



**Roll Call Number**

**Agenda Item Number**

64A

**Date** March 21, 2022

**HOLD HEARING FOR APPROVAL OF THE FIFTH AMENDMENT TO REAL ESTATE LEASE AND ASSET TRANSFER AGREEMENT WITH THE DES MOINES AIRPORT AUTHORITY TO EXCLUDE EXCESS PROPERTY ADJOINING FLEUR DRIVE BETWEEN HIGHVIEW DRIVE AND MCKINLEY AVENUE AND TO INCLUDE PROPERTY LOCATED WEST OF AND ADJOINING SOUTHWEST 46<sup>TH</sup> STREET NORTH OF MCKINLEY AVENUE**

**WHEREAS**, on October 10, 2011, by Roll Call No. 11-1733, the City Council of the City of Des Moines approved the Real Estate Lease and Asset Transfer Agreement between the City of Des Moines, Iowa and the Des Moines Airport Authority (“Airport Authority”) leasing all airport land and transferring outright all other City-owned aviation assets to the Airport Authority; and

**WHEREAS**, on January 27, 2020, by Roll Call No. 20-0131, the City Council authorized submission of a RISE grant application for the Airport Authority’s Cowles Drive Reconstruction Program Project; and

**WHEREAS**, the Airport Authority’s Cowles Drive Reconstruction - Phase 1 Project included the relocation of the main terminal entrance onto Cowles Drive from Fleur Drive to the south, and construction of a dedicated right turn lane from southbound Fleur Drive onto Cowles Drive including site grading, pavement, and utilities; and

**WHEREAS**, on December 6, 2021, by Roll Call No. 21-1848, the City Council of the City of Des Moines approved the Fourth Amendment to the Real Estate Lease and Asset Transfer Agreement authorizing the re-dedication of a portion of Airport leased property as street right-of-way and the addition of a portion of vacated Fleur Drive right-of-way to the Airport’s leased property; and

**WHEREAS**, on February 8, 2022 the Airport Authority Board approved the acquisition of a parcel of property from Monarch Cement Company located west of and adjoining Southwest 46<sup>th</sup> Street north of McKinley Avenue for the Runway 13 Runway Protection Zone; and

**WHEREAS**, the Real Estate Lease and Asset Transfer Agreement must be amended to exclude the Fleur Drive right-of-way to be dedicated for additional street right-of-way, and to include the parcel acquired from Monarch Cement Company by the Airport Authority Board on February 8, 2022, which parcel is located west of and adjoining Southwest 46<sup>th</sup> Street north of McKinley Avenue; and

**WHEREAS**, on March 7, 2022, by Roll Call No. 22-0334, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed Fifth Amendment to the Real Estate Lease and Asset Transfer Agreement be set for hearing on March 21, 2022, at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

.....  
**Date** ..... March 21, 2022 .....

**WHEREAS**, due notice of said proposal to amend said Real Estate Lease and Asset Transfer Agreement between the City of Des Moines, Iowa and the Des Moines Airport Authority was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the proposed lease amendment, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed Fifth Amendment to Real Estate Lease and Asset Transfer Agreement between the City of Des Moines, Iowa and the Des Moines Airport Authority, as described herein, are hereby overruled and the hearing is closed.
2. That the Fifth Amendment to Real Estate Lease and Asset Transfer Agreement between the City of Des Moines, Iowa and the Des Moines Airport Authority on file in the office of the City Clerk leasing property owned by the City of Des Moines, Iowa, to the Des Moines Airport Authority is hereby approved.
3. That the Mayor be and is hereby authorized and directed to sign the Fifth Amendment to Real Estate Lease and Asset Transfer Agreement between the City of Des Moines, Iowa and the Des Moines Airport Authority, and the City Clerk is hereby authorized and directed to attest the Mayor's signature.
4. There are no proceeds associated with this action.



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Moved by \_\_\_\_\_ to adopt. Second by \_\_\_\_\_.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland  
Lisa A. Wieland, Assistant City Attorney

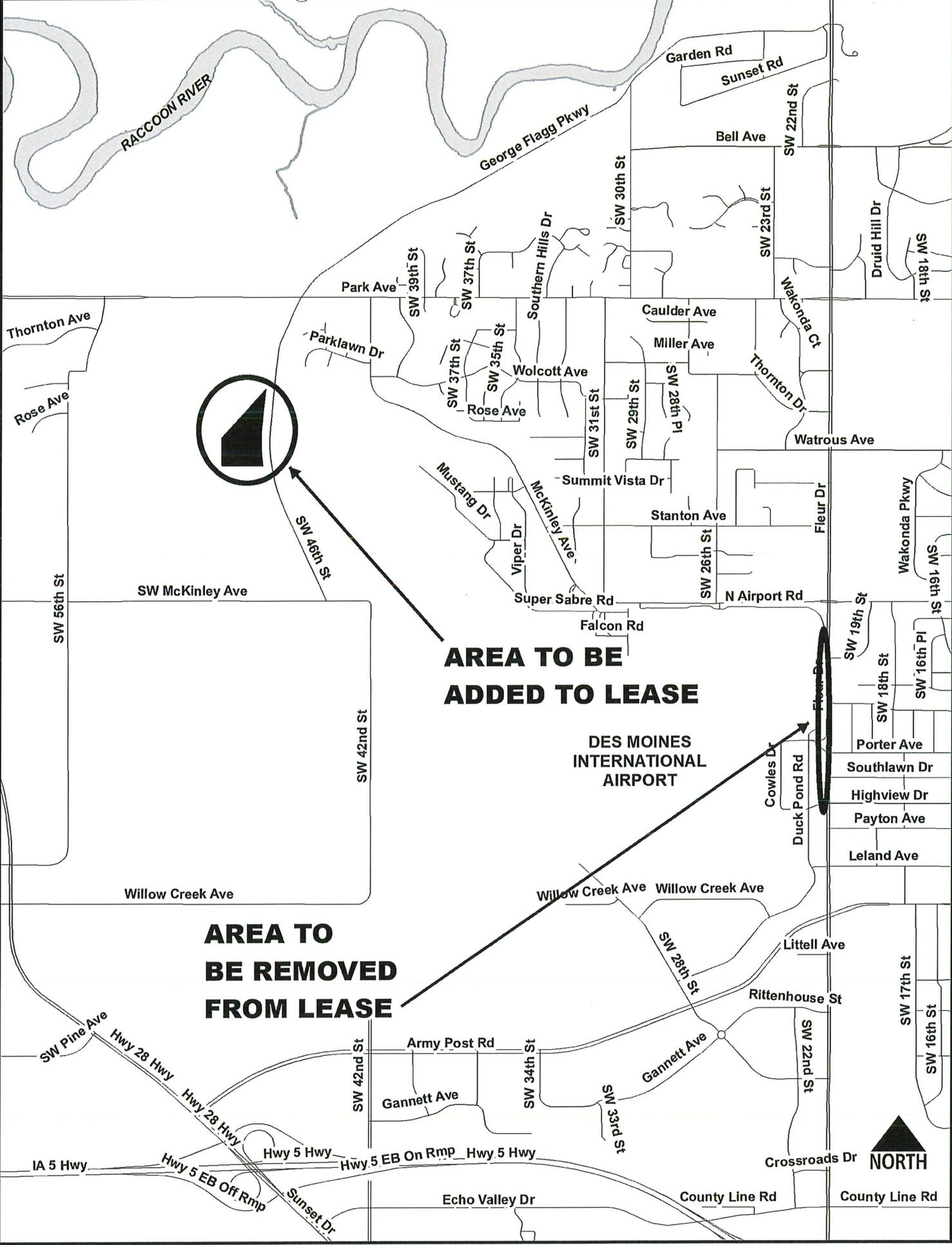
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk



Prepared by: Lisa A. Wieland, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891  
(515) 283-4561  
Return to: David DeForest Colvig, Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA  
50309-1891  
Title of Document: Fifth Amendment to Lease Agreement  
Legal Description: See below on this page

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Project Name: Airport\_ Cowles Drive Improvements Mapping No. 29 Tract No. 8E Activity ID: 34111000

### FIFTH AMENDMENT TO LEASE AGREEMENT

This Fifth Amendment is made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and between the CITY OF DES MOINES, IOWA, a municipal corporation of the State of Iowa (the "City"), and the DES MOINES AIRPORT AUTHORITY, an airport authority organized under Iowa Code Chapter 330A (the "Authority").

#### WITNESSETH:

**WHEREAS**, the City and the Authority entered into a Real Estate Lease and Asset Transfer Agreement (the "Agreement") dated November 1, 2011, which transferred possession and control of all land, assets, buildings, fixtures, equipment and personal property comprising the Des Moines International Airport; and

**WHEREAS**, the parties have agreed to amend certain terms of said Agreement to exclude the real estate, and all associated assets located on such real estate, legally described as follows:

A PARCEL OF LAND LOCATED IN THE WEST HALF OF SECTION 29, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 29, THENCE NORTH 89° 57' 04" WEST, 50.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF FLEUR DRIVE, ALSO BEING THE POINT OF BEGINNING; THENCE SOUTH 00° 05' 45" EAST, 324.86 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 89° 54' 15" WEST, 7.00 FEET CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 00° 05' 45" EAST, 104.48 FEET CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 05° 25' 13" WEST, 36.41 FEET CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE; THENCE NORTH 00° 05' 45" WEST, 465.61 FEET; THENCE NORTH 00° 05' 06" WEST, 268.03 FEET; THENCE NORTH 03° 03' 01" EAST, 100.58 FEET; THENCE NORTH 00° 05' 06" WEST, 210.41 FEET; THENCE NORTH 05° 48' 06" WEST, 90.35 FEET; THENCE NORTH 00° 05' 06" WEST, 399.57 FEET; THENCE

NORTH 01° 14' 03" WEST, 99.73 FEET; THENCE NORTH 00° 05' 06" WEST, 1144.28 FEET TO SAID WESTERLY RIGHT-OF-WAY LINE OF FLEUR DRIVE; THENCE SOUTH 19° 23' 03" EAST, 48.41 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 00° 05' 06" EAST, 2266.67 FEET CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 34,372 SQUARE FEET OR 0.79 ACRES MORE OR LESS, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

FOR THE PURPOSE OF THIS DESCRIPTION, ALL BEARING AND DISTANCES ARE REFERENCED TO NAD83(2011) IA SPCS SOUTH ZONE, US SURVEY FOOT.

**WHEREAS**, the parties have further agreed to amend certain terms of said Agreement to include the real estate, and all associated assets located on such real estate, legally described as follows:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER IN SECTION 24, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 24, THENCE SOUTH 89° 53' 27" EAST, 28.51 FEET ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24 TO THE POINT OF BEGINNING; THENCE NORTH 00° 09' 19" WEST, 195.53 FEET; THENCE NORTH 42° 27' 00" EAST, 1158.66 FEET TO THE WEST RIGHT-OF-WAY LINE OF THE FORMER CHICAGO GREAT WESTERN RAILROAD; THENCE SOUTH 06° 39' 27" WEST, 589.82 FEET ALONG SAID WEST RIGHT-OF-WAY LINE; THENCE SOUTHERLY A DISTANCE OF 758.30 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EASTERLY WITH A CENTRAL ANGLE OF 14° 54' 54", ALONG A 2913.00 FOOT RADIUS WITH A CHORD THAT BEARS SOUTH 00° 48' 00" EAST, 756.16 FEET CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE; THENCE NORTH 89° 53' 27" WEST, 722.98 FEET; THENCE NORTH 00° 08' 23" WEST, 290.10 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 634,167 SQUARE FEET OR 14.56 ACRES MORE OR LESS, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

FOR THE PURPOSE OF THIS DESCRIPTION, ALL BEARING AND DISTANCES ARE REFERENCED TO NAD83(2011) IA SPCS SOUTH ZONE, US SURVEY FOOT.

**NOW, THEREFORE**, in consideration of the premises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

1. Section 1.1 is hereby amended and replaced as follows:

“The City hereby leases to the Authority all Land comprising the Airport as depicted on the attached Airport Master Plan Property Map, Exhibit A, dated February 17, 2015, including all amendments thereto, and filed with the Federal Aviation Administration Central Region, and generally shown in the attached aerial photograph, Exhibit B.”

2. The Agreement is hereby amended to replace Exhibit B with the “Airport Property Exhibit B” as attached hereto.

3. Except as amended above, all parts of the Agreement shall otherwise remain in full force and effect.

**CITY OF DES MOINES, IOWA**

BY: \_\_\_\_\_  
T. M. Franklin Cownie, Mayor

Attest: \_\_\_\_\_  
P. Kay Cmelik, City Clerk

APPROVED AS TO FORM:

BY:  \_\_\_\_\_  
Lisa A. Wieland, Assistant City Attorney

STATE OF IOWA    )  
                                  ) ss.  
COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie, and P. Kay Cmelik, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in Roll Call No. \_\_\_\_\_ passed and approved by the City Council on \_\_\_\_\_, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of said City by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**DES MOINES AIRPORT AUTHORITY**

BY: \_\_\_\_\_  
Mark Feldmann, Board Chair

Attest: \_\_\_\_\_  
Bryan Belt, Director of Engineering

APPROVED AS TO FORM:

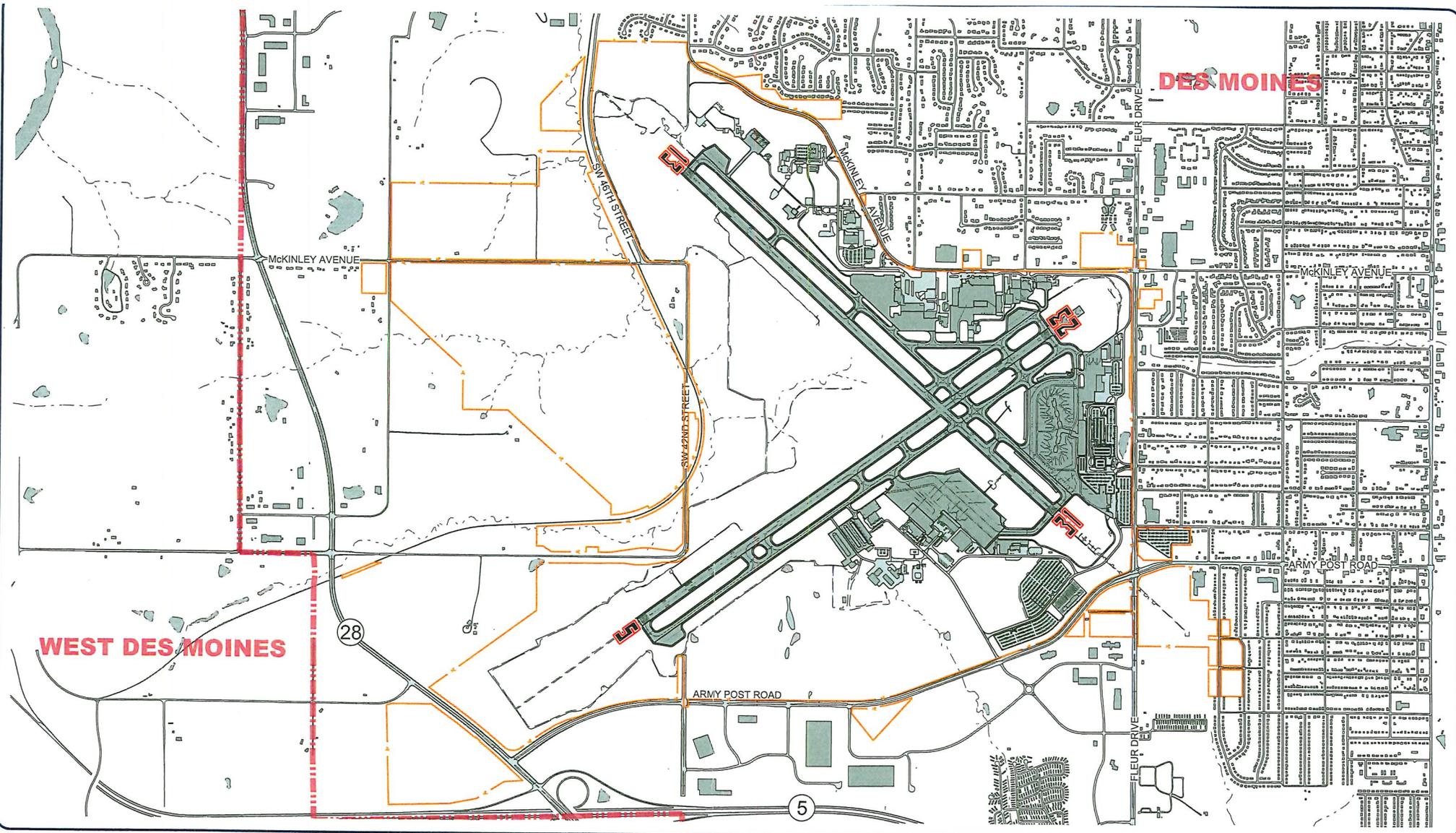
BY: \_\_\_\_\_  
James Wainwright, Special Counsel  
for Des Moines Airport Authority

STATE OF IOWA    )  
                                  ) ss.  
COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mark Feldmann and Bryan Belt, to me personally known, who, being by me duly sworn, did say that they are the Chair of the Des Moines Airport Authority Board and Director of Engineering of the Des Moines Airport Authority, respectively; that the instrument was signed on behalf of Des Moines Airport Authority, by authority of its Board, as contained in Roll Call No. \_\_\_\_\_ passed and approved by the Des Moines Airport Authority Board on \_\_\_\_\_, 20\_\_, and that Mark Feldmann and Bryan Belt acknowledged the execution of the instrument to be the voluntary act and deed of said Des Moines Airport Authority by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

2/16/2022 c:\ow\work\paw\paw\183033021\EXHIB\_B\DSM\_A1004-B.dwg



# AIRPORT PROPERTY EXHIBIT "B"

2/16/2022

