

Prospective Purchaser Agreement  
Des Moines TCE Site- City of Des Moines

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION VII**  
**901 North 5<sup>th</sup> STREET**  
**KANSAS CITY, KANSAS 66101**

ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
Des Moines TCE Superfund Site )  
)  
Under the Authority of the )  
Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act of 1980, )  
42 U.S.C. § 9601, et seq., )  
as amended. )

Docket No. CERCLA-07-2003-0156

AGREEMENT AND COVENANT  
NOT TO SUE THE CITY OF  
DES MOINES, IOWA

Final PPA - 022603



40114898

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## I. INTRODUCTION

1. This Agreement and Covenant Not to Sue (“Agreement”) is made and entered into by and between the United States on behalf of the Environmental Protection Agency (“EPA”) and the city of Des Moines, Iowa (“Settling Respondent”). For convenience, EPA and Settling Respondent will be referred to collectively in this Agreement as the “Parties”.
2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq.
3. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent for the Existing Contamination at the Easement Area which would otherwise result from Settling Respondent becoming the owner of the Easement Area.
4. The Parties agree that the Settling Respondent’s entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.
5. The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

## II. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever the terms listed below are used in this Agreement, the following definitions shall apply:
- a. "Dico's Property" shall mean the property within the Des Moines TCE Site which is owned by Dico, Inc. ("Dico"), which property comprises approximately 42 acres and includes the Easement Area described herein.
  - b. "Easement Area" shall mean that portion of Dico Inc.'s Property to be acquired by the City for construction of the Martin Luther King Parkway Project ("MLK Parkway Project"), as described in the Deed of Permanent Easement for Roadway Right-of-Way and Covenant ("Deed") attached hereto as Exhibit 1 and as shown on the Acquisition Plat attached to said Deed.
  - c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
  - d. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Easement Area as of the effective date of this Agreement.
  - e. "Parties" shall mean EPA and the Settling Respondent.

- f. “Settling Respondent” shall mean the City of Des Moines, Iowa (also referred to as the “City”).
- g. “Site” shall mean the Des Moines TCE Site, encompassing approximately 200 acres, which is located in the south central portion of the city of Des Moines, Polk County, Iowa, adjacent to the Raccoon River. The Site is depicted generally on the Site Map attached to this Agreement as Exhibit 2.
- h. “United States” shall mean the United States of America, its departments, agencies, and instrumentalities.

### III. STATEMENT OF FACTS

- 7. EPA listed the Site on the National Priority List in 1983.
- 8. The Site includes property owned by Dico. The groundwater beneath Dico’s Property is heavily contaminated with trichloroethylene (“TCE”) and other volatile organic compounds (“VOCs”). Surface soil on much of Dico’s Property is contaminated with VOCs, pesticides, herbicides, and metals. Interior building surfaces contain pesticide-laden dust, and building insulation materials include polychlorinated biphenyls (“PCBs”).
- 9. In July 1986 EPA issued a final Record of Decision (“ROD”), commonly referred to as the Operable Unit 1 (“OU1”) ROD, which selected a hydraulic containment remedy to prevent the contaminated groundwater from reaching the Des Moines water supply. EPA then issued a unilateral CERCLA 106 order to Dico requiring it to implement the selected remedial action. Dico designed and constructed a groundwater pumping and treatment system which began operation in 1987 and continues in operation today.

10. EPA addressed the risks posed by the pesticides and metals contamination through a series of removal actions. In 1994 EPA issued Dico two CERCLA Section 106 orders requiring it to take removal actions mitigating surface soil and building contamination. Dico selectively removed soils with very high levels of pesticides, capped much of the rest of its property, and cleaned and sealed the interior of some buildings. An additional area of contamination, the South Pond Area, was addressed in a removal action conducted by other parties under a separate CERCLA 106 order. In December 1996 EPA issued a Record of Decision, commonly referred to as the Operable Unit 2 and 4 ("OU2/4") ROD, which concluded that these removal actions, if properly maintained and supplemented with appropriate land use restrictions, would be acceptable long-term remedial action for contaminated surface soils and buildings.
11. The City of Des Moines plans to acquire a permanent roadway easement over approximately three (3) acres of Dico's Property as right-of-way for the Martin Luther King Jr. Parkway Project (the "MLK Parkway Project"). The MLK Parkway Project is a highway construction project being undertaken with both State of Iowa and Federal funding through the Iowa Department of Transportation. The MLK Parkway Project includes construction of both East-West and North-South segments of the highway. The East-West segment involves the construction of a bridge over the Raccoon River. The eastern approach for this bridge will be on Dico's Property.
12. The City is currently engaged in the planning stages of a project to revitalize a 300 acre area known as Riverpoint West, located south of the City's central business district, and immediately adjacent to Dico's property and the MLK Parkway Project. The MLK

Parkway Project will improve access to downtown Des Moines and the Riverpoint West Project Area.

13. The Easement Area is currently paved over with asphalt, which is part of the cap EPA required Dico to install over the contaminated portions of Dico's Property. Groundwater extraction wells, monitoring wells and some piping associated with the OU1 groundwater remedial action are also located in the Easement Area as well as other areas of the Site.
14. By letter dated December 21, 2001, the City submitted to EPA a "Technical Proposal and Plan of Action for Des Moines TCE Superfund Site," ("Technical Proposal and Plan of Action") describing the precautions taken by the City in the design of the MLK Parkway Project and the accommodations the City plans to make during the construction of the MLK Parkway to minimize interference with the existing CERCLA response actions and to insure that the response actions will be at least as effective after completion of the MLK Parkway Project as they are now. A copy of the Technical Proposal and Plan of Action is attached to this Agreement as Exhibit 3.
15. In response to comments from EPA, by letter dated March 8, 2002, the City submitted a First Supplement to Technical Proposal and Plan of Action for Des Moines TCE Superfund Site" ("First Supplement"). A copy of the First Supplement is attached to this Agreement as Exhibit 4.
16. A Second Supplement to Technical Proposal and Plan of Action for Des Moines TCE Site ("Second Supplement") was submitted by the City on December 23, 2002, to provide updated information on the City's proposed design and construction plans. A copy of the Second Supplement is attached as Exhibit 5.



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17. A Third Supplement to Technical Proposal and Plan of Action for Des Moines TCE Site (“Third Supplement”) was submitted by the City by letter dated February 21, 2003, to clarify that certain piezometer and monitoring wells are needed for long-term monitoring and that they will be repaired or replaced if damaged or destroyed. A copy of the Third Supplement is attached as Exhibit 6.
18. Due to the MLK Parkway Project, a nearby Des Moines Waterworks raw water main will be relocated. The relocated raw water main will not be on Dico’s Property or in the Easement Area, but it will be located on the Site and the relocation may potentially impact some Site monitoring wells. On December 23, 2002, the City submitted to EPA a plan showing the alignment of the Des Moines Waterworks Raw Water Main Relocation Project (“Water Main Relocation Project”), describing the new main’s proposed location and the Site monitoring wells that may be impacted. A copy of the Plan for Raw Water Main Relocation, with attachments, is attached as Exhibit 7.
19. The City of Des Moines, Iowa is a municipal corporation, organized and existing under the City Code of Iowa, Chapters 362 through 392 of the Iowa Code.
20. The Settling Respondent represents, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondent’s involvement with Dico’s Property and the Site has been limited to the following:
  - a. The City has no affiliation with Dico or predecessor owners or operators of the Easement Area.

- b. The City owns streets which are located within the boundaries of the Site.  
Additionally, easements for water and sewer held by the City exist within the boundaries of the Easement Area and the Site.
- c. On September 5, 2001, the City condemned a temporary access easement over 11.84 acres of Dico's Property to allow its consultants to conduct geotechnical and environmental studies of Dico's Property.
- d. The City intends to purchase, or condemn in lieu of purchase, a permanent easement for a roadway over the Easement Area, reserving to Dico certain specified access rights necessary to operate and maintain existing CERCLA response actions.

#### IV. UNDERTAKINGS

21. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein and Removal of Lien in Section XX herein, Settling Respondent agrees to the following.
  - a. Except as specifically agreed in writing by EPA, the City shall design, construct, and maintain the highway in a manner consistent with the Technical Proposal and Plan of Action, First Supplement, Second Supplement, and Third Supplement, Exhibits 3, 4, 5, and 6, respectively. During construction and maintenance of the highway, the City shall (1) provide access to Dico, its agents and representatives, to perform routine sampling, inspections, and other necessary operation and maintenance activities for the existing remedial actions or as may be necessary to comply with existing orders or other orders issued by EPA; (2) repair and replace

groundwater monitoring wells affected by the City's activities under the Deed as determined by EPA; (3) properly handle and dispose of any contaminated soils which may be encountered during the City's construction activities; and (4) comply with applicable worker health and safety requirements, all as more particularly provided in the Deed of Permanent Easement for Roadway Right-of-Way and Covenant attached hereto as Exhibit 1.

- b. Except as specifically agreed in writing by EPA, the City shall design and construct the Water Main Relocation Project as set forth in the Plan for Raw Water Main Relocation, Exhibit 7. During construction of the relocated water main, the City shall abandon, replace and/or repair groundwater monitoring wells EPA determines to be affected by the City's activities, described in Exhibit 7.
- c. The City shall submit to EPA for review and approval a plan describing the specific procedures for the abandonment, repair, and replacement of any monitoring wells in the Site. The plan shall be submitted to EPA at least thirty days prior to the scheduled start date for any of the activities described in Subparagraphs 20.a and b, above. The plan shall include a list of wells to be abandoned or replaced and a map showing their locations, a description of the proposed location and construction details for any replacement wells, and a proposed schedule for field activities relating to the abandoned or replaced wells. The plan will provide information on how decisions will be made with regard to repair of wells. The EPA will review the plan and will provide written comments or approval. If EPA provides comments on the plan, the City shall revise the plan

accordingly and shall submit a revised plan or addendum as appropriate. The City shall not commence any of the activities described in Subparagraphs 20. a and b, above, without EPA's written approval.

- d. The City shall notify EPA, in writing, of any proposed actions by the City with respect to the Easement Area, including zoning changes, issuance of building or construction permits, or other similar action, that might affect land or groundwater use on Dico's Property.

#### V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

22. Commencing upon the date that it acquires a permanent roadway easement in the Easement Area, Settling Respondent agrees to provide to EPA, its authorized officers, employees, representatives and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to any property to which EPA determines access is required for the implementation of response actions at the Site, to the extent of Settling Respondent's interest in the property, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Site. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

23. The Settling Respondent shall record the Deed attached hereto as Exhibit 1 with the county recorder. The Settling Respondent shall provide EPA with a certified copy of the same within ten (10) days of recording. In the event the Settling Respondent is required to acquire the Easement Area by condemnation, the Settling Respondent agrees to incorporate the terms of the Deed of Permanent Easement, Exhibit 1 hereto, into its Application for Condemnation, and to cause said Application for Condemnation to be recorded.
24. The Settling Respondent shall ensure that assignees and successors in interest, including any lessees and sublessees, of the Easement Area shall provide the same access and cooperation, including institutional controls. The Settling Respondent shall ensure that any subsequent assignments or transfers of the Easement Area or an interest in the Easement Area, including any leases or subleases, are consistent with this Section, Section IV (Undertakings), and Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

#### VI. DUE CARE/COOPERATION

25. The Settling Respondent agrees that in constructing the MLK Parkway Project and in operating and maintaining the MLK Parkway Project Improvements it shall exercise due care at the Easement Area with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with Settling Respondent's use of the Easement Area. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site

and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Easement Area or other portions of the Site under its control that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

## VII. CERTIFICATION

26. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its officers, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Easement Area or at or from those portions of the Site under its control and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at

the Site. If the United States determines that information provided by Settling

Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

#### VIII. UNITED STATES' COVENANT NOT TO SUE

27. Subject to the Reservation of Rights in Section IX of this Agreement, as of the date Settling Respondent acquires a permanent roadway easement over the Easement Area, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

#### IX. RESERVATION OF RIGHTS

28. The covenant not to sue set forth in Section VIII, above, does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:
- a. claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Undertakings), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs).

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- b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;
  - c. any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;
  - d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;
  - e. criminal liability;
  - f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and
  - g. liability for violations of local, State or federal law or regulations.
29. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.
30. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.
31. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling



Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondent acknowledges that it is acquiring property where response actions may be required.

#### X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

32. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.
33. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA.

Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XI. PARTIES BOUND/TRANSFER OF COVENANT

34. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon the Settling Respondent, its officers and employees. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII shall apply to Settling Respondent's officers or employees to the extent that the alleged liability of the officer or employee is based on its status and in its capacity as an officer or employee of Settling Respondent, and not to the extent the alleged liability arose independently of the alleged liability of the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.
35. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.
36. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.
37. In the event of an assignment or transfer of the Easement Area or an assignment or transfer of an interest in the Easement Area, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement,

~~in writing, accordingly. Moreover, prior to or simultaneous with~~ any assignment or transfer of the Easement Area, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

#### XII. DISCLAIMER

38. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Easement Area or the Site nor constitutes any representation by EPA that the Easement Area or the Site is fit for any particular purpose.

#### XIII. DOCUMENT RETENTION

39. The Settling Respondent agrees to retain and make available to EPA all of its business and operating records, contracts, site studies and investigations, and documents relating to operations at the Easement Area for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

#### XIV. PAYMENT OF COSTS

40. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Undertakings) of this Agreement, it shall

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be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

#### XV. NOTICES AND SUBMISSIONS

41. All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted to EPA pursuant to this Agreement shall be directed to:

Mary Peterson  
Superfund Division  
U. S. Environmental Protection  
Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone (913) 551-7882  
Fax (913) 551-7964

42. All verbal notices and written communications provided to be made to Settling Respondent under this Agreement shall be directed to:

City Engineer  
City of Des Moines  
City Hall  
400 East First Street  
Des Moines, Iowa 50309-1891  
Telephone: (515) 283-4920  
Fax: (515) 283-4112

#### XVI. EFFECTIVE DATE

43. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

44. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received.

#### XVII. TERMINATION

45. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

#### XVIII. CONTRIBUTION PROTECTION

46. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Easement Area with respect to the Existing Contamination.

47. The Settling Respondent agrees that ~~with respect to any suit or claim~~ for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.
48. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

#### XIX. EXHIBITS

49. Exhibit 1 shall mean the Deed of Permanent Easement for Roadway Right-of-Way and Covenant and the Acquisition Plat attached to said Deed.
50. Exhibit 2 shall mean the map depicting the Site.
51. Exhibit 3 shall mean the City of Des Moines “Technical Proposal and Plan of Action for Des Moines TCE Site.”
52. Exhibit 4 shall mean the “First Supplement to Technical Proposal and Plan of Action for Des Moines TCE Superfund Site” dated March 8, 2002.
53. Exhibit 5 shall mean the Second Supplement to Technical Proposal and Plan of Action for Des Moines TCE Site.
54. Exhibit 6 shall mean the Third Supplement to Technical Proposal and Plan of Action for Des Moines TCE Site.
55. Exhibit 7 shall mean the plan for the Des Moines Waterworks Raw Water Main Relocation Project.

~~XX. REMOVAL OF LIEN~~

56. Subject to the Reservation of Rights in Section IX of this Agreement, as of the date Settling Respondent acquires a permanent roadway easement over the Easement Area, EPA agrees to remove any lien it may have on the Easement Area under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), as a result of response action conducted by EPA at the Easement Area.

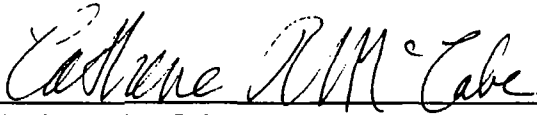
XXI. PUBLIC COMMENT

57. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

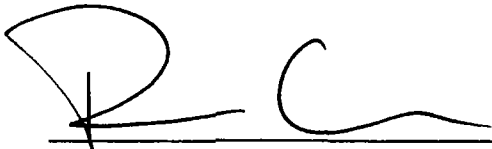
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**FOR THE UNITED STATES OF AMERICA**



Catherine R. McCabe  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

May 8, 2003  
Date



Paul Gormley  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

May 8, 2003  
Date



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**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION VII**

*James B. Gulliford*  
\_\_\_\_\_  
James B. Gulliford  
Regional Administrator,  
U.S. Environmental Protection Agency  
Region VII

*3/17/03*  
\_\_\_\_\_  
Date

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Des Moines TCE Site- City of Des Moines

**CITY OF DES MOINES, IOWA**

By *Preston A. Daniels*  
Preston A. Daniels, Mayor

Attest:

*Diane Rauh*  
Diane Rauh  
City Clerk

Approved as to Form:

*Terrence L. Timmins*  
Terrence L. Timmins  
Deputy City Attorney

STATE OF IOWA    )  
                          ) ss:  
COUNTY OF POLK    )

On this 10<sup>th</sup> day of March, 2003 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Preston A. Daniels and Diane Rauh, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in (Ordinance No. passed) (the Resolution adopted) by the City Council, under Roll Call No. 037 of the City Council on the 10<sup>th</sup> day of March, 2003, and that Preston A. Daniels and Diane Rauh acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

*Jodene Witmer*  
Notary Public in and for the  
State of Iowa



Real Estate Division  
Engineering Dept.  
City of Des Moines  
City Hall  
400 East First Street  
Des Moines, Iowa 50309-1891

Prepared by: Terrence L. Timmins, Legal Department., City of Des Moines (515) 283-4130

Project Name Martin Luther King Jr. Parkway  
Project Location: SW 17<sup>th</sup> and Market 200 SW 16th

W.O. #28-2001-047  
Parcel # - 34

**DEED OF PERMANENT EASEMENT  
FOR ROADWAY RIGHT-OF-WAY AND COVENANT**

**THIS DEED OF EASEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between DICO, Inc., a corporation organized under the laws of the State of Delaware, Grantor, and the City of Des Moines, Iowa, a municipal corporation, Grantee.

**WITNESSETH:**

That DICO, Inc., as Grantor, for and in consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00), does hereby grant, bargain, sell and convey unto the said City of Des Moines, Iowa, as Grantee, a perpetual, exclusive Easement for Roadway Right-of-Way under, over, through, and across, and access rights to, the following described real estate:

**LEGAL DESCRIPTION: PERMANENT EASEMENT AREA**

ALL THAT PART OF LOTS 1, 2 AND C IN DICO PLAT NO. 1, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE PRESENT NORTH RIGHT-OF-WAY LINE OF MARKET STREET AND THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET; THENCE SOUTH 00° (DEGREES) 01' (MINUTES) 03" (SECONDS) WEST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ON THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET A DISTANCE OF 158.16 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUING SOUTH 00°01'03" WEST ON THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET A DISTANCE OF 129.46 FEET; THENCE SOUTHWESTERLY ON A 1,219.81-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY AND HAVING A 307.60-FOOT LONG CHORD BEARING SOUTH 76°51'40" WEST, A DISTANCE OF 308.42 FEET (ARC LENGTH); THENCE NORTH 20°50'38" WEST, A DISTANCE OF 14.21 FEET; THENCE SOUTH 69°09'22" WEST A DISTANCE OF 19.61 FEET; THENCE SOUTH 20°50'38" EAST, A DISTANCE OF 14.21 FEET; THENCE SOUTHWESTERLY ON A 1,219.81-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY AND HAVING A 155.57-FOOT LONG CHORD BEARING SOUTH 65°02'25" WEST, A DISTANCE OF 155.68 FEET (ARC LENGTH) TO THE WEST LINE OF SAID LOT C; THENCE NORTH 06°03'08" EAST ON THE WEST LINE OF SAID LOT C, A DISTANCE OF 82.17 FEET; THENCE NORTH 12°20'42" WEST ON THE WEST LINE OF SAID LOT C, A DISTANCE OF 293.96 FEET; THENCE NORTH 42°56'39" WEST ON THE WEST LINE OF SAID LOT C, A DISTANCE OF 124.99 FEET; THENCE SOUTHEASTERLY ON A 1,879.11-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND HAVING A 212.22-FOOT LONG CHORD BEARING SOUTH 74°32'24" EAST, A DISTANCE OF 212.33 FEET (ARC LENGTH); THENCE SOUTH 71°29'44" EAST, A DISTANCE OF 415.23 FEET TO THE POINT OF BEGINNING.

BY SURVEY CONTAINING 132,077 SQUARE FEET, OR 3.03 ACRES.

Also as depicted and described on Exhibit "A" attached hereto and incorporated herein by this reference.

LEGAL DESCRIPTION: GRANTOR'S REMAINDER PARCEL

ALL THAT PART OF LOTS 1, B AND C IN DICO PLAT NO. 1, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE PRESENT NORTH RIGHT-OF-WAY LINE OF MARKET STREET AND THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET; THENCE SOUTH 00° (DEGREES) 01' (MINUTES) 03" (SECONDS) WEST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ON THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET A DISTANCE OF 287.62 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUING SOUTH 00°01'03" WEST ON THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET A DISTANCE OF 273.68 FEET TO THE PRESENT SOUTH RIGHT-OF-WAY LINE OF WABASH STREET; THENCE NORTH 89°59'28" EAST ON THE PRESENT SOUTH RIGHT-OF-WAY LINE OF WABASH STREET A DISTANCE OF 354.89 FEET TO THE EAST LINE OF SAID LOT 1; THENCE SOUTH 00°02'16" WEST ON THE EAST LINE OF SAID LOT 1 A DISTANCE OF 2,031.04 FEET; THENCE NORTH 63°23'29" WEST A DISTANCE OF 200.00 FEET TO THE BOUNDARY LINE OF SAID LOT 1; THENCE NORTH 45°35'39" WEST ON THE BOUNDARY LINE OF SAID LOT 1 A DISTANCE OF 1,072.90 FEET; THENCE NORTHWESTERLY ON THE BOUNDARY LINE OF SAID LOT 1 BEING A 411.83-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY AND HAVING A 356.96-FOOT LONG CHORD BEARING NORTH 19°54'39" WEST A DISTANCE OF 369.20 FEET (ARC LENGTH); THENCE

Grantor and Grantee agree that the consideration above provided constitutes full and adequate compensation to Grantor for its conveyance and delivery of this Deed of Permanent Easement, and constitutes full and adequate compensation for all damages associated with this conveyance, including damages to the Remainder Parcel, damages for loss of access to the Permanent Easement Area from the Remainder Parcel and damages associated with the construction and future public use of the public improvements to be constructed in the Permanent Easement Area for the Martin Luther King, Jr. Parkway Project, and including damages for loss of use of the Permanent Easement Area.

This Easement shall be subject to and is granted upon the following terms and conditions:

1. **Purpose and Use of Permanent Easement Area.** This grant of Permanent Easement is for the purpose of establishing a permanent road for the use, benefit and enjoyment of the public. Grantee shall be entitled to the use of the Permanent Easement Area for the construction, operation, maintenance, repair and replacement of certain public improvements, to wit: (a) a multiple lane arterial roadway, roadway and bridge approach embankment, bridge abutment and bridge located in the Permanent Easement Area, including appurtenances thereto (hereinafter referred to collectively as "the roadway improvements"), (b) surface and storm water collection structures and storm sewers, including appurtenances thereto (hereinafter "the storm water facilities"); and (c) underground fibers, wires, conduits and ducts for governmental communications purposes including but not limited to traffic control, and including appurtenances thereto; (which roadway improvements, drainage improvements and underground fibers and wires are hereinafter collectively referred to as the "Project Improvements"). The use of the Permanent Easement Area for the installation or operation of underground fibers, wires, conduits and ducts and appurtenances thereto shall not extend to any non-governmental public utility or telecommunications company, or to any private company. The use of the Permanent Easement Area for construction, maintenance, repair or replacement activities as above provided shall include the use of such Area as a construction staging area for the storage of construction

trailers, equipment and materials. The Permanent Easement shall be deemed to include air rights over said Permanent Easement Area.

**2. Conflicting Uses and Erection of Structures Prohibited.** Grantor shall not engage in any use of the Permanent Easement Area which conflicts with or affects the construction, operation, maintenance, repair, replacement or use of the Project Improvements or appurtenances thereto, nor shall Grantor erect any structure or fence over, under or within the Permanent Easement Area without obtaining the prior written approval of the City Engineer; Provided that Grantor shall be entitled to maintain the presently existing perimeter fence of the Permanent Easement Area, except for that portion of the Permanent Easement Area upon which the roadway improvements are constructed. Grantee covenants and agrees that it will construct and maintain a fence, of similar design to the presently existing perimeter fence, along and on either side of the roadway right-of-way, to separate Grantor's Remainder Parcel from the roadway right-of-way.

**3. Change of Grade Prohibited.** Grantor shall not change the grade, elevation or contour of any part of the Permanent Easement Area without obtaining the prior written consent of the City Engineer.

**4. Right of Access.** The Grantee, its agents, contractors, employees and assigns shall have the right of access to the Permanent Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including, but not limited to, the right to remove any unauthorized obstructions, structures, plants, etc., placed or erected on the Permanent Easement Area.

**5. Reservation of Access Rights and Uses to Grantor; Grantor's Covenant Regarding Access to and Use of the Permanent Easement Area.** Pursuant to order of the United States Environmental Protection Agency (EPA), Grantor is obligated to operate and maintain in place upon its property, including the Permanent Easement Area certain environmental response activities. In order that Grantor can continue to meet its obligations under the existing or any future EPA order, the following rights in the Permanent Easement Area are reserved to Grantor:

(a) a right of access to continue operating, maintaining and repairing and to replace the existing groundwater recovery wells and associated pumps and piping located in the Permanent Easement Area, if and as required by the EPA or other environmental regulatory agency;

(b) a right of access to continue the operation, maintenance, repair and replacement of the asphalt environmental cap now in place upon the Easement Area, if and as required by the EPA or other environmental regulatory agency, except for that portion of said environmental cap which the Grantee replaces or augments in connection with its construction of the roadway improvements, which portion thereof the Grantee shall hereafter be responsible for operating, maintaining, repairing or replacing if and as required by the EPA or other environmental regulatory agency;

(c) a right of access to continue operating, maintaining, and repairing existing and replacement monitoring wells (replacement wells being those wells required by EPA or other environmental regulatory agency);

(d) a right of access for addressing environmental contamination within the Easement Area as may be required by the EPA or other environmental regulatory agency;

- (e) a right of access to monitor soil and groundwater contamination located under the environmental cap within the ~~Permanent Easement Area~~, and for in situ remediation of that contamination, should changes in law or regulation require such remediation in the future or should such remediation be required by any future order of the EPA or other environmental regulatory agency; and
- (f) a right of access to continue the operation, maintenance, repair and replacement of the existing perimeter fencing along the exterior property line of the Easement Area if and as required by the EPA or other environmental regulatory agency or if desired by Grantor.

PROVIDED that the exercise of the aforementioned rights by Grantor shall not interfere with the construction of the Project Improvements, or with the future use, operation, maintenance, repair, enlargement, reconstruction or replacement of those improvements;

AND FURTHER PROVIDED that access to the Easement Area from the public road right-of-way for the purposes identified above shall be provided to Grantor only at the locations hereafter described and as shown on Exhibit A, or at such different or additional access points which the Grantee may hereafter designate or consent to in writing. For purposes of effecting said access rights, the Grantee reserves to Grantor the right to directly access the Permanent Easement Area, from its Remainder Parcel to the South of said Permanent Easement Area, at Access Point No. 1 as described and shown in Exhibit A, and Grantee agrees to construct a gate in the fence for Grantor's use at said Access Point No. 1. For purposes of effecting said access rights, the Grantee further reserves to Grantor the right to directly access the Permanent Easement Area lying North of the Martin Luther King, Jr. Parkway roadway right-of-way at Access Point No. 2 as described and shown in Exhibit A, and Grantee agrees to construct a gate in the fence along the Northerly boundary of the Permanent Easement Area at Access Point No. 2 for Grantor's use.

Grantor covenants and agrees that its exercise of the foregoing access rights shall be performed subject to and consistently with the Grantee's use of the Permanent Easement Area as hereinabove provided, and provided that the exercise of said rights does not interfere or conflict with the construction, operation, maintenance, repair, replacement or use of the Project Improvements hereafter constructed or installed in the Permanent Easement Area by the Grantee.

**6. Grantee's Covenants Regarding Maintenance, Repair and Replacement of the Environmental Cap Within the Easement Area.** Pursuant to order of the United States Environmental Protection Agency (EPA), Grantor is obligated to maintain in place upon its property, including the Permanent Easement Area, an "environmental cap" to prevent dermal and inhalation exposures to contaminants within the soils under the cap, and to prevent the infiltration of surface and storm waters into said soils. In constructing the Project Improvements within the Permanent Easement Area, the Grantee will be required to remove certain portions of said cap, and may disturb or damage other portions of said cap. The Grantee hereby covenants and agrees that it will replace those portions of the asphalt cap removed for construction of the Project Improvements with a cap comprised of clay soils which will form the roadway and bridge approach embankment, and that it will maintain said clay soil cap in place upon the Permanent Easement Area as required by the aforementioned order, or any future order, of the EPA with respect thereto. The Grantee further covenants and agrees that it will repair or replace any portion of the asphalt cap within the Permanent Easement Area which is damaged or destroyed due to the construction of the Project Improvements, and will thereafter maintain said

portions of the asphalt cap as required by the aforementioned order, or any future order of the EPA, with respect thereto.

**7. Grantee's Covenants Regarding Maintenance, Repair and Replacement of the Groundwater Recovery Wells Within the Easement Area.** Pursuant to order of the United States Environmental Protection Agency (EPA), Grantor is obligated to maintain in place upon its property, including the Permanent Easement Area, a groundwater recovery system to reduce the groundwater gradient on the West side of the Raccoon River to prevent contaminated groundwater from crossing beneath the river and entering water intake wells of the Des Moines Water Works. The Project Improvements have been designed and are to be constructed so as not to disturb, impair or require the relocation of the wells, pumps or piping comprising Grantor's groundwater recovery system within the Permanent Easement Area. In the event that the construction activities of the Grantee's contractor are determined to be the proximate cause of damage to or destruction of any portion of Grantor's groundwater recovery system, the Grantee agrees pay Grantor's reasonable costs for repair or replacement of the system components so damaged or destroyed, or cause its contractor to do so. Grantee further covenants and agrees that in the event of the failure of the piping for the groundwater recovery system situated beneath the bridge approach embankment to be constructed as part of the Project Improvements, it will, at its option, allow Grantor to replace the said piping in its existing location, or it will allow Grantor to relocate said piping within the Permanent Easement Area. Grantee further agrees that in the event it is determined that the construction of the Project Improvements is the proximate cause of the failure of said piping, the Grantee agrees to pay Grantor's reasonable costs for repair or replacement of the system components so damaged or destroyed. The Grantee further agrees that damages to Grantor's groundwater recovery system caused as above provided shall be subject to renegotiation as provided by Section 6B.52 of the Iowa Code.

**8. Grantee's Covenants Regarding Maintenance, Repair and Replacement of the Groundwater Monitoring Wells Within the Easement Area.** Pursuant to order of the United States Environmental Protection Agency (EPA), Grantor is obligated to maintain in place upon its property, including the Permanent Easement Area, and upon certain other properties, a system of groundwater monitoring wells to monitor the effectiveness of its groundwater recovery system. The design of the Project Improvements is such that a number of said groundwater monitoring wells have been identified for permanent removal to accommodate construction of the Project Improvements. Grantee agrees to submit to EPA a plan for the abandonment, repair and replacement of monitoring wells, therein identifying which wells will need to be removed to accommodate construction of the Project Improvements. With respect to such monitoring wells that must be replaced, the Grantee agrees to cause its contractor to determine the appropriate relocation site for such monitoring wells, and upon EPA approval of the proposed relocation sites, Grantee agrees to cause its contractor to construct new monitoring wells at the approved relocation sites, all at Grantee's cost.

In the event that the construction activities of the Grantee's contractor are determined to be the proximate cause of damage to or destruction of any of Grantor's groundwater monitoring wells not identified for removal or relocation as above provided, the Grantee agrees to cause its contractor to repair said wells, or to relocate and replace said wells as above provided, all at Grantee's cost. The Grantee further agrees that damage to or destruction of Grantor's groundwater monitoring wells caused as above provided shall be subject to renegotiation as provided by Section 6B.52 of the Iowa Code.

9. **Grantor's and Grantee's Covenants.** Grantor, on behalf of itself, its successors and assigns, covenants to perform and to observe the terms and conditions and affirmative requirements and obligations as provided herein. Grantee, on behalf of itself, its successors and assigns, accepts this Easement and covenants to perform and to observe the terms and conditions and affirmative requirements and obligations as provided herein.

10. **Easement and Covenant Runs With The Land.** This Easement and the covenants herein contained shall be deemed to run with the land comprising the Permanent Easement Area and Grantor's Remainder Parcel and shall be binding on the Grantor and Grantee and their respective successors and assigns.

11. **Abandonment of Easement.** Upon Grantee's abandonment of (a) the roadway improvements within the Permanent Easement Area, as evidenced by the cessation of pedestrian or vehicular traffic thereon and the removal of said roadway improvements therefrom, and (b) the underground fibers, wires, conduits and ducts within the Permanent Easement Area, as evidenced by the cessation of their use and their removal therefrom, the easement therefor hereby conveyed, and all rights incident or appurtenant thereto, shall revert to Grantor, its successors and assigns.

12. **Assignment of Easement.** The Grantor agrees that the Grantee may assign this Easement to the State of Iowa or to the Iowa Department of Transportation or to any other governmental agency assuming jurisdiction of the public roadway constructed within the Easement Area.

13. **Approval by City Council.** This Easement shall not be binding until it has received final approval and acceptance by the Des Moines City Council by Resolution, which approval and acceptance shall be noted on this Easement by the City Clerk.

14. **Renegotiation of Damages.** Grantee acknowledges and agrees, and hereby notifies Grantor, that pursuant to Section 6B.52 of the Iowa Code, Grantor shall have five years from and after Grantee's acceptance of construction of the Project Improvements to renegotiate construction or maintenance damages not apparent at the time of its execution and delivery of this Deed.

15. **Grantor's Covenant.** Grantor does hereby covenant with the Grantee that Grantor holds said real estate described in this Easement by Title In Fee Simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.



**GRANTEE  
CITY OF DES MOINES, IOWA**

By \_\_\_\_\_  
Preston A. Daniels, Mayor

Attest:

Approved as to Form:

\_\_\_\_\_  
Donna V. Boetel-Baker  
City Clerk

\_\_\_\_\_  
Terrence L. Timmins  
Deputy City Attorney

STATE OF IOWA    )  
                          ) ss:  
COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, 2002 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Preston A. Daniels and Donna V. Boetel-Baker, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in (Ordinance No. \_\_\_\_ passed) (the Resolution adopted) by the City Council, under Roll Call No. of the City Council on the \_\_\_ day of \_\_\_\_\_, 2002, and that Preston A. Daniels and Donna V. Boetel-Baker acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

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



**EXHIBIT A**  
**~~Acquisition Plat of~~**  
**Permanent Roadway Easement**

LEGAL DESCRIPTION: PERMANENT EASEMENT AREA

ALL THAT PART OF LOTS 1, 2 AND C IN DICO PLAT NO. 1, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE PRESENT NORTH RIGHT-OF-WAY LINE OF MARKET STREET AND THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET; THENCE SOUTH 00° (DEGREES) 01' (MINUTES) 03" (SECONDS) WEST (ASSUMED BEARING FOR THE PURPOSE OF THIS DESCRIPTION) ON THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET A DISTANCE OF 158.16 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUING SOUTH 00°01'03" WEST ON THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET A DISTANCE OF 129.46 FEET; THENCE SOUTHWESTERLY ON A 1,219.81-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY AND HAVING A 307.60-FOOT LONG CHORD BEARING SOUTH 76°51'40" WEST, A DISTANCE OF 308.42 FEET (ARC LENGTH); THENCE NORTH 20°50'38" WEST, A DISTANCE OF 14.21 FEET; THENCE SOUTH 69°09'22" WEST A DISTANCE OF 19.61 FEET; THENCE SOUTH 20°50'38" EAST, A DISTANCE OF 14.21 FEET; THENCE SOUTHWESTERLY ON A 1,219.81-FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY AND HAVING A 155.57-FOOT LONG CHORD BEARING SOUTH 65°02'25" WEST, A DISTANCE OF 155.68 FEET (ARC LENGTH) TO THE WEST LINE OF SAID LOT C; THENCE NORTH 06°03'08" EAST ON THE WEST LINE OF SAID LOT C, A DISTANCE OF 82.17 FEET; THENCE NORTH 12°20'42" WEST ON THE WEST LINE OF SAID LOT C, A DISTANCE OF 293.96 FEET; THENCE NORTH 42°56'39" WEST ON THE WEST LINE OF SAID LOT C, A DISTANCE OF 124.99 FEET; THENCE SOUTHEASTERLY ON A 1,879.11-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND HAVING A 212.22-FOOT LONG CHORD BEARING SOUTH 74°32'24" EAST, A DISTANCE OF 212.33 FEET (ARC LENGTH); THENCE SOUTH 71°29'44" EAST, A DISTANCE OF 415.23 FEET TO THE POINT OF BEGINNING.

BY SURVEY CONTAINING 132,077 SQUARE FEET, OR 3.03 ACRES.

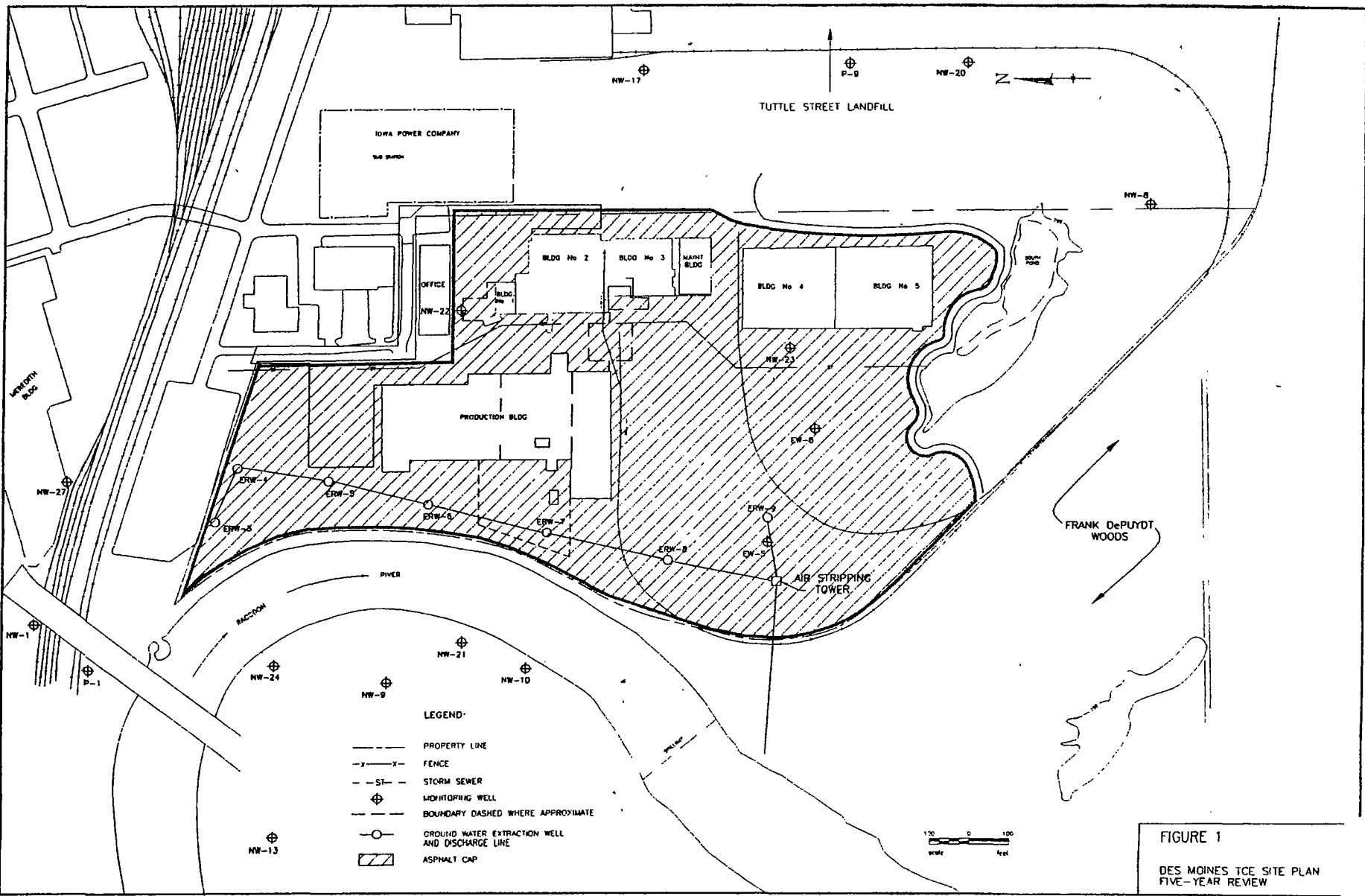
ACCESS POINT NO. 1

A 16.00-FOOT (4.9 METER) WIDE DRIVE CENTERED ON A POINT ALONG THE PROPOSED SOUTH RIGHT-OF-WAY LINE OF MARTIN LUTHER KING JR. PARKWAY AND THE NORTHERLY BOUNDARY OF GRANTOR'S REMAINDER PARCEL ABUTTING THEREON, WHICH POINT IS LOCATED 200.00 FEET WESTERLY OF THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET, ALL IN LOT 1 IN DICO PLAT NO. 1, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

ACCESS POINT NO. 2

A 16.00-FOOT (4.9 METER) WIDE DRIVE CENTERED ON A POINT ALONG THE NORTHERLY BOUNDARY OF THE PERMANENT EASEMENT AREA (ALSO THE NORTHERLY BOUNDARY OF LOT 1 IN DICO PLAT NO. 1), WHICH POINT IS LOCATED 400.00 FEET WESTERLY OF THE PRESENT WEST RIGHT-OF-WAY LINE OF SOUTHWEST 17TH STREET, ALL IN LOT 1 IN DICO PLAT NO. 1, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA..

PLOTTER: PLOT SCALE: 1"=100' ORIGINAL DATE: 04/18/00 REVISED BY: ON: 04/18/00 @ 11:20am  
 DRAWING: 01/PLA/18/10/000733/DWG ACAD 13.05 PLOT BY: 04/18/00 ON: 10/2002 02:15pm ATTACHED: 18T



**FIGURE 1**  
 DES MOINES TCE SITE PLAN  
 FIVE-YEAR REVIEW

December 21, 2001

Mr. Daniel J. Shiel  
 Assistant Regional Counsel  
 Office of Regional Counsel  
 United States Environmental Protection Agency  
 901 North 5<sup>th</sup> Street  
 Kansas City, KS 66101

RE: Submittal of Technical Proposal and  
 Plan of Action for Des Moines TCE  
 Superfund Site, Activity ID No. 28-2001-047

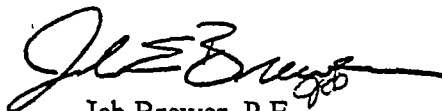
Dear Mr. Shiel:

Attached is the City of Des Moines "Technical Proposal and Plan of Action" for that portion the Martin Luther King, Jr., Parkway Project which is proposed for construction on the DICO Inc. property, which is part of the Des Moines TCE Superfund Site. We are simultaneously submitting this report to DICO Inc. This is to report that we have not received any comments from DICO Inc. since our joint meeting with EPA and DICO representatives, in which we outlined the basic concepts of the City's proposal.

I would request that EPA provide its comments or objections to the Technical Proposal and Plan of Action to me as soon as possible. We ask particular review and approval of the proposed monitoring well replacement schedule. The City is hoping to obtain EPA approval of the Technical Proposal and Plan of Action no later than February 20, 2002, so that we may timely proceed with further activities directed at the acquisition of the roadway easement upon the DICO property.

Thank you for your assistance in this matter.

Sincerely,



Jeb Brewer, P.E.  
 Deputy City Engineer

JB/mrq  
 Attachments

cc: Mr. Stanley Riegel, Morrison & Hecker LLP  
 Mr. Soderstrum, Brown Winick Graves Gross  
 Mr. Steve Eaton, Earth Tech  
 Mr. Tom Draur, Baker & Lemar  
 Mrs. Jane McAllister, Ahlers Law Firm  
 Mr. Terrence Timmins, Deputy City Attorney, City of Des Moines



ENGINEERING DEPARTMENT  
 CITY HALL  
 400 EAST FIRST STREET  
 DES MOINES IOWA 50309-1891  
 (515) 283-4920  
 FAX (515) 283-4112

ALL-AMERICA CITY 1949, 1976, 1981

**CITY OF DES MOINES TECHNICAL PROPOSAL AND PLAN OF ACTION  
RE THAT PORTION OF THE MARTIN LUTHER KING, JR. PARKWAY  
PROJECT PROPOSED FOR CONSTRUCTION UPON THE  
DES MOINES TCE-SUPERFUND-SITE**

**Submitted to U.S. E.P.A. Region VII Office,  
Kansas City, Kansas, December 2001**

**I. OVERVIEW OF MLK PROJECT**

- A. Project Description
- B. Environmental Impact Statements
- C. Project Funding and Ownership of Project Improvements
- D. Public Need for the Project
- E. Project Schedule

**II. DISCUSSION OF MLK PROJECT AS IT RELATES TO DICO PROPERTY**

- A. Location Study
- B. City's Acquisition of a Portion of the DICO Property for the MLK Project
- C. Precautions Taken by the City in the Design of the MLK Project to Accommodate Superfund Status of DICO Property
  - 1. Design of MLK Project Improvements in the Easement Area
  - 2. Proposed Accommodation of DICO Response Actions
  - 3. Proposed Accommodation of DICO's Groundwater Recovery System
  - 4. Proposed Accommodation of DICO's Monitoring Well Network
  - 5. Proposed Accommodation of DICO's Environmental Cap; Prevention of Dermal Contact and Inhalation Exposures and Prevention of Storm and Surface Water Infiltration and Resultant Migration of Contaminants Off-Site During and After Completion of Construction of MLK Project Improvements
  - 6. Maintaining the Effective Level of Environmental Protection Afforded by Current Response Actions

**III. CONCLUSION**

**IV. REQUESTED EPA ACTION**

## **I. OVERVIEW OF THE MARTIN LUTHER KING, JR. PARKWAY PROJECT**

### **A. Project Description**

The Martin Luther King, Jr. Parkway Project (MLK Project) is a 6 lane divided urban arterial roadway around the southern and western perimeters the City of Des Moines' Central Business District (CBD). **The MLK Project consists of three major segments.** The first segment, known as the **MLK East-West Segment**, which is from SW 2<sup>nd</sup> Street near the Sec Taylor Baseball Stadium just west of the Des Moines River westward to SW 16th Street and across the Raccoon River to an intersection with the existing Fleur Drive. The second segment, known as the **MLK North-South Segment**, commences at the intersection of Fleur Drive and the MLK East-West Segment, and proceeds straight north across the Raccoon River, underneath Grand Avenue to Ingersoll Avenue, and continues north to the Interstate 235 (I-235) interchange. The North-South and East-West Segments of the Project are currently in various stages of design and construction. The third segment, known as the **MLK East-West Extension**, commences on the east end of the East-West Segment, near Sec Taylor Baseball Stadium and SW 2<sup>nd</sup> Street, and proceeds easterly across the Des Moines River to the interchange with US 69, also known as SE 14th Street and SE 15th Street. For your reference, a project map is found in Attachment 1.

### **B. Environmental Impact Statements**

All three segments of the MLK Project were identified in a corridor study started by the City in 1979. A draft Environmental Impact Statement (EIS) was made available to the U.S. Environmental Protection Agency (EPA) on May 6, 1983. The location hearing on all three segments was held on June 30, 1983. Eventually a final EIS was presented to the US EPA and the U.S. Department of Interior on December 28, 1987. In March 1988 the Record of Decision was published in the Federal Register. The location approval was granted by the Federal Highway Administration (FHWA) later in 1988. A series of proposed changes along with additional and updated information resulted in the supplemental EIS being issued in August 1997 with final concurrence.

### **C. Project Funding and Ownership of Project Improvements**

The MLK Project is being funded with a combination of Federal, State and City funds. The City will contribute over 30% of the cost of the Project. The entire route will eventually become a State highway after construction is completed, based upon a Memorandum of Understanding between the Iowa Department of Transportation and the Metropolitan Planning Organization (MPO).

### **D. Public Need for the Project**

The MLK Project is intended to meet five critical needs of the City of Des Moines and the metropolitan area, including the following:

1. The Project will provide a high-capacity corridor to move east-west traffic around the CBD rather than through the CBD, thus reducing traffic congestion and the associated air quality impacts.
2. The Project will dramatically improve the accessibility to the Des Moines International

Airport from I-235 through the MLK North-South Segment. The current route from I-235 to the Airport is convoluted, involving the use of narrow local one-way streets which are very difficult for out-of-town drivers. The MLK North-South Segment will provide a direct route from I-235 to Fleur Drive and the Airport.

3. The Project will relieve traffic on I-235 from the MLK interchange to US 69 interchange. I-235 is currently in the process of being reconstructed. During the reconstruction of I-235, MLK will be critical in handling displaced traffic. Even after I-235 is reconstructed MLK will carry a significant amount of east-west traffic since the I-235 design is a limited-build alternative and isn't capable of carrying the full projected traffic growth through the corridor. The current MPO Long Range Transportation Plan provides for corridor traffic by utilizing arterial and freeway routes making MLK an integral part of regional traffic patterns.

4. The Project will provide needed linkages to the existing street network. The MLK Project includes a number of other linkages including connections to SW 2<sup>nd</sup>, SW 3<sup>rd</sup>, SW 5<sup>th</sup>, SW 11<sup>th</sup>, and SW 16<sup>th</sup> Streets. The connection to SW 2<sup>nd</sup> and SW 3<sup>rd</sup> Streets, in conjunction with construction of the Indianola Avenue Connector which is currently underway, will allow a direct connection from the CBD to the major southwesterly arterial, Indianola Avenue.

5. The Project will stimulate economic development. The MLK Project has already stimulated redevelopment of a portion of the City's CBD which has traditionally been under utilized. That area, known as the Gateway West Area, is bounded by Grand Avenue on the north, 10<sup>th</sup> Street on the east, Locust Street on the south, and 15<sup>th</sup> Street on the west. The State of Iowa is investing significant amounts of economic development infrastructure funds to the East-West Segment of the MLK Project to encourage such development. As the first stage of the MLK East-West Segment is now being constructed, there is already new investment. A large insurance company, Nationwide, is currently building a \$150 million corporate headquarters that will utilize the transportation network developed by the East-West Segment of MLK. This private redevelopment project would have moved out of the CBD if the MLK East-West Segment had not been under construction. In addition, Wells Fargo Financial is also expanding its current facilities, as are other smaller office and light commercial interests, due to construction of the East-West Segment of MLK.

Furthermore, the MLK project will stimulate economic development of the Riverpoint West Area, a 300 acre area lying south of the City's CBD and immediately south of the East - West Segment of MLK. The City is in the planning stages of the Riverpoint West Project, which is characterized by underutilized industrial parcels with land extensive uses, a substantial number of deteriorated structures, real and perceived environmental contamination, physical and economic obsolescence and other factors that inhibit economic growth. The area is located in Census Tract 51, which has a family poverty rate of 37.8%. Riverpoint West has an assessed value of only \$12 million. In November 1999, the City completed a Phase I environmental assessment of Riverpoint West. Based on Phase I results, it was determined that Phase II work must be conducted on approximately 175 acres of property, or approximately 58 Sites. EPA has issued Brownfields Supplemental Assistance Funds for the Phase II assessment work.



Redevelopment of the Riverpoint West Project Area will benefit the community significantly by exponentially increasing the tax base from approximately \$12 million to at least \$140 million. It will provide quality, livable wage jobs, thus reducing the family poverty rate. The proposed urban village will offer a potential workforce for the downtown as well as a new market for its products and services. Most importantly, it will support the fundamental genesis of downtown Des Moines into a vital and integrated residential and service center poised for smart growth in the new millennium.

The lynchpin for successful completion of the redevelopment of the Gateway West Area, and for successful initiation of redevelopment in the Riverpoint West Area, is the Martin Luther King Jr. Parkway Project now being constructed between these two areas. The East-West Segment of MLK, slated for completion in 2004, will provide the improved access necessary to support the redevelopment presently occurring in the Gateway West Area of the CBD, and will act as a catalyst to open up the Riverpoint West Project Area by providing a highly visible location with direct access to a major thoroughfare.

#### **E. Project Schedule**

A number of construction contracts for the MLK East-West Segment of the Project have already been awarded for that stage of the Project between SW 2nd Street and SW 16th Street, including construction of MLK roadway improvements, storm drainage improvements including pump stations, and connector roads. A few of these contracts have been completed, including the majority of the mainline paving. The remaining parking and sidewalk work will be finished in the spring of 2002, which will allow for completion of the remaining contracts.

Originally, that portion of the MLK North-South Segment proceeding north from the Raccoon River, under Grand Avenue to Ingersoll Avenue, was to be under construction in the fall of 2001. However, high bids resulted in the City Council's rejection of all bids for this stage, with the direction to redesign some of the project elements to reduce costs. This redesign of the Raccoon River to Ingersoll Avenue stage will delay its construction until fall of 2002. In order to maintain the overall project schedule, the next stage of the North-South Segment, from Ingersoll Avenue to I-235, will be accelerated for bidletting in the spring of 2002, with construction to commence in the summer of 2002. A redesign of the interchange of the MLK East-West Segment with Fleur Drive and with the MLK North-South Segment has also been undertaken to identify additional savings. It is possible that there could be some delay in design and construction of the interchange depending on the timing of required approvals by various State and Federal agencies.

The final stage of the East-West Segment of the Project will involve construction of the roadway, bridge approach embankment and bridge over the Raccoon River to the interchange with Fleur Drive and the North-South Segment of MLK. **This stage of the Project will commence at SW 16<sup>th</sup> Street and will proceed westerly across the northern tip of the Des Moines TCE Superfund Site (CERCLIS Identification No. IAD980 687933), which is now owned by DICO, Inc. For purposes of discussion in this document, the portion of the Des Moines TCE Superfund Site owned by DICO will hereinafter be referred to as either "the Site" or "the DICO property".** Design of this stage of the East-West Segment is now underway, and construction was originally scheduled to commence in 2002. However, due to the required

redesign of the North-South Segment of the Project and of the interchange for the intersection of Fleur Drive with the East-West and North-South Segments of MLK, bidletting for construction of the roadway and bridge approach embankment and bridge has been rescheduled to occur in late fall 2002, with construction to commence in January 2003. In order to maintain that schedule, resolution of the environmental issues associated with the City's acquisition of that portion of the DICO property required for the MLK Project must occur by June 1<sup>st</sup> of 2002.

## **II. DISCUSSION OF MLK PROJECT AS IT RELATES TO THE DICO PROPERTY**

### **A. Location Study**

A location study was initiated by the City of Des Moines in 1979 to analyze the location and type of facilities required for what was then know as the "Central Business District Loop Arterial", now the Martin Luther King, Jr. Parkway. In conjunction with this study an environmental impact study of the proposed project was initiated. Numerous alternative alignments were proposed and considered during the course of this study. Through the environmental impact study process, some 14 federal agencies, 12 state agencies, and numerous local agencies and organizations and the public were provided opportunity for input. After receiving public input and after preparation of an Environmental Impact Statement, a final alignment was selected. Several alternative alignments, including the preferred alignment, cross the DICO property. The preferred alternative, which involves crossing the northern tip of the DICO property, was selected because it provides improved traffic flow and much better access to the underdeveloped industrial area south of the CBD while being competitive in cost. The alternatives considered were determined to have equal impact on the environment, but the preferred alternative resulted in displacement of considerably fewer businesses. For your reference, a diagram of the proposed alignment of the MLK roadway on the DICO property is found in Attachment 2.

### **B. City's Acquisition of a Portion of the DICO Property for the MLK Project**

The City intends to acquire a permanent easement over a small portion of the DICO property (the "Easement Area") for construction of the improvements associated with the final stage of the East-West Segment of MLK (roadway, bridge approach embankment and bridge). The Easement Area is comprised of approximately three (3) acres located at the northern-most portion of the 42-acre DICO property. The Site has been the subject of multiple removal and remedial actions (collectively "Response Actions") directed by EPA under the authority of the Comprehensive Response, Compensation and Liability Act ("CERCLA"). The Easement Area includes property which has been directly addressed by the Response Actions in that a portion of the groundwater recovery system (wells and piping), a portion of the groundwater monitoring system, and a portion of the surface cap are all found within the bounds of the Easement Area. Other Response Actions at the Site are outside the Easement Area.

### **C. Precautions Taken by the City in the Design of the MLK Project to Accommodate Superfund Status of DICO Property**

The City understands that DICO must be allowed to maintain certain mandated Response Actions at the Site as necessary to achieve their intended environmental goals. These Response Actions include the following:

- (1) The maintenance of a groundwater recovery system with its two-fold functions of providing hydraulic control of the groundwater plume as well as pumping and treating the contaminated groundwater;
- (2) The maintenance of an environmental cap with its two-fold functions of preventing inhalation and dermal contact exposures to contaminants and preventing the infiltration of surface and storm waters into soils on-site and the resultant migration of contaminants off-site; and
- (3) The maintenance and periodic sampling of a network of groundwater monitoring wells to verify the continuing effectiveness of the ground water recovery well system.

The City took extraordinary steps in the design and planned construction of the MLK Project improvements at this Site to assure that the City's activities would have little or no negative impact on the Response Actions in the Easement Area or elsewhere at the Site, thus assuring no less protection of public health and the environment than that being currently achieved. After further evaluation and design of the MLK project improvements, it is the City's belief that the construction of those improvements will have no negative impact on the Response Actions, as discussed below. In support of that assertion, the City would request consideration of the following:

1. Design of MLK Project Improvements in the Easement Area.

The MLK Project improvements to be constructed within the Easement Area on the DICO property consist of a 6-lane roadway with raised median that is sloped at approximately 2.5 percent away from the flood control levee located at the western edge of the property at the edge of the Raccoon River. The roadway cross section will include the roadway, 15 foot clear zones on both sides of the roadway, and side slopes down to the existing ground. The pavement cross section will consist of approximately 10 inches of Portland cement concrete over 12 inches of modified sub-base (crushed stone), over an embankment constructed of natural soils consisting of clays. The new roadway will be approximately 10 feet above the elevation of the Site as it now exists. The edge slopes along the roadway will be approximately four horizontal feet to one vertical foot to match existing ground. There will be a bridge abutment located on the land-side near the toe of the flood control levee. The first bridge pier will be located on the river-side of the flood control levee. The drainage from the roadway including the clear zones and the bridge will be collected at the curb and gutter section on the roadway and will drain off-Site towards SW 16<sup>th</sup> Street, where it will be collected in an underground storm sewer system.

2. Proposed Accommodation of DICO's Groundwater Recovery System.

To achieve the goal of minimally impacting the site, the City chose an alignment for construction of the roadway, bridge approach embankment and bridge on the DICO property that would not impact the groundwater recovery system. While this alignment does not present the most favored alignment from a highway engineering perspective, it is acceptable, and it offers the benefit of allowing DICO to continue to operate, maintain, sample, and repair the majority of the existing components of the groundwater recovery system without interruption from construction of the MLK roadway or from its operation and maintenance.

The planned footprint of the roadway, bridge approach embankment and bridge is between

extraction wells ERW-5 and ERW-4. The outer edges of the embankment will be located between ERW-4 and ERW-5, and embankment retaining walls will be constructed around the wellheads. The retaining walls were included in the design in order to permit adequate working space above and around the extraction wells, which are located within the edge of the planned embankment. The construction process will not disturb the piping between the extraction wells, will not interrupt operation of the groundwater recovery well system, and will not prevent the operation, maintenance or repair of that system.

While construction of roadway, bridge approach embankment and bridge will involve removal of the asphalt cap within the planned footprint, the roadway and bridge approach embankment will be constructed above the elevation of existing ground level within the Easement Area, and only the pilings for the bridge abutment will penetrate below the surface of existing soils. The added weight of the embankment will not adversely impact the piping between these wells.

In anticipation of future maintenance on the piping between ERW-4 and ERW-5 or the electrical wiring to the northern two extraction wells, the City will reserve to DICO the right to direct bore for piping or electrical connections between ERW-4 and ERW-5, or to reroute those connections around the toe of the embankment. If the piping or electrical wiring needs to be replaced, new piping can be installed under the roadway by means of jacking or tunneling with connections being made at the location of ERW-4 and ERW-5. The jacking or tunneling can be done directly or with an outside casing pipe. Maintenance and repair of the recovery system will be available on either side of the roadway. Surface access to ERW-3 and ERW-4 will be reserved to DICO from SW 16<sup>th</sup> Street on the north side of MLK Parkway, while surface access to ERW-5 will be reserved to DICO from the current DICO property on the south side of the roadway.

### 3. Proposed Accommodation of DICO's Monitoring Well Network.

In addition to the groundwater recovery system, DICO has developed a groundwater monitoring network for investigatory purposes. As part of the Response Actions, EPA has required DICO to regularly monitor some of the wells to evaluate the performance of the groundwater recovery system and to demonstrate its adequacy. The City understands that it is important to continue to have an effective groundwater monitoring network in place for those reasons.

The alignment chosen by the City for the roadway, bridge approach embankment and bridge will displace some of the existing monitoring wells and piezometers, as indicated on Attachment 2. The planned alignment will likely render monitoring wells NW-29, EW-3, EW-9 and piezometer P-2 inaccessible. As part of the roadway construction project, the City will cause its contractor to properly plug and abandon these wells and piezometers before they are lost to construction activities. It is possible, though unlikely, that monitoring wells NW-25, NW-1, NW-11, NW-9, NW-15 and piezometer P-4 will be affected by construction activities. Care will be taken to preserve monitoring wells where possible. However, the City believes that DICO can still demonstrate the adequacy of the groundwater recovery system by making the following adjustments with regard to the displaced wells.

Monitoring Well	Replace (Y/N)	Replacement/ Substitute Wells	Comments
<b>Wells to be Abandoned</b>			
NW-29	Y	NW-29R	South of new highway
EW-3	N	NW-1, ERW-5	Data points available nearby
EW-9	N	NW-9	Data point available nearby
P-2	Y	P-2R	North of road spur, south of railroad
<b>Wells Potentially Affected by Construction</b>			
NW-1	Y	NW-1R	South of highway if necessary, same distance from ERW-5
NW-9	Y	NW-9R	If EW-9 also destroyed
NW-11	N		Infrequently utilized
NW-15	Y	NW-15R	South of highway, if necessary
NW-25	Y	NW-25R	South of highway or under bridge deck near current position, if possible
P-4	Y	P-4R	As close as practicable to current position

Monitoring wells NW-29 and EW-3 on the east side of the river are monitored quarterly. Sufficient monitoring points exist near EW-3 that its replacement is not recommended; instead, monitoring at NW-1 and ERW-5 may be substituted. If NW-1 is rendered inaccessible during construction activities, the City will cause its contractor to install a replacement well adjacent to the current location of NW-1. The City will cause its contractor to replace monitoring well NW-29 as close to the south edge of the roadway as possible, south by southeast of its current position, following completion of construction activities. The City will, if necessary, cause its contractor to relocate piezometer P-2 north its current location and the new road to continue to provide hydraulic and contaminant concentration data on the northeastern edge of the project area.

Monitoring wells NW-11, EW-9, NW-9, NW-15, and NW-25 on the west side of the Raccoon River have met the criteria established by EPA of four months below 5 µg/L. Monitoring well NW-9 will serve as an adequate replacement for EW-9, which is monitored quarterly. Should both wells be damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to install one replacement well at a location south of their current locations. Similarly, if monitoring well NW-15 is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it at a location immediately south of the roadway, as near as practicable to its current location. Monitoring well NW-11 is not monitored often, and may not be a critical part of the monitoring system. If it is damaged beyond repair due to construction of the MLK improvements and replacement is deemed necessary, the City will cause its contractor to replace it at a location as close as practicable to its current location. Monitoring well NW-25 is a critical monitoring point for hydraulic capture data and water quality, and if it is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it at a location immediately south of its current location. As NW-25 is along the river's edge and will

likely be below a bridge span, damage is not considered likely. If piezometer P-4 is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it.

4. Proposed Accommodation of DICO's Environmental Cap, Prevention of Dermal Contact and Inhalation Exposures and Prevention of Storm and Surface Water Infiltration and Resultant Migration of Contaminants Off-Site During and After Completion of Construction of MLK Project Improvements.

In apparent compliance with an administrative order issued by EPA, DICO has installed and must maintain an asphalt "environmental cap" over portions of the Des Moines TCE Superfund Site, the primary purpose of which is to address potential dermal and inhalation routes of exposure for pesticides and herbicides in the soil at the Site. The cap also performs a secondary function of reducing infiltration from precipitation events, resulting in reduced opportunity for surface and subsurface contaminant migration. As such, the cap must remain in existence in the Easement Area.

The MLK roadway improvements to be constructed within the Easement Area will be located on a portion of the capped area and will replace a portion of the cap. Construction plans will call for removal of the asphalt cap under the roadway embankment, and replacement with a minimum of 4 feet of compacted clay as embankment material. After removal of the asphalt cap, all construction activities directed at construction of the roadway embankment will occur above the existing grade. The compacted clay, base, pavement and other construction materials forming the roadway and bridge approach embankment will be approximately 10 feet thick in place of the asphalt cap.

The contract documents will advise project contractors that the construction site for the roadway and bridge approach embankment and bridge is within the Des Moines TCE Superfund Site and that contractors and subcontractors should take special note of Site conditions which implicate worker safety or specialized construction methods. During construction of the project, the City's contractor will be required to exercise due care with respect to the hazardous substances concerned, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts and circumstances. The contractor will be required to take precautions against foreseeable acts or omissions of any third party and the consequences that could foreseeably result from such acts or omissions.

Special recognition must also be given to construction workers and construction-related activities at the Site to make sure all applicable and appropriate worker safety and environmental regulations, such as OSHA and RCRA, are fully achieved, and that due care is exercised with respect to the hazardous substances at the Site. To achieve this goal, the contractor will be required to provide an environmental management plan that will protect the workers and the public during construction.

The presence of a compacted clay barrier and a concrete road surface in perpetuity is considered sufficient protection to maintain a reduced risk to the public and the environment at or below the levels established in the risk assessment and Record of Decision for the Site.

The asphalt cap also serves to prevent storm water from entering the soils on the Site and causing contaminants to migrate off-Site. During construction of the MLK roadway improvements, the asphalt cap located within the footprint of the roadway and bridge approach embankment and in the vicinity of the bridge abutment will be left in place as long as practicable. The clay fills for the embankment which will take the place of the asphalt cap will be put in place as soon as practicable after removal of the asphalt cap. Erosion control measures will be installed to prevent off-site surface water from entering the construction zone. The time for construction will be limited in order to minimize the amount of surface water falling on the construction site. The natural grade of the area allows for surface water to naturally drain away from the site and be collected in a storm water collection system.

The joint where the asphalt cap meets the roadway and bridge approach embankment will be constructed in a manner similar to the existing joint between the flood control levee and the asphalt cap. The embankment will be placed for a short distance over the asphalt cap with positive drainage away from the joint. This design currently protects the area along the flood control levee and will protect the area along the roadway as well.

Should project construction activities result in damage to the asphalt cap in that portion of the Easement Area not covered by the roadway and bridge approach embankment, the City will cause its contractor to make repairs to the cap in accordance with EPA requirements or directives.

Long term control of surface and storm water infiltration into the soils within the Easement Area, and the conveyance of surface and storm water off-site is a concern that will also be addressed by the City. The embankment will be more than sufficient to prevent the infiltration of surface and storm waters into the soils in the Easement Area. The embankment will be constructed at a side slope of 4:1, and the road surface will be sloped as well, aiding in the handling of precipitation events. After completion of construction of the MLK roadway improvements, storm water drainage from the roadway will be controlled and transported off-Site to the City's storm water collection system, which will prevent the infiltration of surface and storm waters into the soils in the Easement Area. Additionally, the City will maintain control of access to and uses of the MLK roadway right-of-way, and will assume responsibility for maintenance of that portion of the environmental cap which is incorporated into the design of the roadway and bridge approach embankment.

#### 5. Maintaining the Effective Level of Environmental Protection Afforded by Current Response Actions.

In addition to the above, the City understands that its actions should not decrease the effectiveness or level of environmental protection currently achieved by the Response Actions. While the level of protection afforded by the Response Actions applies to the general environment, public health and welfare in general, it specifically addresses the public drinking water supply for the City. This level of protection will also be maintained.

The groundwater extraction system on the DICO property provides a mechanism for

control of contaminants in the saturated zone of the subsurface. The construction and use of the MLK roadway improvements will involve activities at or above grade, and will not affect the operational status of the groundwater extraction system. The roadway has been rerouted between recovery wells ERW-4 and ERW-5, with embankment accommodations made in the form of retaining walls around the wellheads to permit continued access around and above the recovery wells. The groundwater extraction system was originally designed as a nine-well, approximately 2 million gallons per day (MGD) remedial response action. Review of system installation and operation reports indicates that seven recovery wells were installed, and six are currently operating, though at rates less than the design rate. The system was designed to pump at a combined rate of approximately 1,300 gallons per minute (gpm). However, the system has been operating at an average flow rate of approximately 650 to 700 gpm. The system's degraded performance has continued to meet the EPA's requirements to date. As the construction and use of the MLK roadway will not affect the groundwater extraction system operationally, no impact to performance or contaminant loading is anticipated. Additionally, contaminant concentrations historically have been greater towards the west side of the production building on the DICO property, south of the planned highway route. This area is outside of the Easement Area.

When the City and its engineering consultant began the design of MLK project improvements in its original alignment, it was their belief that construction of those improvements would impact the groundwater recovery well system at the site, perhaps requiring relocation of one or more recovery wells. Consequently, the City retained an environmental consulting firm to undertake modeling of that system, and to report what impacts if any the project would have upon that system. While realignment of the MLK roadway improvements on the DICO property has obviated that impact, the City nonetheless authorized its consultant to continue the modeling efforts to evaluate the groundwater recovery system now in place. The modeling effort has included reconstruction of the previously accepted theoretical models in Visual Modflow version 2.8.2. These theoretical models were then adjusted until a reasonable match of the original steady-state data and a data set obtained during system operation were obtained. Upon achieving this match, variations in pumping activities and contaminant loading can be examined and system performance in different configurations estimated. The results of this modeling and a detailed description of model preparation and calibration will be submitted to the US EPA Region VII office upon completion and submission of the consultant's final report to the City.

### III. CONCLUSION

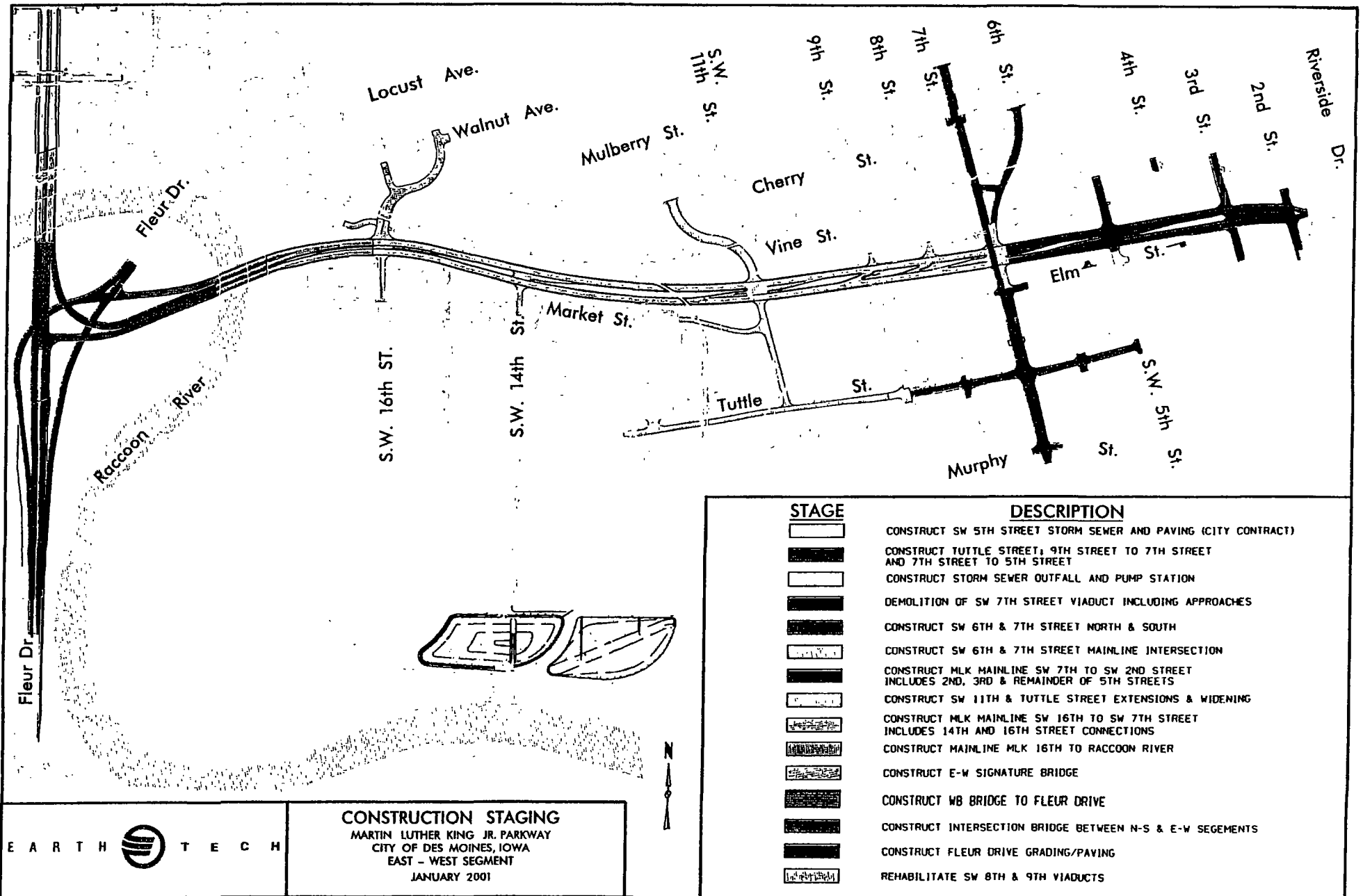
As indicated above, the MLK Project represents a public improvement necessary to alleviate significant traffic safety concerns while serving to meet developing business growth in the Gateway West Area of the Des Moines' CBD and attracting vital new residential and business development in the Riverpoint West Area. While alternative roadway alignments have been evaluated, the only workable approach requires a roadway easement through the Des Moines TCE Superfund Site. Acquisition of that roadway easement is the critical final step for completion of the East-West Segment of the MLK Project. The alignment of that segment of the Project was selected and designed for no significant negative impact on environmental response actions. The groundwater recovery system will not be impacted. That portion of the cap in the Easement Area will be improved and its continued maintenance assured. And, the Project will



result in the replacement of a few monitoring wells, which can be readily and simply accomplished. Upon EPA approval of the new well locations, the City is prepared to design and construct the replacement wells, or to compensate DICO for their design and construction. All of the above can be accomplished without reducing the level of environmental protection currently being achieved.

#### **IV. REQUESTED EPA ACTION**

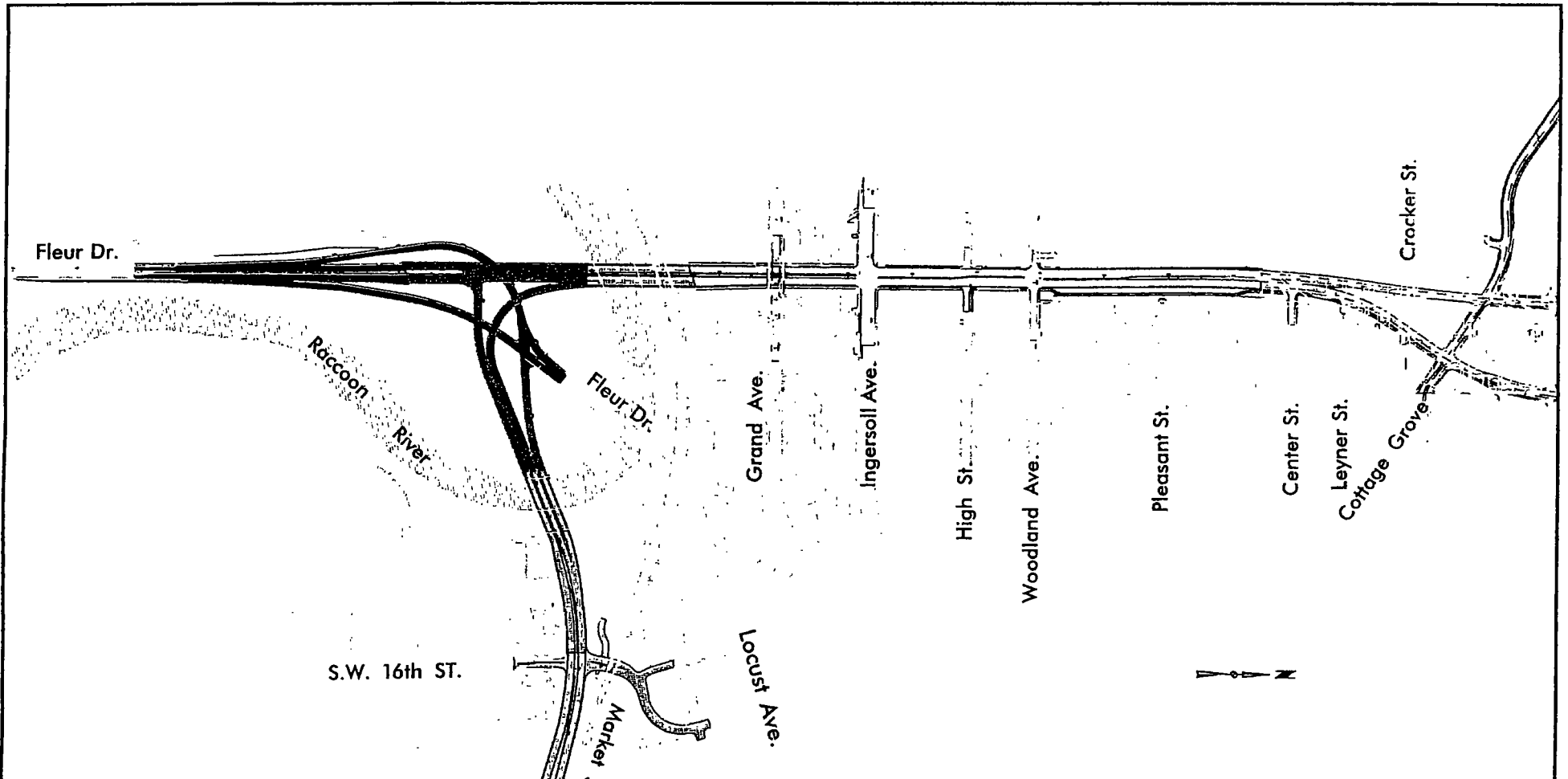
The City respectfully requests EPA provide the City with any comments or objections to its Technical Proposal and Plan of Action as soon as possible. We ask particular review and approval of the proposed monitoring well replacement schedule. The City is hoping to obtain EPA approval of its Technical Proposal and Plan of Action no later than February 20, 2002 so the City may timely proceed with further activities directed at the acquisition of the roadway easement upon the DICO property. It is requested that questions and comments be directed to Deputy City Engineer Jeb Brewer at (515) 283-4920.



**EARTH TECH**

**CONSTRUCTION STAGING**  
 MARTIN LUTHER KING JR. PARKWAY  
 CITY OF DES MOINES, IOWA  
 EAST - WEST SEGMENT  
 JANUARY 2001

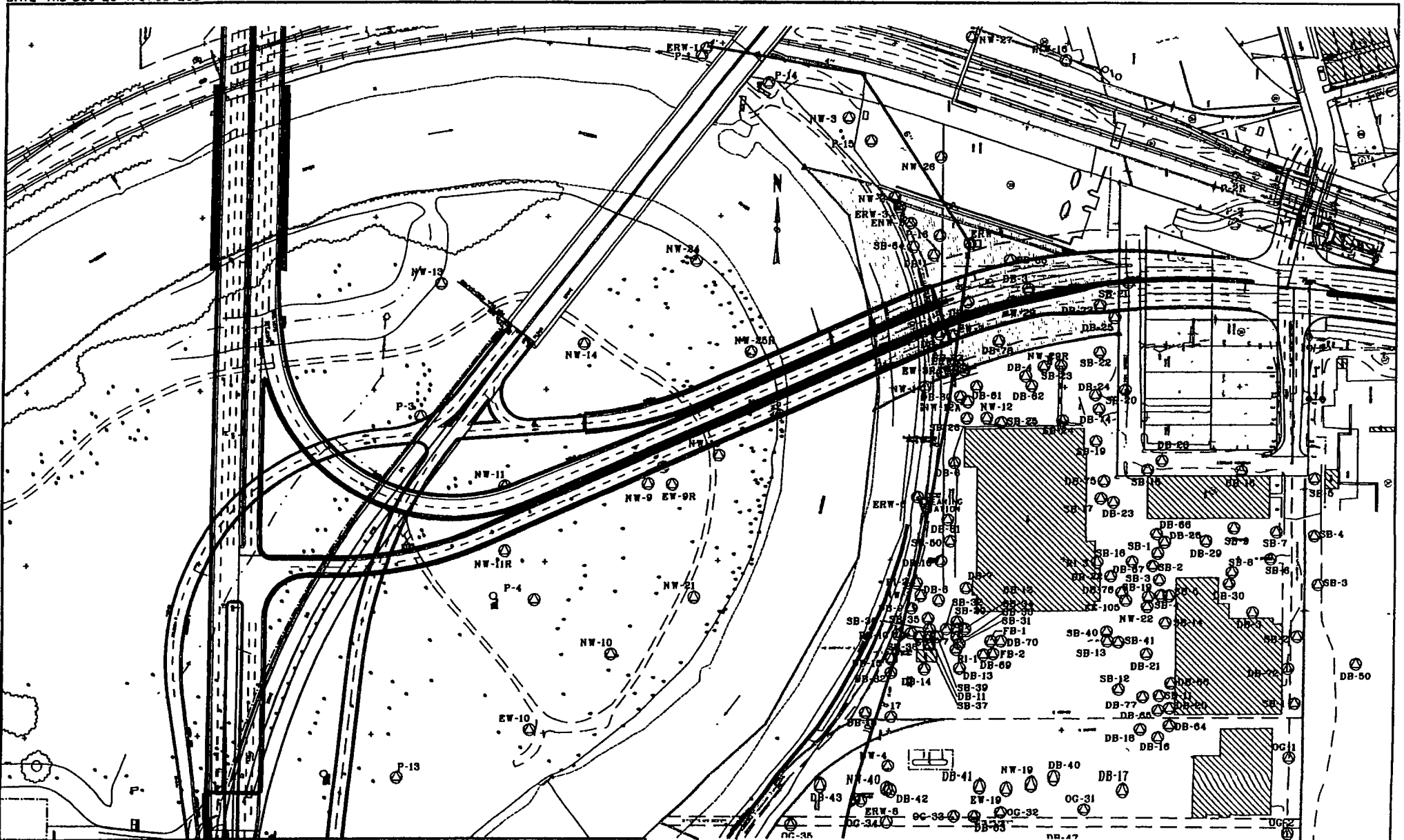
STAGE	DESCRIPTION
[Symbol: White box]	CONSTRUCT SW 5TH STREET STORM SEWER AND PAVING (CITY CONTRACT)
[Symbol: Black box]	CONSTRUCT TUTTLE STREET, 9TH STREET TO 7TH STREET AND 7TH STREET TO 5TH STREET
[Symbol: White box]	CONSTRUCT STORM SEWER OUTFALL AND PUMP STATION
[Symbol: Black box]	DEMOLITION OF SW 7TH STREET VIADUCT INCLUDING APPROACHES
[Symbol: Black box]	CONSTRUCT SW 6TH & 7TH STREET NORTH & SOUTH
[Symbol: White box]	CONSTRUCT SW 6TH & 7TH STREET MAINLINE INTERSECTION
[Symbol: Black box]	CONSTRUCT MLK MAINLINE SW 7TH TO SW 2ND STREET INCLUDES 2ND, 3RD & REMAINDER OF 5TH STREETS
[Symbol: White box]	CONSTRUCT SW 11TH & TUTTLE STREET EXTENSIONS & WIDENING
[Symbol: Black box]	CONSTRUCT MLK MAINLINE SW 16TH TO SW 7TH STREET INCLUDES 14TH AND 16TH STREET CONNECTIONS
[Symbol: Black box]	CONSTRUCT MAINLINE MLK 16TH TO RACCOON RIVER
[Symbol: Black box]	CONSTRUCT E-W SIGNATURE BRIDGE
[Symbol: Black box]	CONSTRUCT WB BRIDGE TO FLEUR DRIVE
[Symbol: Black box]	CONSTRUCT INTERSECTION BRIDGE BETWEEN N-S & E-W SEGMENTS
[Symbol: Black box]	CONSTRUCT FLEUR DRIVE GRADING/PAVING
[Symbol: Black box]	REHABILITATE SW 8TH & 9TH VIADUCTS



STAGE	DESCRIPTION
	CONSTRUCT INTERSECTION BRIDGE BETWEEN N-S & E-W SEGMENTS
	CONSTRUCT FLEUR DRIVE GRADING/PAVING
	CONSTRUCT CENTER STREET TO INGERSOLL AVENUE
	CONSTRUCT MAINLINE FROM INGERSOLL AVENUE TO RACCOON RIVER
	CONSTRUCT GRAND AVENUE BRIDGE AND APPROACHES
	CONSTRUCT N-S SIGNATURE BRIDGE
	I-235 (I.D.O.T.) SEGMENT

EARTH TECH

**CONSTRUCTION STAGING**  
 MARTIN LUTHER KING JR. PARKWAY  
 CITY OF DES MOINES, IOWA  
 NORTH - SOUTH SEGMENT  
 JANUARY 2001



EAST-WEST ALIGNMENT  
LOCATION OF WELLS  
AND ROADWAY  
MARTIN LUTHER KING JR. PARKWAY



March 8, 2002

MAR 15 2002

Ms. Mary P. Peterson  
Project Manager  
Iowa / Nebraska Branch  
Superfund Division  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

RE: First Supplement to Technical Proposal and  
Plan of Action for Des Moines TCE  
Superfund Site  
Activity ID No. 28-2001-047

Dear Ms. Peterson:

This is in response to your comment letter of February 8, 2002, regarding the City's Technical Proposal and Plan of Action for the Des Moines TCE Superfund Site, Activity ID No. 28-2001-047, submitted to Mr. Daniel Shiel of your office on December 21, 2001. I will, in this letter, respond to your comments in the order in which you made them.

1. Additional weight of embankment, roadway and traffic on pipeline between DICO extraction wells.

The pipeline has been evaluated based on the pipeline specifications that we received from your office, an anticipated depth of 6 feet below existing surface for the pipeline, and the added weight of the embankment, roadway and traffic from the construction of MLK Parkway. The embankment for MLK Parkway will add approximately 10 feet of additional cover over the existing pipeline between extraction well ERW-4 and extraction well ERW-5. The specifications indicate that the pipe is ductile iron pipe meeting ANSI A21.50 and having a minimum thickness Class 51 with a 200 psi working pressure. There were no laying conditions provided in the specifications, therefore, the worst case (Type 1, flat bottom trench with loose material) was considered in the evaluation. By evaluating this pipe in accordance with ANSI A21.50 the additional 10-foot of embankment for MLK Parkway will increase the earth load (dead load) from approximately 7.1 psi to 13.6 psi. Because the pipeline will be approximately 16 feet below the surface of the proposed roadway and the roadway will be a rigid pavement (Portland cement concrete) the increase in truck/traffic load (live load) will be negligible. The result of the analysis indicates that the ductile iron pipe, Class 51, 200 psi working pressure, with Type 1 bedding, has adequate strength to accommodate the increase in load resulting from the construction of MLK Parkway without distortion or damage.



ENGINEERING DEPARTMENT  
CITY HALL  
400 EAST FIRST STREET  
DES MOINES, IOWA 50309-1891  
(515) 283-4920  
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ALL-AMERICA CITY 1949, 1976, 1981

2. Replacement Well for NW 29.

The City will cause its contractor to replace monitoring well NW-29 as close to the south edge of the roadway as possible, south by southeast of its current position, following completion of construction activities. Additionally, a new monitoring well north of the roadway near the location of SB-66 will be installed to monitor the area east of ERW-4.

3. City Plan for Replacement of Damaged Monitoring Wells.

If any monitoring wells are damaged during construction activities, the City will determine whether the monitoring well is repairable. If the well is repairable, the City will cause its contractor to repair it. If the well is not repairable, the City will cause its contractor to replace it. A well will be considered repairable if it can be restored to its former function prior to being damaged.

These responses are intended to augment and become a part of the Technical Proposal and Plan of Action submitted by the City on December 21, 2001.

Thank you for your assistance and consideration in this matter.

Sincerely,



Jeb E. Brewer, P.E.  
City Engineer

JEB/TLT/mrq

cc: Mr. Daniel J. Shiel, Assistant Regional Counsel, Office of Regional Counsel  
Mr. Stanley Riegel, Morrison & Hecker LLP  
Mr. Soderstrum, Brown Winick Graves Gross  
Mr. Steve Eaton, Earth Tech  
Mr. Tom Draur, Baker & Lemar  
Mrs. Jane McAllister, Ahlers Law Firm  
Mr. Terrence Timmins, Deputy City Attorney, City of Des Moines

**SECOND SUPPLEMENT TO  
CITY OF DES MOINES TECHNICAL PROPOSAL AND PLAN OF ACTION  
RE THAT PORTION OF THE MARTIN LUTHER KING, JR. PARKWAY  
PROJECT PROPOSED FOR CONSTRUCTION UPON THE  
DES MOINES TCE SUPERFUND SITE**

**Submitted to U.S. E.P.A. Region VII Office,  
Kansas City, Kansas, December 2002**

This Second Supplement consists of (1) revised text which updates and replaces the text found in Part II, paragraph 3. of the Technical Proposal and Plan of Action submitted to EPA on or about December 21, 2001; and (2) Attachment 2 (Revised), Monitoring Wells To Be Adjusted Due To Construction - Martin Luther King Jr. Parkway, which updates and replaces Attachment 2 to the said Technical Proposal and Plan of Action submitted to EPA on or about December 21, 2001.

**C. Precautions Taken by the City in the Design of the MLK Project to Accommodate Superfund Status of DICO Property**

**3. Proposed Accommodation of DICO's Monitoring Well System.**

In addition to the groundwater recovery system, DICO has developed a groundwater monitoring system for investigatory purposes. As part of the Response Actions, EPA has required DICO to regularly monitor some of the monitoring wells to evaluate the performance of the groundwater recovery system and to demonstrate its adequacy. The City understands that it is important to continue to have an effective groundwater monitoring system in place for those reasons. Modifications to the monitoring well network have recently been suggested by DICO to EPA.

The alignment chosen by the City for the roadway, bridge approach embankment and bridge will displace some of the existing monitoring wells and piezometers, as indicated on Attachment 2 (Revised), Monitoring Wells To Be Adjusted Due To Construction - Martin Luther King Jr. Parkway. The planned alignment will likely render monitoring wells NW-29, EW-3, NW-25, NW-15, NW-9, EW-9 and piezometer P-3 inaccessible. As part of the roadway construction project, the City will cause its contractor to properly plug and abandoned these wells and piezometers before they are lost to construction activities. It is possible, though unlikely, that monitoring wells NW-1, NW-11, NW-21, NW-24, and piezometers P-12 and P-13 will be affected by construction activities. Care will be taken to preserve monitoring wells where possible, including conducting grading activities around the wells, and extension or other vertical adjustment of the well casing as necessary to preserve well accessibility. The affected wells, potentially affected wells, and proposed replacement locations are coded and shown in Attachment 2 (Revised).

Monitoring Well	Replace (Y/N)	Replacement Well	Comments
<b>Wells to be Abandoned</b>			
NW-29	Y	NW-29R	South of new highway
EW-3	N	NW-1, ERW-5	Data points available nearby
EW-9	N	NW-9R	South of new highway
NW-9	Y	NW-9R	South of new highway
NW-15	Y	NW-15R	South of new highway
NW-25	Y	NW-25R	South of highway or under bridge deck near current position, if possible
P-2	Y	P-2R	North of road spur, South of railroad
P-3	Y	P-3R	North of current location
P-13	Y	P-13R	As close as practicable to current position if necessary
<b>Wells Potentially Affected by Construction</b>			
NW-1	Y	NW-1R	South of highway if necessary, same distance from ERW-5
NW-11	N		Infrequently utilized
NW-21	N		Data near river may be obtained from NW-25
NW-24	Y	NW-24R	As close as practicable to current position if necessary
P-4	Y	P-4R	As close as practicable to current position, if necessary
P-12	Y	P-12R	As close as practicable to current position if necessary

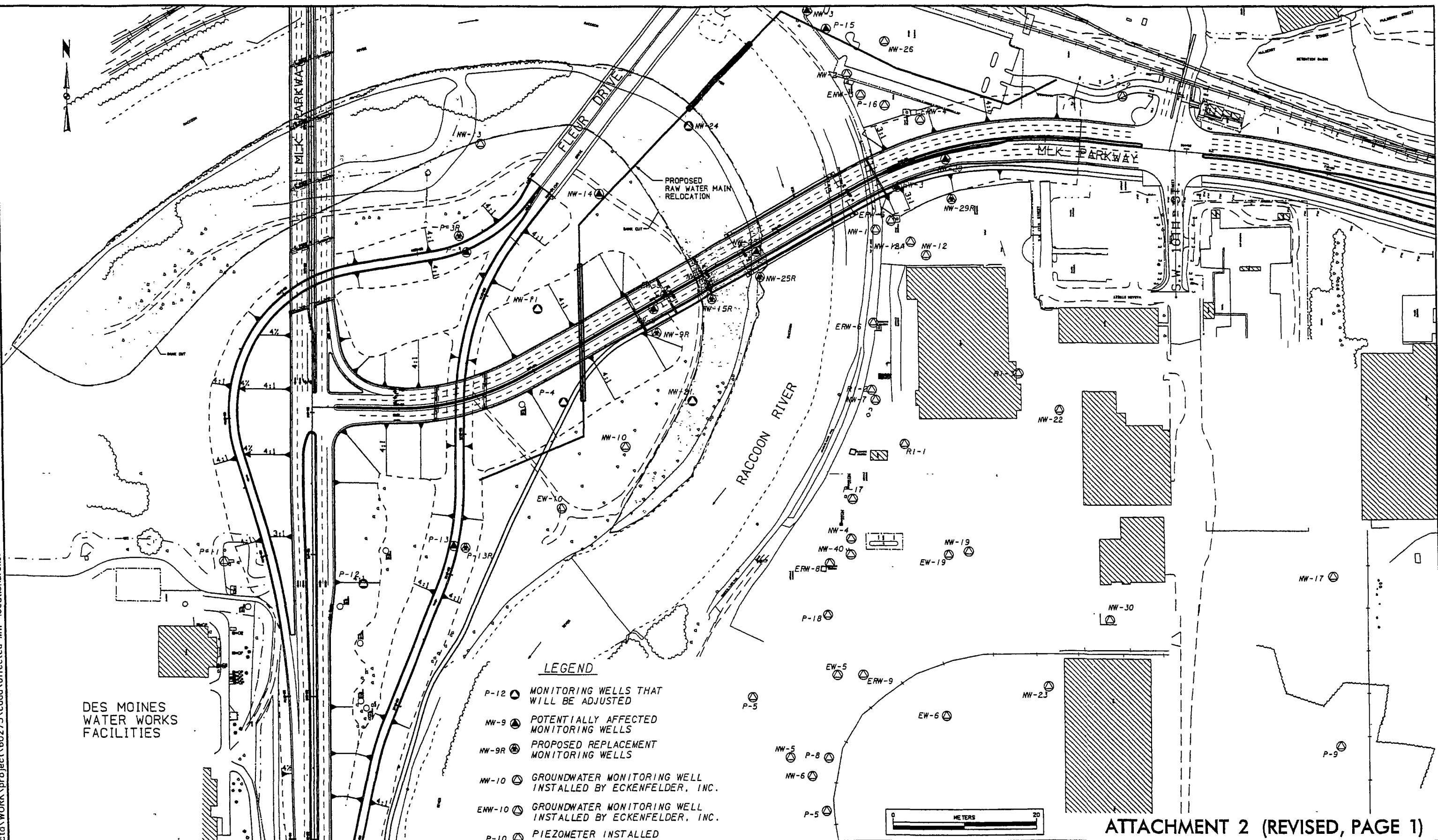
Monitoring wells NW-29 and EW-3 on the east side of the river are monitored quarterly. Sufficient monitoring points exist near EW-3 that its replacement is not recommended; instead, monitoring at NW-1 and ERW-5 may be substituted. If NW-1 is rendered inaccessible during construction activities, the City will cause its contractor to install a replacement well adjacent to the current location of NW-1. The City will cause its contractor to replace monitoring well NW-29 as close to the south edge of the roadway as possible, south by southeast of its current position, following completion of construction activities. The City will, if necessary, cause its contractor to relocate piezometer P-2 north its current location and the new road to continue to provide hydraulic and contaminant concentration data on the northeastern edge of the project area.

Monitoring wells NW-11, EW-9, NW-9, NW-15, and NW-25 on the west side of the Raccoon River have met the criteria established by EPA of four months below 5 µg/L. Monitoring well NW-9 will serve as an adequate replacement for EW-9, which is monitored quarterly. Should both wells be damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to install one replacement well at a location south of their current locations. Similarly, if monitoring well NW-15 is damaged beyond repair due to



construction of the MLK improvements, the City will cause its contractor to replace it at a location immediately south of the roadway, as near as practicable to its current location. Monitoring well NW-11 is not monitored often, and may not be a critical part of the monitoring system. If it is damaged beyond repair due to construction of the MLK improvements and replacement is deemed necessary, the City will cause its contractor to replace it at a location as close as practicable to its current location. NW-21 and 24 will also be handled in this manner. Monitoring well NW-25 is a critical monitoring point for hydraulic capture data and water quality, and if it is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it at a location immediately south of its current location. As NW-25 is along the river's edge and will likely be below a bridge span, damage is not considered likely. If piezometer P-4 is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it. Piezometer P-3 is likely to be destroyed during construction. The piezometer will be properly abandoned and replaced north of its current location outside of the new roadway. Piezometers P-13 and P-12 may be damaged by construction; attempts will be made to protect the piezometers and adjustments made to casing elevations as necessary. If they are damaged beyond repair, the City will cause its contractor to replace them.

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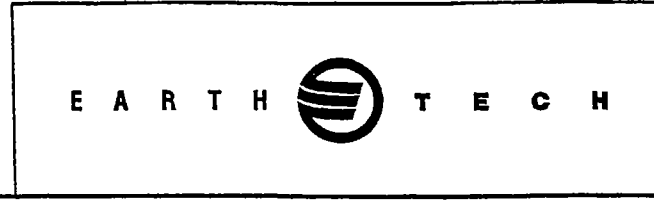
DES MOINES  
 WATER WORKS  
 FACILITIES

**LEGEND**

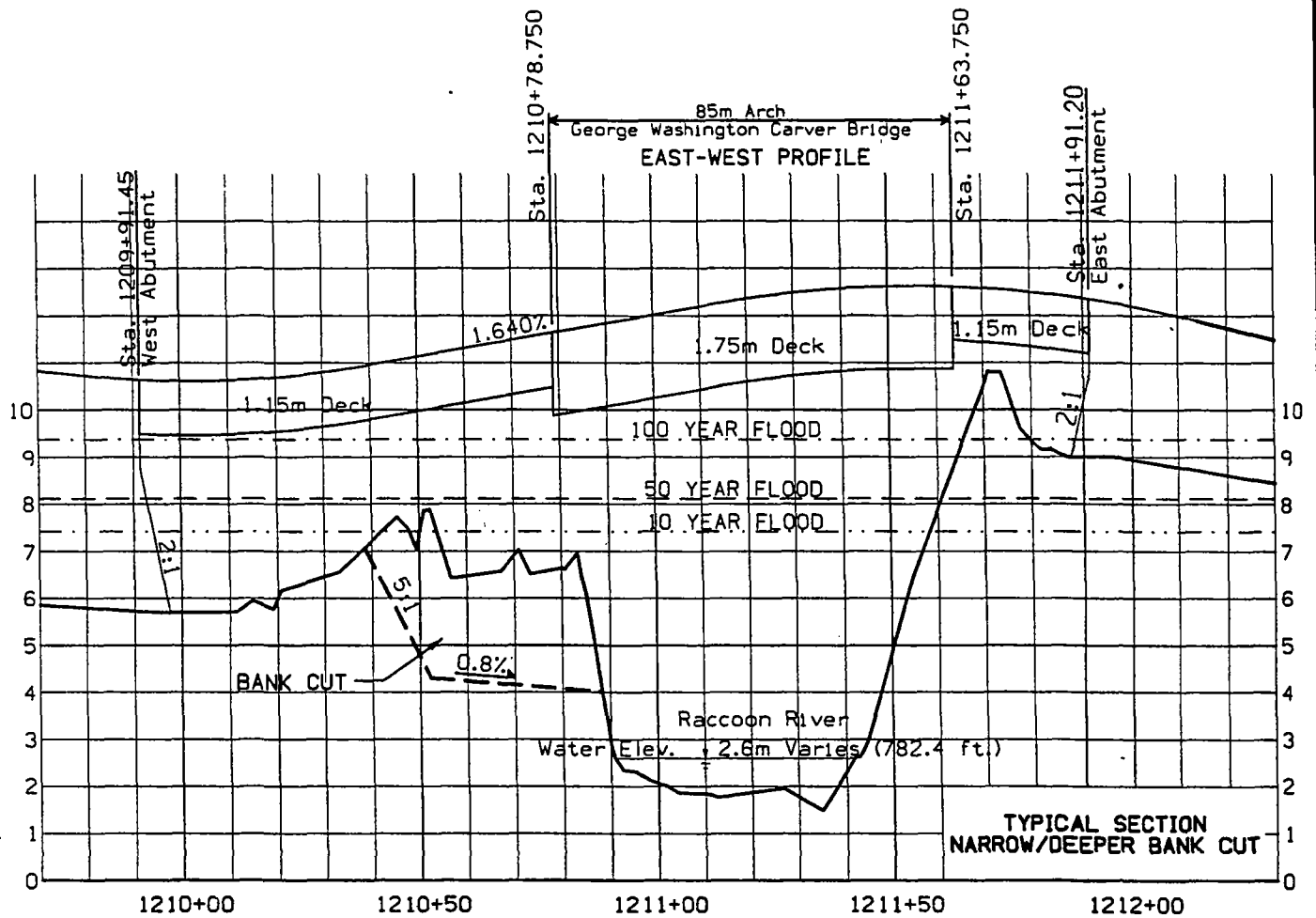
- P-12 ● MONITORING WELLS THAT WILL BE ADJUSTED
- NW-9 ● POTENTIALLY AFFECTED MONITORING WELLS
- NW-9R ● PROPOSED REPLACEMENT MONITORING WELLS
- NW-10 ● GROUNDWATER MONITORING WELL INSTALLED BY ECKENFELDER, INC.
- ENW-10 ● GROUNDWATER MONITORING WELL INSTALLED BY ECKENFELDER, INC.
- P-10 ● PIEZOMETER INSTALLED BY ECKENFELDER, INC.
- RI-1 ● GROUNDWATER MONITORING WELL INSTALLED BY ECKENFELDER, INC.
- - - - LIMITS OF ROADWAY EMBANKMENT

The Monitoring Well information for this exhibit was provided by Barker Lemar, environmental consultant for the City of Des Moines.

**ATTACHMENT 2 (REVISED, PAGE 1)**



**MONITORING WELLS  
 TO BE ADJUSTED  
 DUE TO CONSTRUCTION  
 MARTIN LUTHER KING JR. PARKWAY**



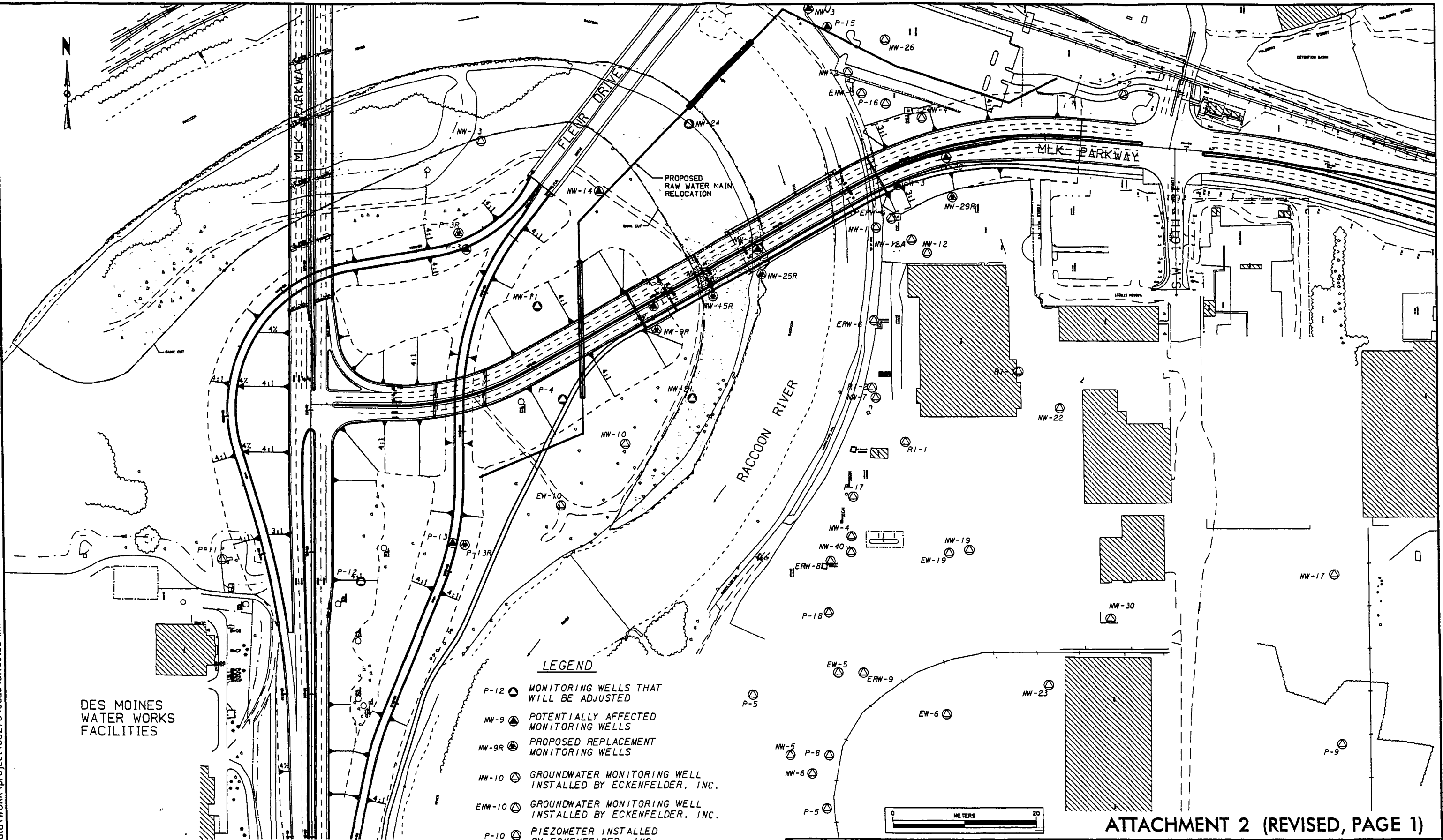
ATTACHMENT 2 (REVISED, PAGE 2)



TYPICAL SECTION

IMPROVEMENTS FOR RIVERBANK IMPROVEMENT PROJECT

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DES MOINES  
 WATER WORKS  
 FACILITIES

**LEGEND**

- P-12 ● MONITORING WELLS THAT WILL BE ADJUSTED
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- - - - - LIMITS OF ROADWAY EMBANKMENT



The Monitoring Well information for this exhibit was provided by Barker Lemar, environmental consultant for the City of Des Moines.

**ATTACHMENT 2 (REVISED, PAGE 1)**



**MONITORING WELLS  
 TO BE ADJUSTED  
 DUE TO CONSTRUCTION  
 MARTIN LUTHER KING JR. PARKWAY**

February 12, 2003

Ms. Mary P. Peterson  
 Project Manager  
 Iowa / Nebraska Branch  
 Superfund Division  
 United States Environmental Protection Agency  
 Region VII  
 901 North 5<sup>th</sup> Street  
 Kansas City, KS 66101

FEB 15 10 34


RE: Third Supplement to Technical Proposal and  
 Plan of Action for Des Moines TCE Superfund Site  
 Activity ID No. 28-2001-047

Dear Ms. Peterson:

Included herewith is the Third Supplement to the City of Des Moines' Technical Proposal and Plan of Action for that portion the Martin Luther King, Jr., Parkway Project which is proposed for construction on the DICO Inc. property and on a portion of the Des Moines TCE Superfund Site. We have simultaneously submitted the Third Supplement to DICO Inc. The Third Supplement updates the Technical Proposal and Plan of Action which the City submitted to EPA for review on December 21, 2001 to clarify the City's intentions with respect to anticipated and potential impacts of the construction of the Martin Luther King, Jr., Parkway Project and of the Raw Water Main Relocation Project on DICO's system of monitoring wells and piezometers.

Thank you for your assistance and consideration in this matter.

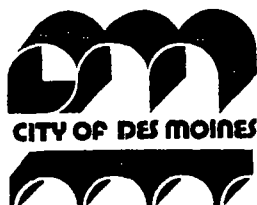
Sincerely,

  
 Jeb E. Brewer, P.E.  
 City Engineer

JEB/TT/mrq

Attachments

cc: Mr. Daniel J. Shiel,  
 Assistant Regional Counsel, Office of Regional Counsel  
 Mr. Stanley Riegel, Morrison & Hecker LLP  
 Mr. Soderstrum, Brown Winick Graves Gross  
 Mr. Steve Eaton, Earth Tech  
 Mr. Tom Draur, Barker Lemar  
 Mrs. Jane McAllister, Ahlers Law Firm  
 Mr. Terrence Timmins, Deputy City Attorney, City of Des Moines



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ALL-AMERICA CITY 1949, 1976, 1981

**THIRD SUPPLEMENT TO  
CITY OF DES MOINES TECHNICAL PROPOSAL AND PLAN OF ACTION  
RE THAT PORTION OF THE MARTIN LUTHER KING, JR. PARKWAY  
PROJECT PROPOSED FOR CONSTRUCTION UPON THE  
DES MOINES TCE SUPERFUND SITE**

**Submitted to U.S. E.P.A. Region VII Office,  
Kansas City, Kansas, February 2003**

This Third Supplement consists of (1) revised text which updates and replaces the text found in Part II, section C, paragraph 3. of the Technical Proposal and Plan of Action submitted to EPA on or about December 21, 2001; and (2) new text, to be added as Part II, section D of the Technical Proposal and Plan of Action submitted to EPA on or about December 21, 2001.

**I. REVISED TEXT**

**C. Precautions Taken by the City in the Design of the MLK Project to Accommodate Superfund Status of DICO Property**

**3. Proposed Accommodation of DICO's Monitoring Well System.**

In addition to the groundwater recovery system, DICO has developed a groundwater monitoring system for investigatory purposes. As part of the Response Actions, EPA has required DICO to regularly monitor some of the monitoring wells to evaluate the performance of the groundwater recovery system and to demonstrate its adequacy. The City understands that it is important to continue to have an effective groundwater monitoring system in place for those reasons. Modifications to the monitoring well network have recently been suggested by DICO to EPA.

The alignment chosen by the City for the roadway, bridge approach embankment and bridge will displace some of the existing monitoring wells and piezometers, as indicated on Attachment 2 (Revised), Monitoring Wells To Be Adjusted Due To Construction - Martin Luther King Jr. Parkway. The planned alignment will likely render monitoring wells NW-29, EW-3, NW-25, NW-15, NW-9, EW-9 and piezometers P-2, P-3 and P-13 inaccessible. As part of the roadway construction project, the City will cause its contractor to properly plug and abandon those wells and piezometers not plugged and abandoned by DICO, before they are lost to construction activities. It is possible, though unlikely, that monitoring wells NW-1, NW-11, NW-21, NW-24, and piezometers P-4 and P-12 will be affected by construction activities. Care will be taken to preserve monitoring wells where possible, including conducting grading activities around the wells, and extension or other vertical adjustment of the well casing as necessary to preserve well accessibility. The affected wells, potentially affected wells, and proposed replacement locations are coded and shown in Attachment 2 (Revised).

The City will submit to EPA for review and approval a plan describing the specific procedures for the abandonment, repair, and replacement of any monitoring wells or piezometers as

described in this paragraph 3. The plan will be submitted to EPA at least thirty days prior to the scheduled start date for such activities. The plan will include a list of wells to be abandoned or replaced and a map showing their locations, a description of the proposed location and construction details for any replacement wells, and a proposed schedule for field activities relating to the abandoned or replaced wells. The plan will provide information on how decisions will be made with regard to repair of wells. If EPA provides comments on the plan, the City will revise the plan accordingly and submit a revised plan or addendum as appropriate.

The City understands that EPA has required DICO to plug and properly abandon monitoring well NW-21 and piezometers P-3 and P-12 and therefore it is not necessary for the City to replace those wells and piezometers.

**Table 1: Impacts of MLK Project**

<b>Monitoring Wells / Piezometers Impacted</b>	<b>Continued Monitoring/ Replacement Required (Y/N)</b>	<b>Replacement Well Designation</b>	<b>Comments</b>
<b>Wells to be Abandoned</b>			
NW-29	Y	NW-29R	South of new highway
EW-3	N	NW-1, ERW-5	Data points available nearby
EW-9	N	NW-9R	South of new highway
NW-9	Y	NW-9R	South of new highway
NW-15	Y	NW-15R	South of new highway
NW-25	Y	NW-25R	South of highway or under bridge deck near current position, if possible
P-2	Y	P-2R	North of road spur, South of railroad
P-3	N		DICO to abandon
P-13	Y	P-13R	As close as practicable to current position if necessary
<b>Wells Potentially Impacted by Construction</b>			
NW-1	Y	NW-1R	South of highway if necessary, same distance from ERW-5
NW-11	N		Infrequently utilized
NW-21	N		Data near river may be obtained from NW-25; DICO to abandon
NW-24	Y	NW-24R	As close as practicable to current position if necessary
P-4	Y	P-4R	As close as practicable to current position, if necessary
P-12	N		DICO to abandon

Monitoring wells NW-29 and EW-3 on the east side of the river are monitored quarterly.

Sufficient monitoring points exist near EW-3 that its replacement is not recommended; instead, monitoring at NW-1 and ERW-5 may be substituted. If NW-1 is rendered inaccessible during construction activities, the City will cause its contractor to install a replacement well adjacent to the current location of NW-1. The City will cause its contractor to replace monitoring well NW-29 as close to the south edge of the roadway as possible, south by southeast of its current position, following completion of construction activities. The City will, if necessary, cause its contractor to relocate piezometer P-2 north its current location and the new road to continue to provide hydraulic and contaminant concentration data on the northeastern edge of the project area.

Monitoring wells NW-11, EW-9, NW-9, NW-15, and NW-25 on the west side of the Raccoon River have met the criteria established by EPA of four months below 5 µg/L. Monitoring well NW-9 will serve as an adequate replacement for EW-9, which is monitored quarterly. Should both wells be damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to install one replacement well at a location south of their current locations. Similarly, if monitoring well NW-15 is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it at a location immediately south of the roadway, as near as practicable to its current location. Monitoring well NW-11 is not monitored often, and may not be a critical part of the monitoring system. If it is damaged beyond repair due to construction of the MLK improvements and replacement is deemed necessary, the City will cause its contractor to replace it at a location as close as practicable to its current location. NW-21 and 24 will also be handled in this manner. Monitoring well NW-25 is a critical monitoring point for hydraulic capture data and water quality, and if it is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it at a location immediately south of its current location. As NW-25 is along the river's edge and will likely be below a bridge span, damage is not considered likely. If piezometer P-4 is damaged beyond repair due to construction of the MLK improvements, the City will cause its contractor to replace it. Piezometer P-3 is likely to be destroyed during construction. The piezometer will be properly abandoned and replaced north of its current location outside of the new roadway. Piezometers P-13 and P-12 may be damaged by construction; attempts will be made to protect the piezometers and adjustments made to casing elevations as necessary. If they are damaged beyond repair, the City will cause its contractor to replace them.

## **II. NEW TEXT**

### **D. Precautions Taken by the City in the Design of the Raw Water Main Relocation Project to Accommodate DICO Monitoring Wells on the Site.**

1. Proposed Accommodation of DICO's Monitoring Well System.  
Due to the MLK Project, a nearby Des Moines Water Works raw water supply main will be relocated. The relocated raw water main will not be on DICO's property or in the Easement Area to be acquired, but will be located the Site and the relocation may potentially impact some site monitoring wells. On December 23, 2002, the City submitted to EPA a plan showing the planned alignment of the Des Moines Water Works Raw Water Main Relocation Project. It is



possible, though unlikely, that the planned alignment of the relocated raw water main may render monitoring wells NW-3, NW-14 and NW-24, and piezometers P-4 and P-15 inaccessible, as indicated on Attachment 2 (Revised), Monitoring Wells To Be Adjusted Due to Construction - Martin Luther King Jr. Parkway. If it becomes clear prior to construction that certain wells will be impacted by the Raw Water Main Relocation Project, those wells should be plugged and abandoned before being lost to construction. As part of the Raw Water Main Relocation Project, the City will cause its contractor to properly plug and abandon those wells not abandoned and plugged by DICO.

The City will submit to EPA for review and approval a plan describing the specific procedures for the abandonment, repair, and replacement of any monitoring wells or piezometers as described in this section D. The plan will be submitted to EPA at least thirty days prior to the scheduled start date for such activities. The plan will include a list of wells to be abandoned or replaced and a map showing their locations, a description of the proposed location and construction details for any replacement wells, and a proposed schedule for field activities relating to the abandoned or replaced wells. The plan will provide information on how decisions will be made with regard to repair of wells. If EPA provides comments on the plan, the City will revise the plan accordingly and submit a revised plan or addendum as appropriate.

**Table 2: Impacts of Raw Water Main Relocation Project**

<b>Monitoring Wells / Piezometers Impacted</b>	<b>Continued Monitoring/ Replacement Required (Y/N)</b>	<b>Replacement Well Designation</b>	<b>Comments</b>
<b>Wells Potentially Impacted by Construction</b>			
P-4	N		Protected during water main construction
NW-10	N		Protected during water main construction
NW-14	N		Protected during water main construction
NW-24	N		Protected during water main construction
NW-3	N		DICO to abandon
P-15	N		DICO to abandon

## EXHIBIT 6

## PLAN FOR RAW WATER MAIN RELOCATION

**1. Description of Raw Water Main Relocation Project**

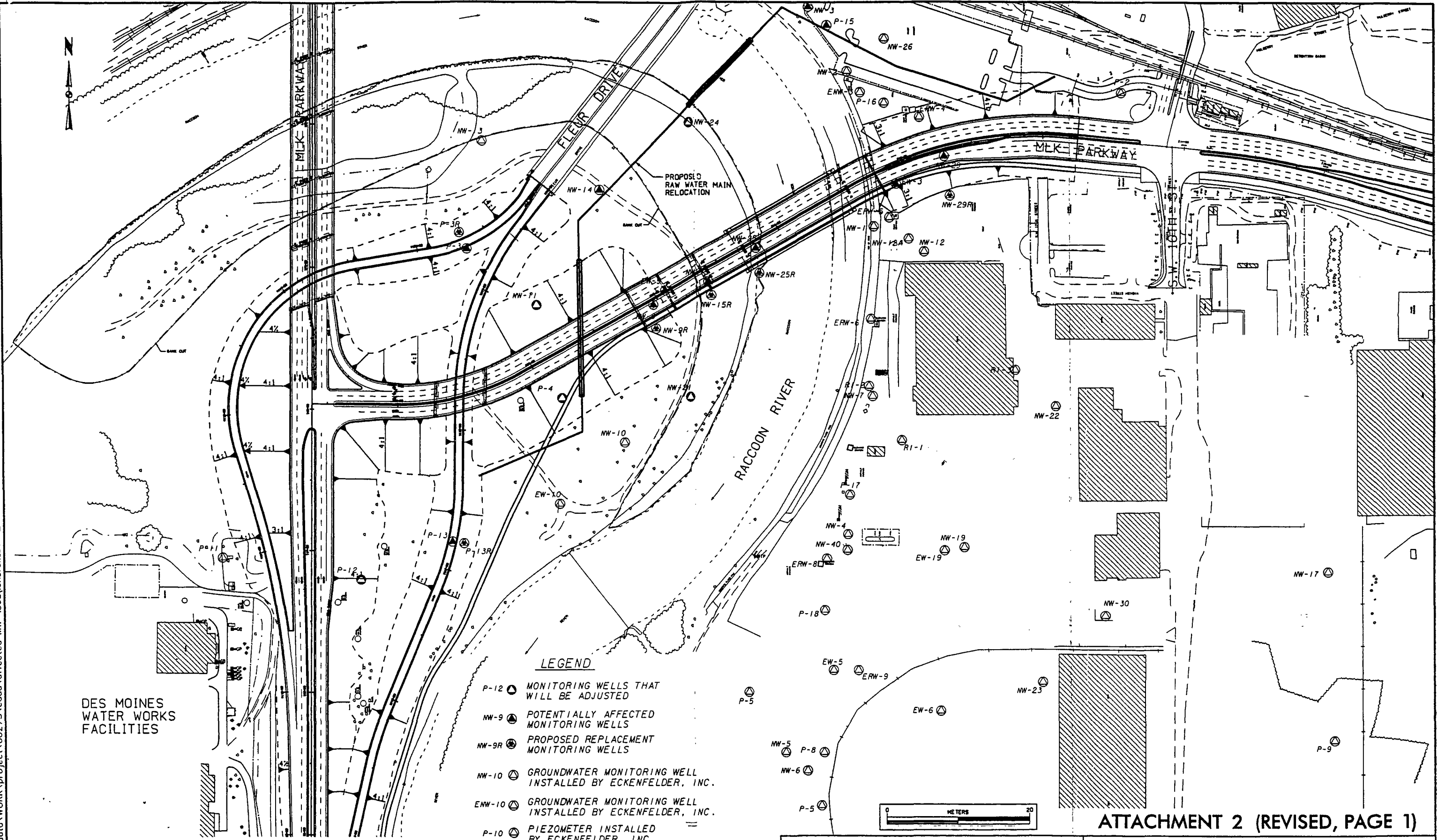
The Des Moines Water Works (DMWW) presently operates and maintains a "Raw Water Main" which crosses in an Easterly to Westerly direction the Easement Area being acquired from DICO by the City of Des Moines for the Martin Luther King Jr. Parkway Project. The Raw Water Main is a gravity feed line which supplies untreated water for processing at the DMWW water treatment plant on the West side of the Raccoon River. The alignment of the roadway embankment and bridge abutment for the Martin Luther King Jr. Parkway within the Easement Area is such that the Raw Water Main will be covered in part by the embankment and bridge abutment.

Given those considerations, the City of Des Moines and DMWW have entered into an intergovernmental agreement pursuant to which DMWW will design the relocation of that portion of the Raw Water Main presently on DICO property, and the City of Des Moines will contract to construct the "Raw Water Main Relocation Project".

**2. Potential Impact of Raw Water Main Relocation Project on DICO Monitoring Wells**

The proposed route of the relocated Raw Water Main is shown on "Attachment 2 (Revised), Monitoring Wells To Be Adjusted Due To Construction - Martin Luther King Jr. Parkway", appended hereto. Attachment 2 (Revised) includes a legend which identifies monitoring wells that will be affected or potentially affected by construction activities, as well as proposed replacement well locations. As shown on Attachment 2 (Revised), piezometers P-4 and P-15 and groundwater monitoring wells MW-3, NW-14 and NW-24 are potentially affected by the Raw Water Main Relocation Project, in that they are within the construction limits for that Project. While the City intends to protect these piezometers and monitoring wells during Project construction, the potential exists for them to be damaged or destroyed due to construction activities. In the event of such damage or destruction, the City will cause the Project contractor to repair the affected piezometers or wells, if practicable, or replace them in locations as close as practicable to their current locations.

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DES MOINES  
 WATER WORKS  
 FACILITIES

**LEGEND**

- P-12 ● MONITORING WELLS THAT WILL BE ADJUSTED
- NW-9 ● POTENTIALLY AFFECTED MONITORING WELLS
- NW-9R ● PROPOSED REPLACEMENT MONITORING WELLS
- NW-10 ● GROUNDWATER MONITORING WELL INSTALLED BY ECKENFELDER, INC.
- ENW-10 ● GROUNDWATER MONITORING WELL INSTALLED BY ECKENFELDER, INC.
- P-10 ● PIEZOMETER INSTALLED BY ECKENFELDER, INC.
- RI-1 ● GROUNDWATER MONITORING WELL INSTALLED BY ECKENFELDER, INC.
- LIMITS OF ROADWAY EMBANKMENT

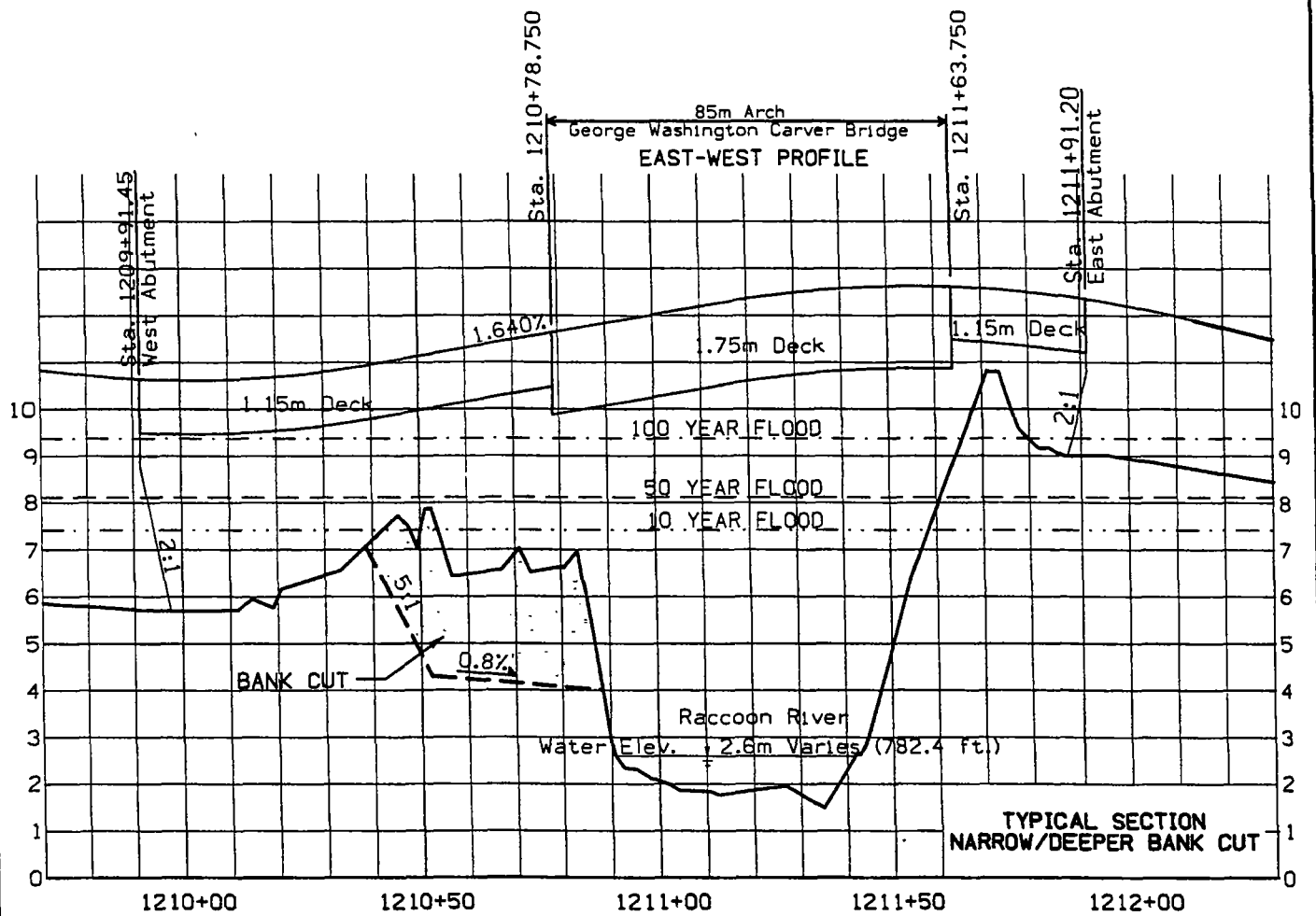


**ATTACHMENT 2 (REVISED, PAGE 1)**

**MONITORING WELLS  
 TO BE ADJUSTED  
 DUE TO CONSTRUCTION  
 MARTIN LUTHER KING JR. PARKWAY**



The Monitoring Well information for this exhibit was provided by Barker Lemar, environmental consultant for the City of Des Moines.



ATTACHMENT 2 (REVISED, PAGE 2)



TYPICAL SECTION

IMPROVEMENTS FOR  
RIVERBANK IMPROVEMENT PROJECT

IN THE MATTER OF Des Moines TCE Superfund Site  
Docket No. CERCLA-07-2003-0156

CERTIFICATE OF SERVICE

I certify that the foregoing Agreement and Covenant Not to Sue the City of Des Moines, Iowa was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Daniel Shiel  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Federal Express to:

Jane B. McAllister  
Ahlers, Cooney, Dorweiler, Haynie,  
Smith & Allbee, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231

Dated: 7/7/03



Kathy Robinson  
Regional Hearing Clerk