defined in WAC 197-11-600 adequately identify the probable significant adverse environmental impacts of the development proposal and will agree whether any additional environmental review is required.

(6) **Environmental Mitigation Requirements.** The parties recognize that as co-lead agencies, each agency has the right to determine appropriate SEPA mitigation. The parties will work together to agree about the appropriate mitigation for the development.

(7) **Nominal Lead Agency for SEPA Appeals.** The parties agree that because the City of Des Moines is the final permitting/adopting authority for several actions including all permits related to building construction contained in this and future agreements, the City of Des Moines shall act as nominal lead agency for all SEPA actions, and that all SEPA appeals will be subject to DMMC 18.56.

## VII. Relationship Between the Parties.

(1) **Meetings and Representation.** The parties shall each appoint a representative to facilitate the completion of the activities that are subject to this agreement. The representative shall communicate with their principals, develop documents, review consultant work and attend meetings with agencies and interested persons. Those representatives are: Des Moines City Manager and Managing Director, Sea-Tac International Airport.

(2) **Costs and Fees.** The parties shall share the cost in the creation of this agreement. The Port shall be solely responsible for costs associated with the creation of the conceptual master plan and developer RFP process. Except for the selection of the SEPA consultant, who the parties shall select together, the Port has control and approval over the selection of any consultants, their work and schedules, but agrees to consider and work cooperatively with the City about any City comments concerning the consultant's work. The Port shall select the consultants, but the City will be provided notice and invited to join the interview process. In reference to the SEPA consultant, the City and Port shall select the consultant together and shall jointly review and agree upon any work, schedules or other issues associated with the consultant's work.

The parties agree that regarding selection of the consultant for the SEPA planned action environmental review, the Port shall be solely responsible for all costs associated with this document including, but not limited to, all public processes associated with development and processing of the environmental review documents.

(3) **Good Faith.** The parties agree to act in good faith to carry out the terms of this agreement.

(4) **Cooperation Between the Parties**. The parties recognize that the Port may enter into contractual agreements with other parties related to the implementation of this agreement which result may affect the ability of the parties to implement the terms of this agreement. In the events that such delays occur, the parties agree to cooperate to resolve these delays.

(5) **Conflict Resolution.** The representatives of each party shall endeavor to resolve any issues that may arise concerning the implementation of this agreement. If the representatives are unable to resolve an issue, they shall refer the matter to the Managing Director of Aviation for the Port and the City Manager for resolution. If the Managing Director and the City Manager cannot resolve the issue, then the matter shall be resolved by two members of the Port Commission and two members of the City Council. Any further unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. By agreeing to these conflict resolution procedures, the parties do not waive any legal remedies allowed by any court of competent jurisdiction.

## VIII. Miscellaneous Agreements.

(1) **Entire Understanding**. This Development Agreement and the exhibits attached to it and incorporated by reference comprise the entire agreement of the parties and supersede any and all prior written or oral agreements.

(2) **Real Property.** The parties do not intend to acquire, hold or dispose of any jointly owned real or personal property in connection with the performance of this Agreement.

(3) **Effect of this Agreement.** The provisions of RCW 36.70B.180 concerning the effectiveness of this Agreement govern its terms.

(4) **Agreement Modification**. This Development Agreement may be amended or modified only by written agreement of the parties, as limited by the requirements of RCW 36.70B.180.

(5) **Duration and Termination.** This agreement shall remain in effect until the actions required herein are complete, unless otherwise terminated by a party. Other than as may be prohibited by law, and specifically subject to the limitations of RCW 36.70B.180, the parties may terminate this agreement by seven days written notice. Termination of this agreement shall not result in termination of any other legally binding agreement or action based upon this

development agreement unless such additional termination is required under the terms of such other agreement or action. Notice of termination shall be sent to the following addresses: City of Des Moines, 21630 11th Avenue South, Suite A, Des Moines Washington 98198, and Port of Seattle, Post Office Box 68727 Seattle Washington 98168.

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(6) **Effective date.** This agreement shall become effective upon the approval of and signature by the City Council and the Port Commission.

**PORT OF SEATTLE**, a Washington municipal corporation

By: _____
Mark M Reis
Managing Director, Aviation Division

Dated: _____

Approved as to form:

_____
Port of Seattle Attorney

**CITY OF DES MOINES**, a Washington municipal corporation

By: _____
Anthony A. Piasecki
City Manager

Dated: _____

By Direction of the Des Moines City Council in
Open Public Meeting of _____

Approved as to form:

_____
City of Des Moines Attorney

# EXHIBIT 1
# MAP AND LEGAL DESCRIPTION

LEGAL DESCRIPTION
BORROW AREA ONE BOUNDARY WITHIN THE CITY OF DES MOINES CITY LIMITS

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M. CITY OF DES MOINES, KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 9, THENCE NORTH 89°52'02" WEST, ALONG THE NORTH SECTION LINE OF SAID SECTION 9, A DISTANCE OF 27.06 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00°38'05" EAST, ALONG THE WEST MARGIN OF 24TH AVENUE SOUTH, A DISTANCE OF 30.06 FEET;
THENCE CONTINUING ALONG SAID MARGIN, SOUTH 00°19'34" EAST, A DISTANCE OF 2,577.25 FEET TO THE NORTH MARGIN OF SOUTH 216TH STREET;
THENCE NORTH 89°44'06" WEST ALONG SAID NORTH MARGIN, A DISTANCE OF 1,594.65 FEET;
THENCE NORTH 03°10'47" EAST, A DISTANCE OF 360.56 FEET;
THENCE NORTH 11°18'36" WEST, A DISTANCE OF 509.90 FEET;
THENCE NORTH 02°32'41" WEST, A DISTANCE OF 450.44 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 400.00 FEET;
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 650.00 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 150.00 FEET;
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 620.00 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 200.00 FEET;
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 22.74 FEET;
THENCE SOUTH 89°52'02" EAST, ALONG THE NORTH SECTION LINE OF SAID SECTION 9, A DISTANCE OF 1,229.64 FEET TO THE TRUE POINT OF BEGINNING.

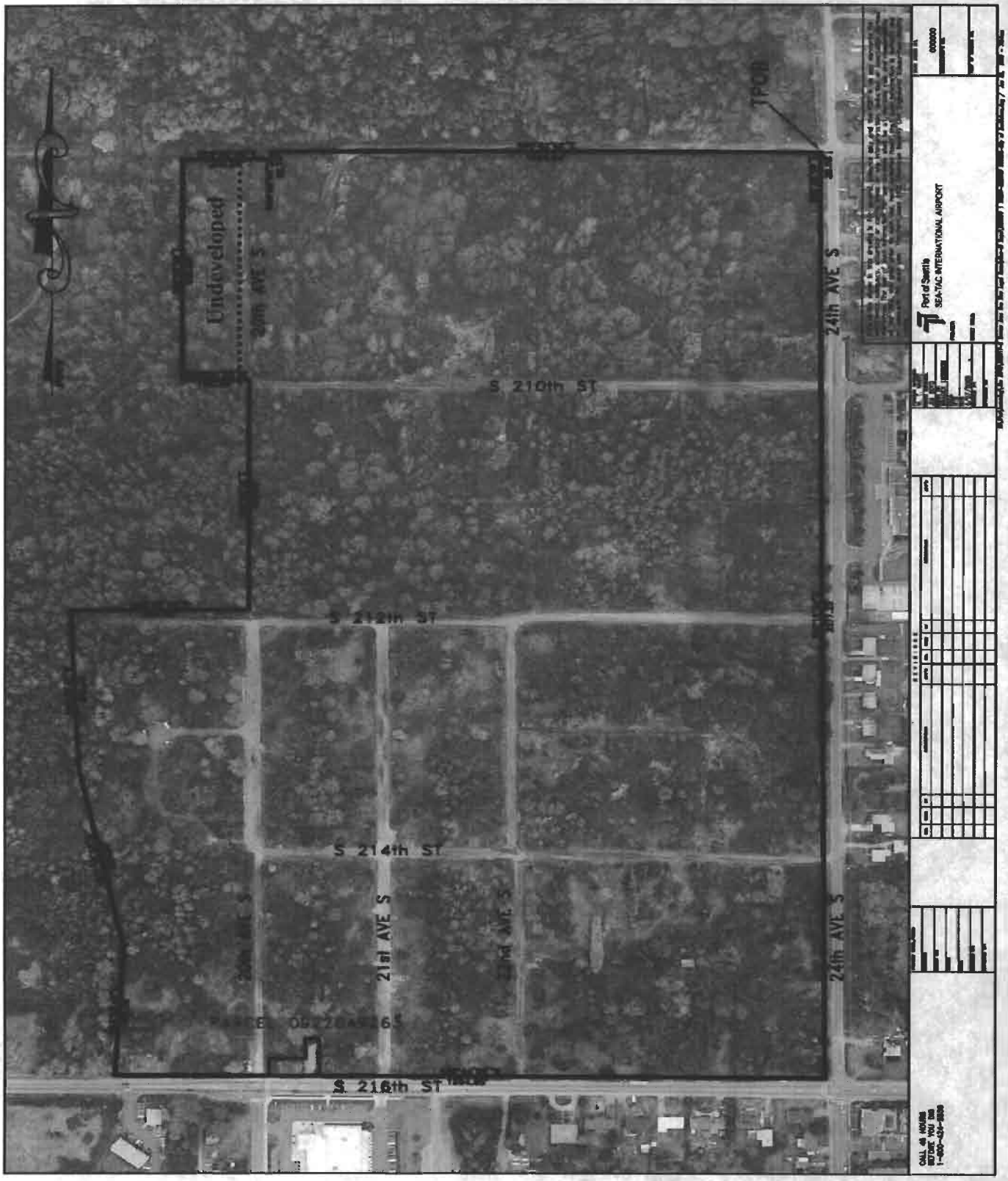
CONTAINING 3,891,091 SQUARE FEET OR 89.33 ACRES, MORE OR LESS.

EXCEPT

KING COUNTY ASSESSOR
PARCEL NUMBER 0922049263

June 7, 2005.

# Exhibit 1 – Map and Legal Description



## EXHIBIT 2

## DES MOINES CREEK BUSINESS PARK USES

Only those uses listed below, in uses similar in nature as determined by the Community Development Director or city designee may be permitted in the Des Moines Creek Business Park

(1)Services, limited to the following:

(a) Business services (73);
(b) Engineering, accounting, research, management, and related services (87);
(c) Legal services (81);
(d) Medical and dental clinics and laboratories (801-804 and 809);
(e) Repair services (76), excluding repair of automobile and other large or motorized vehicles;
(f) Personal services (72);
(g) Recreation services, such as health clubs, athletic clubs, swimming pools, and tennis courts (791, 7991 and 7997), but not including theaters, bowling alleys, amusement arcades, and the like;
(h) Museums and art galleries (841);
(i) Social services (83), including nursery schools and day care centers;
(j) Educational institutions (82);
(k) Business associations, professional associations, fraternal lodges, and similar uses (861-865 and 869);
(m) Conference and meeting facilities (no SIC code);

(2) Finance, insurance and real estate institutions and services (60-67);

(3) Light manufacturing, fabrication, and assembly of the following and closely related products:

(a) Food products (20), excluding meat packing and airline food
(b) Apparel, fabric, and textile products (22 and 23);
(c) Lumber and wood products (24);
(d) Furniture and fixtures (25);
(e) Paper products (26), but excluding paper and pulp manufacturing;
(f) Chemical related products (28), but excluding manufacture of flammable, dangerous, or explosive materials;
(g) Plastic and rubber products (30);
(h) Computer and office and equipment (357);
(i) Small electrical equipment and components, such as appliances, lighting, electronics, and communications equipment (36);
(j) All uses allowed under SIC (34) "Fabricated metal products, except machinery and transportation equipment";
(k) Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks (38) and avionics (no SIC);
(l) Printing and publishing and allied products manufacturing (27);
(m) Stone, clay, glass, ceramics, pottery, china, and similar products (32);
(n) Toys, jewelry, musical instruments, signs, and other miscellaneous items (39);

(4) Wholesale trade of general merchandise, products, supplies, materials, and equipment, including sales offices for these goods (50 and 51); motor freight transportation and warehousing (42), transportation by air (45), and packing and crating (4783) excluding air transportation (451) and airports, flying fields and airport terminal services (458) are allowed as permitted uses when appropriately mitigated for excessive truck traffic and large unsightly buildings;
(5) Building and special trade contractors (15 and 17);
(6) Retail trade, limited to the following:
(a) Restaurants (5812);
(b) Nurseries and greenhouses for the growing and sale of plants (5261);
(c) Retail uses selling products and providing services which are of a type and are located and designed to serve other business park tenants without attracting a significant number of patrons from outside the business park;
(d) Airline ticket sales and reservations (4729)
(e) Sales offices including, but not limited to, those sales offices related to light manufacturing in #3 and wholesale trade in #4(no SIC)
(f) Specialty retail when consistant with the Comprehensive Plan and approved by the Community Development Director or their designee
(a) Department Stores (531)
(b) Variety Stores (533)
(c) Miscellaneous General Merchandise Stores (539)
(d) Home Furniture, Furnishing and Equipment Stores (Major Group 57)
(7) Public facilities, including the following:
(a) Public parks (no SIC code);
(b) Government offices and facilities (91-97);
(c) Public utilities (48 and 49), excluding the production or storage, other than for use by the utility, of petroleum products;
(8) Operation of foreign trade zones limited to the uses listed above

**EXHIBIT 3**
**PROPOSED DES MOINES CREEK DEVELOPMENT TIMELINE**
**May 2005**

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|---|---|
| May 16, 2005 | Staff finalize first development agreement |
| May 16, 2005 | Advertise city public hearing on development agreement |
| May 26, 2005 | Public Hearing on development agreement |
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| March 2006 | City of Des Moines and Port of Seattle decisions on 2nd Development Agreement |

## EXHIBIT 4
## AVAILABLE ENVIRONMENTAL DOCUMENTS

- Draft Environmental Impact Statement for the Proposed Master Plan Update Development Actions at Seattle-Tacoma International Airport, April, 1995.

- Final Environmental Impact Statement for the Proposed Master Plan Update Development Actions at Seattle-Tacoma International Airport, February, 1996

- Final Supplemental Environmental Impact Statement for the Proposed Master Plan Update Development Actions at Seattle-Tacoma International Airport, May 1997.

- Water Quality Certification Order #1996-4-02325 (Amended-2)

- Department of the Army Permit #1996-4-02325, issued under the Section 404 of the Clean Water Act, 12/13/02.

- Final Environmental Impact Statement, Des Moines Creek Technology Campus, May 1995

- Draft Environmental Impact Statement, Greater Des Moines Comprehensive Plan, 1995

- Final Environmental Impact Statement, Greater Des Moines Comprehensive Plan, 1995

- Revised Draft Environmental Impact Statement SR-509/I-5 Freight and Congestion Relief Project, 2002

- Final Environmental Impact Statement SR-509/I-5 Freight and Congestion Relief Project, 2003

Resolution No. 3545, as Amended
Exhibit "B"

# AGREEMENT
# PORT OF SEATTLE
# BUSINESS PARK PROPERTY

...dance with RCW 36.70B.170-.210, and under the authority granted to municipal ...ations under the Interlocal Cooperation Act, RCW Chapter 39.34, to enter into agreements ...int performance of actions within their separate powers, this DEVELOPMENT ...EMENT (Agreement) is entered into effective the 11 day of July, 2005 between ...y of Des Moines ("City"), a Washington municipal corporation and the Port of Seattle ..."), a Washington municipal corporation.

## RECITALS

WHEREAS, the City of Des Moines is a municipal corporation with authority under the ...owth Management Act, Chapter 36.70A RCW; the Planning Enabling Act, Chapter 36.70 ...V; the State Environmental Policy Act (SEPA), Chapter 43.21C RCW; and other state and ...l laws, to exercise discretionary land use jurisdiction over real property located within its ...ndaries, and

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

WHEREAS, the Port has acquired property located in the City of Des Moines located on ...h 216th Avenue on the south and 24th Avenue South on the east, a map of which is included ...hibit 1 of the agreement, under the Federal Aviation Administration "Part 150 regulations" ...e purposes of aircraft noise mitigation, and

WHEREAS, the property is currently vacant and the Port would like to make the ...operty available for commercial development, the types of which are further detailed in Exhibit ... of the agreement, that is compatible with the airport, buffers the ...mpacts, and provides a source of revenue for the airport noise mitigation ...

WHEREAS, the City and the Port are partners with other local ...

[redacted]

...l tax

(9) Set forth standards and processes governing the relationship between the parties; and

(10) Set forth miscellaneous agreements to date.

## II. Definitions.

(1) **"Agreement"** means this First Development Agreement, governed by provisions of Chapter 36.70B RCW.

(2) **"City"** means the City of Des Moines.

(3) **"Conceptual Master Plan"** means a section of the second Development Agreement under RCW 36.70B.170-.210 between the City and the Port that, among other actions, will set forth concept level development plans for, and impacts of development, including but not limited to traffic, surface water, building mass, general building location, associated parking, general open space areas, loading facilities and square footage of buildings, of the proposed commercial development of the property.

(4) **"Consultant"** means the business entity with whom the Port contracts to assist it in developing the property.

(5) **"Environmental documents"** means documents prepared pursuant to the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA).

(6) **"Lead agency"** means the agency responsible for carrying out SEPA's procedural requirements as defined by WAC 197-11-758.

(7) **"Master Plan"** means the development process set forth in Des Moines Municipal Code Chapter 18.25, between the City (as decision maker) and the developer (as applicant) selected by the Port to implement development of the property with uses as detailed in Exhibit 2.

(8) **"Party"** or "parties" means the City and the Port.

(9) **"Port"** means the Port of Seattle.

(10) **"Property"** means the real property located on the map in Exhibit 1 which is attached to this agreement and incorporated by reference.

(11) **"Responsible Official"** means the officials for the City, the Port or both who are designated to undertake SEPA's procedural responsibilities.

(12) **"Second Development Agreement – Conceptual Master Plan"** means one subsequent Agreement entered into between the City and the Port, governed by the provisions of Chapter 36.70B.RCW.

**III. Jurisdictional Authority: Agreements Concerning Land Use Jurisdiction.**

(1) **Property ownership.** The Port owns the property which is located within the City limits and is detailed in Exhibit 1.

(2) **Land use discretionary authority.** As municipal corporations, the City and the Port each have statutory authority to exercise discretionary land use jurisdiction over comprehensive planning, zoning, grading, critical areas, regulatory controls, and SEPA review. The City of Des Moines is a municipal corporation with authority under the Growth Management Act, Chapter 36.70A RCW; the Planning Enabling Act, Chapter 35.70 RCW; the State Environmental Policy Act (SEPA), Chapter 43.21C RCW; and other state and local laws, to exercise discretionary land use jurisdiction over real property located with its boundaries. The Port of Seattle 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 the Port owns.

(3) **Scope and extent issues.** The parties recognize that they may not agree upon the scope and extent to which they might exercise their respective legal authority concerning the development of the property.

(4) **Agreement governs.** In order to avoid conflicts over their respective authority and to avoid delay in developing the property, the parties agree to allow the provisions of this Agreement and any subsequent agreements or governmental actions entered into as contemplated in this Development Agreement to govern the development of the property.

(5) **Non-waiver.** In entering into this Development Agreement and any subsequent agreements or governmental actions entered into as contemplated in this Development Agreement, the parties do not concede any authority or waive any argument they might make in any legal proceeding concerning the scope and nature of their respective legal authorities concerning discretionary land use jurisdiction.

## IV. Permitted Uses.

(1) **List of uses adopted.** As authorized pursuant to RCW 36.70B.180, under this Development Agreement, and under the subsequent Second Development Agreement - Conceptual Master Plan entered into as contemplated in this Development Agreement, the property may be used for any of the uses identified in Exhibit 2, which is attached to this Agreement and incorporated by reference.

(2) **List of uses allowed.** Both parties agree that in lieu of the uses listed in DMMC 18.25, only the uses set forth in Exhibit 2, and others similar in nature as determined by the Community Development Director or city designee under the process set forth in Des Moines Municipal Code Section 18.25.020 shall be allowed in this development.

(3) **No additional use approvals required.** Under this Development Agreement, and under the subsequent Second Development Agreement-Conceptual Master Plan as contemplated in this Development Agreement, the Port and its developer shall not be required to obtain any other use approvals or use-related permits from the City to use the property for any of the uses listed in Exhibit 2 except those administrative permits required for building construction, including but not limited to, right-of-way permits, land clearing and grading permits, building permits, etc.

## V. Overall Development Process

(1) **Order.** The following major steps will be taken in the process of planning for potential development of the property, in the following general order. To expedite time-consuming processes, later steps in the process may be initiated by filing appropriate applications and required supporting documentation prior to completion of earlier steps in the process, but neither party may be required to complete a later step in the process until completion of all earlier steps in the process by both parties. For example, the Port may prepare an application for street vacations at any time (Step 3), but the parties agree that the City will not approve street vacations until the parties have approved a binding Second Development Agreement - Conceptual Master Plan (Step 2).

(2) **Time Schedule.** The parties agree that the terms and conditions of this Development Agreement shall be implemented pursuant to the recommended time schedule set forth in the Proposed Des Moines Creek Development Timeline attached to this agreement as Exhibit 3. While both parties acknowledge the proposed Des Moines Creek Development Timeline reflects their mutual desire to expeditiously move towards development at this site, the parties agree to use the timeline for guidance only.

(3) **Steps.**

Step 1. First Development Agreement. This First Development Agreement shall be presented to the City Council and the Port Commission for review and approval, as provided for in RCW 36.70B.200.

Step 2. Second Development Agreement-Conceptual Master Plan.

(1) **Subsequent Second Development Agreement-Conceptual Master Plan.** The parties contemplate that this Development Agreement will be followed by a Second Development Agreement-Conceptual Master Plan executed under RCW 36.70B.170-.210 and entered into between the City and the Port as owner of the property, setting forth certain provisions governing the development of the property.

(2) **Description.** The Conceptual Master Plan will be a section of the Second Development Agreement – Conceptual Master Plan under RCW 36.70B.170-.210 between the City and the Port that will set forth conceptual site plans for and impacts of development, including but not limited to traffic, surface water, building mass, general building location and open space, square footage of buildings, and associated parking and loading facilities of the proposed commercial development of the property. In developing the Conceptual Master Plan portion of the Second Development Agreement, the parties may utilize the master plan site plan and associated SEPA analysis developed during the DMCTC process, as well as additional master planning work that they may agree is appropriate and meets the intent of the proposed SEPA planned action and the requirements of that section of the Second Development Agreement – Conceptual Master Plan.

(3) **SEPA.** SEPA review of the Conceptual Master Plan will be conducted on a "planned action" basis as authorized under RCW 43.21C.031 and WAC 197-11-164 through WAC 197-11-172. Both parties agree that, except for the identification of new probable significant adverse environmental impacts as determined by the SEPA responsible official, no other SEPA review will be necessary if development occurs within the parameters evaluated in the planned action.

(4) **Parties Acknowledge Permits Regarding Critical Areas.** The parties agree that within the City of Des Moines there are certain environmentally critical areas that are special concerns to the City. The parties agree that the preservation, restoration and development within these areas are regulated by 18.86 DMMC. The parties further recognize specifically that the areas within the business park may also be subject to separate state and federal regulations and permits. The parties acknowledge that in the event that state or federal permits regarding these critical areas are issued, these permits shall control over the provisions of Chapter 18.86 DMMC. Nothing in this paragraph shall prevent either party from utilizing the Conflict Resolution

procedures of this Agreement, including any additional legal remedies, in the event of disagreement concerning environmentally critical areas.

**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.

(2) **Port to apply for street vacation.** The Port will apply to the City for vacation of the streets pursuant to the provisions of Chapter 35.79 RCW and Chapter 12.12 Des Moines Municipal Code (DMMC). The City shall process the application pursuant to the provisions of Chapter 35.79 RCW and Chapter 12.12 Des Moines Municipal Code (DMMC). The Des Moines City Council shall make its discretionary legislative decision concerning the Port's petition for street vacation in compliance with the provisions of Chapter 35.79 RCW and Chapter 12.12 Des Moines Municipal Code (DMMC) and applicable case law. Nothing in this Agreement commits the City to any particular decision with respect to the Port's petition for street vacation.

(3) **Valuation of any vacated streets.** If the City does not agree with the valuation of any street proposed for vacation, as determined by an independent appraiser hired by the Port and approved by the City, the parties will jointly hire another appraiser and will share equally the costs of this appraisal. If the parties jointly hire an appraiser to determine the fair market value of the streets, the parties agree to accept this joint appraisal as the reasonable fair market value of the streets.

**Step 4. Master Plan.** The parties contemplate that this Development Agreement and the subsequent Second Development Agreement-Conceptual Master Plan will be followed by a Master Plan as defined in 18.25 DMMC, between the City (as decision maker) and the developer (as applicant) who is selected by the Port to develop and build the commercial development on the property. That Master Plan will be based upon and shall incorporate by reference the provisions of this Development Agreement and of the Second Development Agreement-Conceptual Master Plan.

(1) **Additional Development Agreement.** Nothing in this Agreement precludes the City and the developer who is selected by the Port from entering into an additional development agreement under Chapter 36.70B RCW to complete development of the property.

(2) **Master Plan SEPA Review.** Both parties agree that except for identification of new probable significant adverse environmental impacts as determined by the SEPA responsible official, no additional SEPA review of the Master Plan or any additional development agreement will be required if development occurs within the parameters evaluated in the planned action review set forth in Step 2, Item 3 above, authorized under RCW 43.21C.031 and WAC 197-11-164 through WAC 197-11-172.

**VI. SEPA Review For All Project Phases.**

(1) **SEPA Review for the First Development Agreement.** The parties agree that adoption of this Agreement by the City and by the Port is categorically exempt from SEPA review, as a governmental procedural action pursuant to WAC 197-11-800(19).

(2) **SEPA Review for the Second Development Agreement – Conceptual Master Plan.** The parties agree that SEPA review is likely required for consideration and adoption of the second development agreement which will include the conceptual master plan. In the event that an environmental impact statement (EIS) is required, the parties further agree that as authorized under WAC 197-11-164-172, the EIS shall be a "planned action". The parties also agree that in development of the planned action, as is authorized by WAC 197-11-600, a thorough assessment of existing EIS documents, including but not limited to, the Sea-Tac International Airport Master Plan Update EIS, the Des Moines Creek Technology Campus EIS and the Greater Des Moines Comprehensive Plan EIS shall be conducted as part of the environmental review for the planned action. Both parties agree that except for the identification of new probable significant impacts as determined by the SEPA responsible official, no other SEPA review will be necessary if development occurs within the parameters evaluated in the planned action.

(3) **Available Environmental Review Documents.** The parties acknowledge that several environmental review documents have already been prepared for certain proposals concerning the property. These are set forth in Exhibit 4, attached hereto and incorporated by reference.

(4) **Co-lead Agencies.** The parties agree to act as co-lead agencies for the purposes of environmental review of the proposals that are the subjects of this Agreement as per WAC 197-11-944.

(5) **Additional Environmental Review.** As co-lead agencies, the parties will determine whether the existing environmental review documents as defined in WAC 197-11-600 adequately identify the probable significant adverse environmental impacts of the development proposal and will agree whether any additional environmental review is required.

(6) **Environmental Mitigation Requirements.** The parties recognize that as co-lead agencies, each agency has the right to determine appropriate SEPA mitigation. The parties will work together to agree about the appropriate mitigation for the development.

(7) **Nominal Lead Agency for SEPA Appeals.** The parties agree that because the City of Des Moines is the final permitting/adopting authority for several actions including all permits related to building construction contained in this and future agreements, the City of Des Moines shall act as nominal lead agency for all SEPA actions, and that all SEPA appeals will be subject to DMMC 18.56.

**VII. Relationship Between the Parties.**

(1) **Meetings and Representation.** The parties shall each appoint a representative to facilitate the completion of the activities that are subject to this agreement. The representative shall communicate with their principals, develop documents, review consultant work and attend meetings with agencies and interested persons. Those representatives are: Des Moines City Manager and Managing Director, Sea-Tac International Airport.

(2) **Costs and Fees.** The parties shall share the cost in the creation of this agreement. The Port shall be solely responsible for costs associated with the creation of the conceptual master plan and developer RFP process. Except for the selection of the SEPA consultant, who the parties shall select together, the Port has control and approval over the selection of any consultants, their work and schedules, but agrees to consider and work cooperatively with the City about any City comments concerning the consultant's work. The Port shall select the consultants, but the City will be provided notice and invited to join the interview process. In reference to the SEPA consultant, the City and Port shall select the consultant together and shall jointly review and agree upon any work, schedules or other issues associated with the consultant's work.

The parties agree that regarding selection of the consultant for the SEPA planned action environmental review, the Port shall be solely responsible for all costs associated with this document including, but not limited to, all public processes associated with development and processing of the environmental review documents.

(3) **Good Faith.** The parties agree to act in good faith to carry out the terms of this agreement.

(4) **Cooperation Between the Parties.** The parties recognize that the Port may enter into contractual agreements with other parties related to the implementation of this agreement which result may affect the ability of the parties to implement the terms of this agreement. In the events that such delays occur, the parties agree to cooperate to resolve these delays.

(5) **Conflict Resolution.** The representatives of each party shall endeavor to resolve any issues that may arise concerning the implementation of this agreement. If the representatives are unable to resolve an issue, they shall refer the matter to the Managing Director of Aviation for the Port and the City Manager for resolution. If the Managing Director and the City Manager cannot resolve the issue, then the matter shall be resolved by two members of the Port Commission and two members of the City Council. Any further unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. By agreeing to these conflict resolution procedures, the parties do not waive any legal remedies allowed by any court of competent jurisdiction.

## VIII. Miscellaneous Agreements.

(1) **Entire Understanding.** This Development Agreement and the exhibits attached to it and incorporated by reference comprise the entire agreement of the parties and supersede any and all prior written or oral agreements.

(2) **Real Property.** The parties do not intend to acquire, hold or dispose of any jointly owned real or personal property in connection with the performance of this Agreement.

(3) **Effect of this Agreement.** The provisions of RCW 36.70B.180 concerning the effectiveness of this Agreement govern its terms.

(4) **Agreement Modification.** This Development Agreement may be amended or modified only by written agreement of the parties, as limited by the requirements of RCW 36.70B.180.

(5) **Duration and Termination.** This agreement shall remain in effect until the actions required herein are complete, unless otherwise terminated by a party. Other than as may be prohibited by law, and specifically subject to the limitations of RCW 36.70B.180, the parties may terminate this agreement by seven days written notice. Termination of this agreement shall not result in termination of any other legally binding agreement or action based upon this

development agreement unless such additional termination is required under the terms of such other agreement or action. Notice of termination shall be sent to the following addresses: City of Des Moines, 21630 11th Avenue South, Suite A, Des Moines Washington 98198, and Port of Seattle, Post Office Box 68727 Seattle Washington 98168.

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(6) **Effective date**. This agreement shall become effective upon the approval of and signature by the City Council and the Port Commission.

**PORT OF SEATTLE**, a Washington municipal corporation

By: M.R. Dinsmore

M.R. Dinsmore
Chief Executive Officer, Port of Seattle

Dated: 7/11/05

Approved as to form:

Port of Seattle Attorney

**CITY OF DES MOINES**, a Washington municipal corporation

By:

Anthony A. Piasecki
City Manager

Dated: 7/8/05

By Direction of the Des Moines City Council in
Open Public Meeting of 6/9/05

Approved as to form:

City of Des Moines Attorney

# EXHIBIT 1
# MAP AND LEGAL DESCRIPTION

LEGAL DESCRIPTION
BORROW AREA ONE BOUNDARY WITHIN THE CITY OF DES MOINES CITY LIMITS

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M. CITY OF DES MOINES, KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 9, THENCE NORTH 89°52'02" WEST, ALONG THE NORTH SECTION LINE OF SAID SECTION 9, A DISTANCE OF 27.06 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00°38'05" EAST, ALONG THE WEST MARGIN OF 24TH AVENUE SOUTH, A DISTANCE OF 30.06 FEET;
THENCE CONTINUING ALONG SAID MARGIN, SOUTH 00°19'34" EAST, A DISTANCE OF 2,577.25 FEET TO THE NORTH MARGIN OF SOUTH 216TH STREET;
THENCE NORTH 89°44'06" WEST ALONG SAID NORTH MARGIN, A DISTANCE OF 1,594.65 FEET;
THENCE NORTH 03°10'47" EAST, A DISTANCE OF 360.56 FEET;
THENCE NORTH 11°18'36" WEST, A DISTANCE OF 509.90 FEET;
THENCE NORTH 02°32'41" WEST, A DISTANCE OF 450.44 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 400.00 FEET;
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 650.00 FEET;
THENCE NORTH 90°00'00" WEST, A DISTANCE OF 150.00 FEET;
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 620.00 FEET;
THENCE NORTH 90°00'00" EAST, A DISTANCE OF 200.00 FEET;
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 22.74 FEET;
THENCE SOUTH 89°52'02" EAST, ALONG THE NORTH SECTION LINE OF SAID SECTION 9, A DISTANCE OF 1,229.64 FEET TO THE TRUE POINT OF BEGINNING.

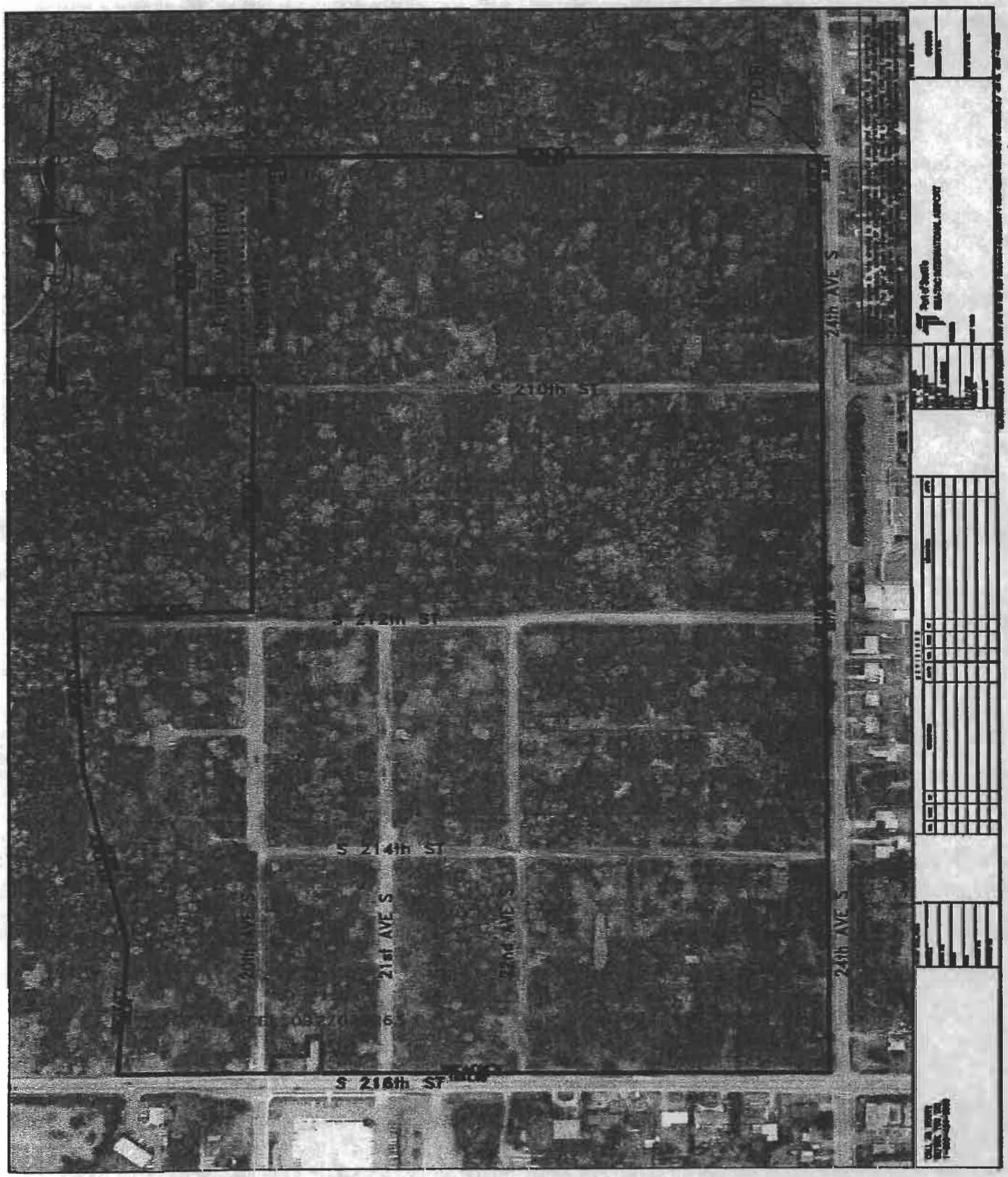
CONTAINING 3,891,091 SQUARE FEET OR 89.33 ACRES, MORE OR LESS.

EXCEPT

KING COUNTY ASSESSOR
PARCEL NUMBER 0922049263

June 7, 2005.

# Exhibit 1 – Map and Legal Description



## EXHIBIT 2

## DES MOINES CREEK BUSINESS PARK USES

Only those uses listed below, in uses similar in nature as determined by the Community Development Director or city designee may be permitted in the Des Moines Creek Business Park

(1)Services, limited to the following:

(a) Business services (73);
(b) Engineering, accounting, research, management, and related services (87);
(c) Legal services (81);
(d) Medical and dental clinics and laboratories (801-804 and 809);
(e) Repair services (76), excluding repair of automobile and other large or motorized vehicles;
(f) Personal services (72);
(g) Recreation services, such as health clubs, athletic clubs, swimming pools, and tennis courts (791, 7991 and 7997), but not including theaters, bowling alleys, amusement arcades, and the like;
(h) Museums and art galleries (841);
(i) Social services (83), including nursery schools and day care centers;
(j) Educational institutions (82);
(k) Business associations, professional associations, fraternal lodges, and similar uses (861-865 and 869);
(m) Conference and meeting facilities (no SIC code);

(2) Finance, insurance and real estate institutions and services (60-67);

(3) Light manufacturing, fabrication, and assembly of the following and closely related products:

(a) Food products (20), excluding meat packing and airline food
(b) Apparel, fabric, and textile products (22 and 23);
(c) Lumber and wood products (24);
(d) Furniture and fixtures (25);
(e) Paper products (26), but excluding paper and pulp manufacturing;
(f) Chemical related products (28), but excluding manufacture of flammable, dangerous, or explosive materials;
(g) Plastic and rubber products (30);
(h) Computer and office and equipment (357);
(i) Small electrical equipment and components, such as appliances, lighting, electronics, and communications equipment (36);
(j) All uses allowed under SIC (34) "Fabricated metal products, except machinery and transportation equipment";
(k) Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks (38) and avionics (no SIC);
(l) Printing and publishing and allied products manufacturing (27);
(m) Stone, clay, glass, ceramics, pottery, china, and similar products (32);
(n) Toys, jewelry, musical instruments, signs, and other miscellaneous items (39);

(4) Wholesale trade of general merchandise, products, supplies, materials, and equipment, including sales offices for these goods (50 and 51); motor freight transportation and warehousing (42), transportation by air (45), and packing and crating (4783) excluding air transportation (451) and airports, flying fields and airport terminal services (458) are allowed as permitted uses when appropriately mitigated for excessive truck traffic and large unsightly buildings;

(5) Building and special trade contractors (15 and 17);

(6) Retail trade, limited to the following:

(a) Restaurants (5812);

(b) Nurseries and greenhouses for the growing and sale of plants (5261);

(c) Retail uses selling products and providing services which are of a type and are located and designed to serve other business park tenants without attracting a significant number of patrons from outside the business park;

(d) Airline ticket sales and reservations (4729)

(e) Sales offices including, but not limited to, those sales offices related to light manufacturing in #3 and wholesale trade in #4(no SIC)

(f) Specialty retail when consistant with the Comprehensive Plan and approved by the Community Development Director or their designee

(a) Department Stores (531)

(b) Variety Stores (533)

(c) Miscellaneous General Merchandise Stores (539)

(d) Home Furniture, Furnishing and Equipment Stores (Major Group 57)

(7) Public facilities, including the following:

(a) Public parks (no SIC code);

(b) Government offices and facilities (91-97);

(c) Public utilities (48 and 49), excluding the production or storage, other than for use by the utility, of petroleum products;

(8) Operation of foreign trade zones limited to the uses listed above

**EXHIBIT 3**
**PROPOSED DES MOINES CREEK DEVELOPMENT TIMELINE**
**May 2005**

| | |
|---|---|
| May 16, 2005 | Staff finalize first development agreement |
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- Water Quality Certification Order #1996-4-02325 (Amended-2)

- Department of the Army Permit #1996-4-02325, issued under the Section 404 of the Clean Water Act, 12/13/02.

- Final Environmental Impact Statement, Des Moines Creek Technology Campus, May 1995

- Draft Environmental Impact Statement, Greater Des Moines Comprehensive Plan, 1995

- Final Environmental Impact Statement, Greater Des Moines Comprehensive Plan, 1995

- Revised Draft Environmental Impact Statement SR-509/I-5 Freight and Congestion Relief Project, 2002

- Final Environmental Impact Statement SR-509/I-5 Freight and Congestion Relief Project, 2003