

ATTACHMENT "1" TO RESOLUTION NO. 3176

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between the City of Des Moines (hereafter "City") and the Port of Seattle (hereafter "Port") for the purpose of defining the authority and responsibilities of the two municipal corporations related to environmental and land use actions pertaining to the Des Moines Creek Technology Campus.

WHEREAS, the Port has acquired residential properties south of Seattle-Tacoma International Airport for the purpose of aircraft noise mitigation, and

WHEREAS, economic development objectives of the Port include: attracting and retaining businesses and industries in the region which create jobs yielding family wages; increasing the local tax base; providing products or services which serve the public good; and redeveloping vacant noise-impacted property near the Airport, and

WHEREAS, this land has been slated for conversion to business park uses, including manufacturing, in the City of Des Moines Comprehensive Plan, and

WHEREAS, the Port is working to attract technology companies to lease this land for the future development of the Des Moines Creek Technology Campus, and

WHEREAS, the Department of Community Development of the City has advised the City Council that the proposed uses of the Project comply with the list of uses in the B-P business park classification and that the Project property is suitable for a business park use of this type, and

WHEREAS, the Department of Community Development of the City has further advised the City Council that structures which formerly existed on Project property have been demolished and public streets serving such structures have been closed to public access, and these public rights-of-way presently serve no function for public ingress and egress, and

WHEREAS, the Department of Community Development has further advised the City Council that it will be in the public interest to vacate streets in the Project property area, and

WHEREAS, the City Council sitting as a quasi-judicial body will process the Port's application to reclassify or rezone the Project property to a business park classification, including proceedings for approval of a master plan, and application for certain street vacations, and can make no commitments or pre-judgments in advance of public hearings;

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

I. Definitions

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

"Agency" means the City and/or the Port.

"City" means the City of Des Moines.

"Contractor" means the party or entity selected to perform services leading to documents required under SEPA.

"DEIS" means draft environmental impact statement prepared pursuant to SEPA.

"EIS" means environmental impact statement prepared pursuant to SEPA.

"Environmental documents" means documents prepared pursuant to SEPA.

"FEIS" means final environmental impact statement prepared pursuant to SEPA.

"Joint lead agencies" means the City and the Port.

"Land use action" means a zoning reclassification, approval of a business park master plan, street vacations, and conveyances of real property.

"Lead agency" means the agency with the main responsibility for complying with SEPA procedural requirements.

"Nominal lead agency" means the agency with the main responsibility for complying with SEPA's procedural requirements pursuant to WAC 197-11-050 and 197-11-922, including the threshold determination and preparation and content of the DEIS and FEIS.

"Port" means the Port of Seattle.

"Project" means the Des Moines Creek Technology Campus.

"Responsible official" means the officials for the City and for the Port designated by the parties' SEPA policies to undertake its procedural responsibilities as lead agency.

"SEPA rules" means Chapter 11, Title 197 of the Washington Administrative Code (WAC), Chapter 16.04 of the Des Moines Municipal Code, and Port of Seattle Commission Resolution No. 3028.

"SEPA" means the Washington State Environmental Policy Act and ordinances of the City of Des Moines and resolution of the Port implementing SEPA.

"Subcontractor" means persons or entities employed by the Contractor.

II. Introduction and Purpose

The purpose of this Memorandum is to establish a written understanding between the City and the Port regarding the responsibilities of the

parties and procedures to be followed in the development and preparation and processing of all necessary and required applications, permits, approvals, studies, and the like, directed toward approval of the Project. The parties intend that the Project proceed in such a manner to satisfy the ordinances, resolutions, policies, and environmental requirements of the City and the Port.

III. Environmental Review

A. Lead Agencies. The City and the Port, acting as joint lead agencies, will be responsible for ensuring compliance with all laws, policies, and regulations adopted pursuant to SEPA. The City is the nominal lead agency as defined in WAC 197-11-944, and as such shall be responsible for complying with the duties of the lead agency under SEPA as provided in WAC 197-11-050, and in particular to ensure that all probable, significant, adverse environmental impacts are addressed in the environmental documents.

B. Contractors. The Port may engage and retain, at its cost, a Contractor for the preparation of documents required under SEPA. The City and the Port shall jointly select the Contractor. The Contractor, with the approval of the Port and City, may employ Subcontractors. The Contractor may be employed by the Port to prepare other planning documents with the City's knowledge and concurrence. Prior to final selection of the Contractor and any Subcontractors, the Port shall disclose to the City and the City shall disclose to the Port all previous work and relationships with the proposed Contractor and Subcontractor, and the extent of work previously performed by the Contractor or Subcontractor on behalf of either party. The Port will require the Contractor to provide, through its staff or by Subcontractor, the expertise, manpower, and technical capabilities required for the preparation of environmental documents. The Port's contract with Contractor shall provide for Contractor's and its Subcontractor's participation in any public hearings required pursuant to SEPA and, at Port's discretion, in two additional workshops, to maximize public familiarity and participation with respect to the assessment of impacts related to the Project.

C. Contractor Oversight and Management. As the party contracting with the Contractor, the Port has the primary responsibility, in consultation with the City, for management of the work of the Contractor and its Subcontractors.

D. Preparation of Environmental Documents. The joint lead agencies shall supervise Contractor's preparation of environmental documents. The City and the Port shall make all reasonable efforts to ensure timely performance of the preparation of environmental documents. The Port and the City will jointly determine the scope of environmental documents and will evaluate all information, environmental data, and analyses submitted by the Contractor, the Port, or others. In the event the City, in consultation with the Port, determines that submittals fail to comply with SEPA, or information has been presented that was not previously known or available which requires the original scope of environmental documents to be broadened, the City in consultation with the Port, may revise documents or cause reasonable additional study and analyses to be performed, solely at the cost of the Port.

E. Meetings and Representation. The City and the Port shall each appoint a designated representative to accomplish the coordination

necessary for the satisfactory preparation of environmental documents. It is the responsibility of the representative to communicate with his or her principal. The representatives review substantive phases of preparation of environmental documents. Representatives attend meetings with federal, state, regional, or local agencies for the purpose of communicating and receiving comments as may be necessary for the preparation of environmental documents. It is the responsibility of the representatives to ensure coordination of exchange of dated information.

F. Costs/Fees. All costs incurred in the employment of the Contractor, Subcontractors, other persons retained or employed by the Port for the preparation of environmental documents, including draft and final copies of environmental documents and costs associated therewith, are the sole responsibility of the Port. The Port shall be responsible for payments of all fees associated with environmental review in accordance with the ordinances of the City.

G. Procedures for Development of Environmental Documents.

(1) Scoping and Schedule. Contractor develops a scope of work and schedule that shall include detailed description of work relating to preparation of environmental documents. The scope of work and schedule are then presented to the City and the Port for joint approval. Upon obtaining joint approval, the schedule, pursuant to and by its reference hereto, shall be incorporated into this Memorandum of Understanding and appended hereto. The scope of work and schedule may be amended as necessary upon approval of the Joint Lead Agencies as the work of Contractor proceeds.

(2) Review Process. Contractor shall formally report, at least once a month, to the Port and the City on the progress of Contractor's work. As each portion of any draft or final document is completed, such portion shall be transmitted to the Port and the City. The responsible officials of the City and the Port shall review each portion and those tasks completed thereunder and shall approve, modify, or comment thereon, and/or direct further work with regard to such portion or task as necessary. Directions and/or comments shall be made in a timely manner and the Contractor shall ensure incorporation of such directions and/or comments into environmental documents to the satisfaction of the City and the Port. Final drafts of any documents are submitted to the City and the Port for review and approval. The City has final approval of all drafts of environmental documents. City and Port comments on draft documents are sent to the Contractor and are copied to the other party.

(3) Staff Meetings. To facilitate the development and preparation of environmental documents, joint meetings among the City, the Port, and Contractor may be held. Contractor will notify the City and the Port of any substantive meetings that are scheduled including those with other parties and of their purpose, and will provide an opportunity for the parties to attend if desired. The City and the Port shall each have the right to consult directly with other federal, state, local officials and agencies during the preparation of environmental documents to ensure compliance with SEPA.

(4) Approval of Environmental Documents. The City shall have final approval of all environmental documents.

(5) Distribution. At such time as the responsible officials of the City and the Port have approved the DEIS, the Port shall proceed expeditiously to comply with the provisions of SEPA, which include distribution of the DEIS to all interested or affected agencies, parties, and individuals as determined by the City and the Port. Costs associated with the printing and distribution of the DEIS and publication of public notices related thereto are the responsibility of the Port.

(6) Questions. In all instances where questions arise between the parties as to the context or relevance of the environmental data, analyses, evaluations and wording prepared by the Contractor, the City in consultation with the Port, will make the final determination on inclusion, deletion, or modification of the same in the EIS, provided that, any final determination by the City pursuant to this paragraph shall comply with the requirements of WAC 197-11-402 (SEPA General requirements).

(7) Public Meetings and Hearings. Upon distribution of the DEIS, the City, in consultation with the Port and the Contractor, shall organize and conduct any public meetings or hearings required under SEPA. The City will consult with the Port on reasonable methods to minimize the cost of public hearings or meetings. In addition to those costs set forth in III.F, the Port shall be responsible for costs associated with public hearings or meetings required under SEPA and publication of public notices therefor.

(8) Comments. City will receive all comments during the DEIS review and comment period. This period (at least 30 but not more than 60 days) will be initiated when the DEIS is publicly available and sent to the Washington State Department of Ecology and other agencies with jurisdiction.

(9) Comment Response. Within 3 days following the close of the DEIS review and comment period, and/or appropriate interim points, City shall furnish the Port and Contractor with copies of all comments received. The Port and the City shall jointly identify the issues and supervision of the comment response process and approving those substantive issues which receive responses. The Port and the City will jointly review and consult on the final responses to all comments for inclusion in the FEIS. The Port will require that Contractor furnish City and the Port requested assistance in preparing responses.

(10) Final Edits. Upon receipt of the comments and the preparation of the responses, the City may direct the Port to require that the Contractor make editorial changes to the text of the DEIS, as necessary, to comply with state regulations and City and Port environmental requirements.

(11) FEIS Distribution. At such time as City and Port have approved the FEIS, the Port shall proceed expeditiously to comply with the provisions of SEPA, which include distribution of the FEIS and preparation of public notices related to availability of the document. Costs associated with distribution of the FEIS and publication of notices are the responsibility of the Port.

(12) Appeals. All SEPA appeals are processed in accordance with chapter 16.04 DMMC. The legal staffs of the City and the Port shall cooperate in any such appeals.

(13) Settling Differences of Opinion. All issues arising out of the process of environmental review shall be resolved by consultation between the responsible officials of the City and the Port. In the event the responsible officials are unable to agree on any particular issue, the issue shall be referred to the Managing Director of Aviation for the Port and the City Manager of the City for resolution. If these officials cannot agree, the final determination shall be made by the City as Nominal Lead Agency in accordance with WAC 197-11 Part Four.

H. Mitigation.

(1) EIS. The parties agree that the EIS will consider reasonable and appropriate measures that could be used to mitigate adverse, significant, and probable environmental impacts of the Project.

(2) Project Mitigation. Decisions by the City ~~and Port~~ regarding Project mitigation measures including attaching conditions to Project permits shall be made only after issuance of the FEIS, shall be based solely on environmental impacts identified therein, shall be made prior to the City Council taking any quasi-judicial action relating to the Project, and shall comply with requirements of DMMC 16.04.200.

(3) Phasing-in. Commitments for Port funding and/or implementation of mitigation measures shall be phased-in in accordance with the elements of Project development that produce the impacts to be mitigated.

IV. Land Use Actions

A. Expeditiously Process. Bearing in mind that the City at this time withholds any judgment on advisability of a zoning reclassification or on the advisability of street vacations, the City agrees to expeditiously process zoning reclassification applications, master plan applications, and applications for street vacations.

B. Street Vacations. In the event any streets in the Project area are vacated, the City will give strong consideration to negotiating with the Port an exchange of real property in lieu of monetary compensation.

C. Building Code. Project construction is subject to the provisions of the City of Des Moines Building Code. The City of Des Moines Department of Community Development shall have the sole responsibility to process all aspects of the building permit process from application through final approval.

D. Costs. The Port is responsible for payment of all Project permitting costs in accordance with the ordinances of the City, including fees for rezone application and master plan review fees, street vacation application fees, and building permit fees.

V. Project Schedule

Port and City agree that the following schedule describes significant Project milestones based on the parties' joint knowledge to date. Each party agrees to exercise reasonable diligence in fulfilling their obligations under this Memorandum of Understanding to meet these milestones:

Advertise RFP	06/17/94
Review Proposals and Short List	07/08/94
Invite, Interview & Select	07/22/94
EIS Scoping	07/22/94
DEIS Published	01/02/95
Comment Period	02/17/95
Respond to Comments & Publish FEIS	03/17/95
FEIS Final	04/17/95
Planning Agency	05/01/95
City Council Review	05/18/95
Master Plan, et al, Adoption	07/13/95
Infrastructure/Right-of-Way Permits	10/31/95
Building Permit	03/31/96

If a date in the above schedule cannot be met, despite the reasonable diligence of the Port or City, the parties shall negotiate in good faith to revise the schedule.

VI. Entire Understanding, Modification, and Authority

A. Entire Understanding. This Memorandum of Understanding contains the entire agreement of the parties and supersedes any and all prior written or oral agreements.

B. Memorandum Modification. This Memorandum of Understanding may be amended or modified only by mutual agreement of the parties expressed in writing.

C. Jurisdictional Authority. This Memorandum of Understanding 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 a recognition of jurisdictional authority which either party may duly claim.

D. Cooperation Between the Parties. The Port and the City recognize that the Port has entered into contractual arrangements with third parties related to the Project and that Project may be directly impacted by unreasonable delays, or other unreasonable action or failure to act pursuant to this Memorandum of Understanding, including but not limited to, the parties' actions related to: Contractor selection under Section III.B.; preparation and approval of environmental documents under Section III.D.; Contractor's scope of work and schedule under Section III.G.(1); and review process for development of environmental documents under Section III.G.(2). The Port and the City agree to cooperate fully, in good faith, and with reasonable diligence in fulfilling their respective obligations pursuant to this Memorandum of Understanding.

E. *Commission/Council Approval.* →

VII. Termination

The agreement described in this Memorandum may be terminated by either party upon seven (7) days written notice to the other party.

THIS MEMORANDUM OF UNDERSTANDING shall become effective upon the date of final signature below.

CITY OF DES MOINES

By _____
Greg Prothman, City Manager

Date: _____

APPROVED AS TO FORM

James B. Gorham, City Attorney
City of Des Moines

Date: _____

PORT OF SEATTLE

By _____
M. R. Dinsmore, Executive Director

Date: _____

APPROVED AS TO FORM

Linda J. Strout, General Counsel
Port of Seattle

Date: _____

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F. Costs/Fees. All costs incurred in the employment of the Contractor, Subcontractors, other persons retained or employed by the Port for the preparation of environmental documents, including draft and final copies of environmental documents and costs associated therewith, are the sole responsibility of the Port. The Port shall be responsible for payments of all fees associated with environmental review in accordance with the ordinances of the City.

G. Procedures for Development and Approval or Environmental Documents.

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(2) Review Process. Contractor shall formally report, at least once a month, to the Port and the City on the progress of Contractor's work. As each portion of any draft or final document is completed, such portion shall be transmitted to the Port and the City. The responsible officials of the City and the Port shall review each portion and those tasks completed thereunder and shall approve, modify, or comment thereon, and/or direct further work with regard to such portion or task as necessary. Directions and/or comments shall be made in a timely manner and the Contractor shall ensure incorporation of such directions and/or comments into environmental documents to the satisfaction of the City and the Port. Final drafts of any documents are submitted to the City and the Port for review and approval. The City has final approval of all drafts of environmental documents. City and Port comments on draft documents are sent to the Contractor and are copied to the other party.

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(4) Approval of Environmental Documents. The City shall have final approval of all environmental documents.

(5) Distribution. At such time as the responsible officials of the City and the Port have approved the DEIS, the Port shall proceed expeditiously to comply with the provisions of SEPA, which include distribution of the DEIS to all interested or affected agencies, parties, and individuals as determined by the City and the Port. Costs associated with the printing and distribution of the DEIS and publication of public notices related thereto are the responsibility of the Port.

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(12) Appeals. All SEPA appeals are processed in accordance with chapter 16.04 DMMC. The legal staffs of the City and the Port shall cooperate in any such appeals.

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(1) EIS. The parties agree that the EIS will consider reasonable and appropriate measures that could be used to mitigate adverse, significant, and probable environmental impacts of the Project.

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A. Expeditiously Process. Bearing in mind that the City at this time withholds any judgment on advisability of a zoning reclassification or on the advisability of street vacations, the City agrees to expeditiously process zoning reclassification applications, master plan applications, and applications for street vacations in accordance with standard operating procedures.

B. Street Vacations. In the event any streets in the Project area are vacated, the City will give strong consideration to negotiating with the Port an exchange of real property in lieu of monetary compensation.

C. Building Code. Project construction is subject to the provisions of the City of Des Moines Building Code. The City of Des Moines Department of Community Development shall have the sole responsibility to process all aspects of the building permit process from application through final approval.

D. Costs. The Port is responsible for payment of all Project permitting costs in accordance with the ordinances of the City, including fees for rezone application and master plan review fees, street vacation application fees, and building permit fees.

V. Project Schedule

Port and City agree that the following schedule describes significant Project milestones based on the parties' joint knowledge to date. Each party agrees to exercise reasonable diligence in fulfilling their obligations under this Memorandum of Understanding to meet these milestones:

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If a date in the above schedule cannot be met, despite the reasonable diligence of the Port or City, the parties shall negotiate in good faith to revise the schedule.

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A. Entire Understanding. This Memorandum of Understanding contains the entire agreement of the parties and supersedes any and all prior written or oral agreements.

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to cooperate fully, in good faith, and with reasonable diligence in fulfilling their respective obligations pursuant to this Memorandum of Understanding.

VII. Termination

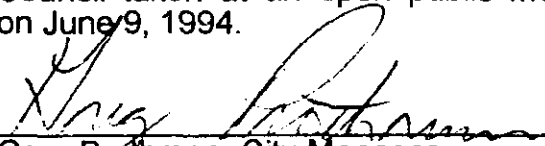
The agreement described in this Memorandum may be terminated by either party upon seven (7) days written notice to the other party.

VIII. Effective Date

This Memorandum of Understanding shall become effective upon the approval by the City Council of the City of Des Moines and the Port Commission of the Port of Seattle on the date of final signature below.

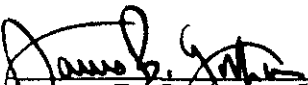
CITY OF DES MOINES

At the direction of the Des Moines City Council taken at an open public meeting on June 9, 1994.



Greg Prothman, City Manager
Date: 6/10/94


APPROVED AS TO FORM



James B. Gorham, City Attorney
City of Des Moines
Date: June 10, 1994

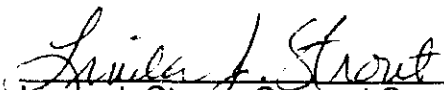
PORT OF SEATTLE

At the direction of the Port Commission of the Port of Seattle taken at an open public meeting on June 28, 1994.



M. R. Dinsmore, Executive Director
Date: July 8, 1994

APPROVED AS TO FORM



Linda J. Strout, General Counsel
Port of Seattle
Date: July 5, 1994
CONTRACT:PORT/94-068.6/3/94



RECEIVED

AUG 05 1994

PLANNING DEPARTMENT

July 19, 1994

Cell Therapeutics Incorporated
201 Elliott Avenue West
Suite 400
Seattle, WA 98119

Attention: Louis Bianco, Executive VP Finance and Administration

Regarding: Memorandum of Understanding - First Amendment

Dear Mr. Bianco:

The Port of Seattle hereby requests the Memorandum of Understanding dated March 16, 1994 between the Port of Seattle and Cell Therapeutics Incorporated be amended to better coincide with the schedule subsequently agreed to in a Memorandum of Understanding between the Port of Seattle and the City of Des Moines regarding environmental and land use actions pertaining to the Des Moines Creek Technology Campus.

With your signature, the following will become the First Amendment to the Memorandum of Understanding between the Port of Seattle and Cell Therapeutics Incorporated dated March 16, 1994. Any dates contained within the First Amendment shall supersede those in the original.

Table with 3 columns: ITEM, ORIGINAL DATE, REVISED DATE. Rows include Identification of Site, Complete Environmental Investigation and Testing, Master Plan Approval, Zoning Approval, SEPA Compliance, Final Execution of Land Development and Lease Agreement, and Infrastructure/Right of Way Permits.

PORT OF SEATTLE

CELL THERAPEUTICS, INC.

By: M.R. Dinsmore
M.R. Dinsmore
Executive Director
Date: July 20, 1994

By: J. Bianco
President
Date: July 28, 1994

RESOLUTION NO. 3176

A RESOLUTION of the Port of Seattle (Port) authorizing the Executive Director to enter into a Memorandum of Understanding with the City of Des Moines (City) to establish responsibilities and procedures for the development and preparation of environmental documents and processing of land use applications for development of the Des Moines Creek Technology Campus.

WHEREAS, the Port has acquired residential properties south of Seattle-Tacoma International Airport for the purpose of aircraft noise mitigation; and

WHEREAS, economic development objectives of the Port include; attracting and retaining businesses and industries in the region which create jobs yielding family wages; increasing the local tax base; providing products or services which serve the public good; and redeveloping vacant noise-impacted Port property near the Airport; and

WHEREAS, this land has been slated for conversion to business park uses, including manufacturing, in the City of Des Moines Comprehensive Plan; and

WHEREAS, the Port is working to attract technology companies to lease this land for the future development of the Des Moines Creek Technology Campus; and

WHEREAS, the Port and Cell Therapeutics, Incorporated, have entered into a Memorandum of Understanding to explore possibilities to lease Port land for future development of a pharmaceutical manufacturing facility; and

WHEREAS, the Department of Community Development of the City has advised the City Council that the proposed uses of the Project comply with the list of uses in the B-P business park classification and that the Project property is suitable for a business park of this type; and

WHEREAS, the City Council sitting as a quasi-judicial body will process the Port's application to reclassify or rezone the Project property to a business park classification, including proceedings for approval of a master plan, and application for certain street vacations, and can make no commitments or pre-judgements in advance of public hearings; and

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the

Port of Seattle that:

1. The Executive Director of the Port of Seattle is hereby authorized to execute a Memorandum of Understanding with the City of Des Moines in substantially the form attached hereto as Attachment "1" and by this reference incorporated herein, and directed to impress the official seal of the Port of Seattle thereon.

2. A copy of the final executed agreement shall be attached to this resolution as Attachment "2" and by this reference incorporated herein.

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting thereof, held this 28th day of June, 1994, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

Patricia Davis
Carl S. Blom
Paul S. Sullivan
Paige R. Miles
Gary Grant

Port Commissioner