

Date June 13, 2022

HOLD HEARING FOR VACATION OF ALLEY RIGHT-OF-WAY LOCATED NORTH OF AND ADJOINING 206 6TH AVENUE AND APPROVAL OF A LICENSE AGREEMENT WITH ND 22 FLEMING LLC AND 206 6TH AVENUE, LLC

WHEREAS, on January 10, 2022, by Roll Call No. 22-0039, the City Council of the City of Des Moines, received and filed a recommendation from the City Plan and Zoning Commission to approve a City-initiated request to vacate a portion of the east-west alley segment located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6th Street to the north, 606 Walnut Street to the west and 206 6th Avenue to the south, hereinafter “Property”, subject to the following conditions:

1. Any fencing and/or gate(s) shall be architecturally compatible with the adjoining development, to the satisfaction of the City's Planning and Urban Design Administrator; and
2. Reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated; and

WHEREAS, the Property has been the focus of numerous citizen complaints regarding illicit and illegal activities; and

WHEREAS, the City’s Real Estate Division has negotiated a License Agreement (“Agreement”) with ND 22 Fleming, LLC, owner of 218 6th Street, and 206 6th Avenue, LLC, owner of 206 6th Avenue, (hereinafter “Licensees”) for the installation and maintenance of a gate/fence across the east entrance to the Property which will allow the Licensees to control access to the Property, which Agreement will include, among other terms, the following:

1. A twenty (20) year license term (Initial Term) with the unilateral right to renew the Agreement for one additional twenty (20) year term (Renewal Term);
2. A one-time lump sum payment of Two Hundred Dollars (\$200.00) for the Initial Term of the agreement; and a one-time lump sum payment of Four Hundred Dollars (\$400.00) for the Renewal Term of the Agreement, which amounts reflect the limited fair market value of the leased area as currently estimated by the City’s Real Estate Division;
3. The License is given subject to all existing easements and encroachments therein, including but not limited to an ingress/egress easement and a building setback easement;
4. A six (6) foot clear and unobstructed pedestrian pathway must be maintained within said sidewalk right-of-way at all times;
5. Termination by either party for any reason upon sixty (60) days written notice to the other party; and

WHEREAS, there is no known current or future public need for the portion of alley right-of-way proposed to be vacated and licensed, and the City will not be inconvenienced by the vacation and license of said property; and

WHEREAS, on May 23, 2022, by Roll Call No. 22-0777, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and license of a portion of the east-west segment of alley right-of-way be set for hearing on June 13, 2022, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

Date June 13, 2022

WHEREAS, due notice of said proposal to vacate and license a portion of the east-west segment of alley right-of-way was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

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

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

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation and license of a portion of the east-west alley segment located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6th Street to the north, 606 Walnut Street to the west and 206 6th Avenue to the south, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the portion of east-west alley right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a portion of the east-west segment of alley right-of-way located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6th Street to the north, 606 Walnut Street to the west and 206 6th Avenue to the south, legally described as follows, and said vacation is hereby approved:

-EXCEPT the West 66 feet-, All of the East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk county, Iowa;

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 16.03 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 18.67 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 18.67 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-

AND

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 37.72 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29"

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Date June 13, 2022

West, 4.00 feet along the North line of said Lot 6; thence North 15°46'31" West, 4.00 feet; thence North 74°13'29" East, 4.00 feet; thence South 15°46'31" East, 4.00 feet to the Point of Beginning-,

AND

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 53.35 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 8.43 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 8.43 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-,

and containing approximately 1,007 Square Feet.

- 3. The proposed license of such vacated alley right-of-way, as legally described below, to ND 22 Fleming, LLC and 206 6th Avenue, LLC for twenty years for \$200.00, subject to any and all easements, restrictions and covenants of record, is hereby approved:

-EXCEPT the West 66 feet-, All of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk county, Iowa,

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 16.03 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 18.67 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 18.67 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-,

AND

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AND

Date June 13, 2022

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 53.35 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 8.43 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 8.43 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-,

and containing approximately 1,007 Square Feet.

4. The Mayor is authorized and directed to sign the License Agreement as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the License Agreement and a copy of the other documents to the Licensee.
8. Non-project related land sale and lease proceeds are used to support general operating budget expenses: Org – EG064090.

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Date June 13, 2022

Moved by _____ to adopt. Second by _____.

APPROVED AS TO FORM:

/s/Mackenzie L. Moreno
 Mackenzie L. Moreno, Assistant City Attorney

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

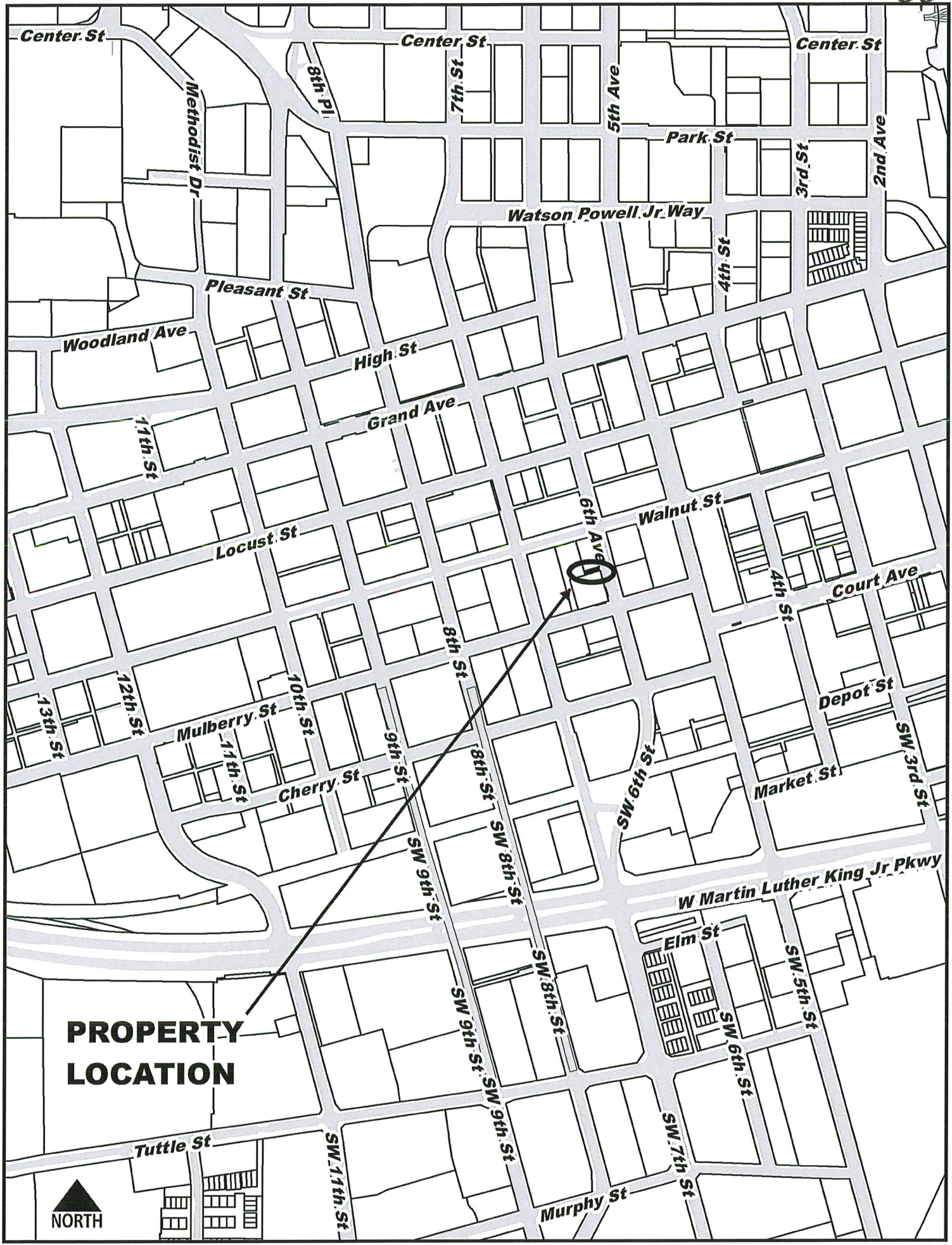
CERTIFICATE

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

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

_____ Laura Baumgartner, Acting City Clerk

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Date June 13, 2022

Agenda Item 106

Roll Call # _____

January 4, 2022

Communication from the City Plan and Zoning Commission advising that at their December 16, 2021 meeting, the following action was taken regarding a City initiated request for vacation of a remaining east to west alley segment to the west of 6th Avenue in the block between Walnut Street and Mulberry Street. The adjoining properties are 218 6th Avenue to the north (owned by ND 22 Fleming LLC), 606 Walnut Street to the west (owned by Lawmark. LP), and 206 6th Avenue to the south (owned by 206 6th Avenue LLC).

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Abby Chungath				X
Kayla Berkson	X			
Chris Draper				X
Jann Freed	X			
Todd Garner				X
Johnny Alcivar	X			
Lisa Howard				X
Carolyn Jenison	X			
William Page	X			
Steve Wallace				X
Greg Wattier	X			
Emily Webb	X			

APPROVAL of the requested vacations subject to the following conditions:

1. Any fencing and/or gate(s) shall be architecturally compatible with the adjoining development, to the satisfaction of the City's Planning & Urban Design Administrator.
2. Reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated. (ROWV-2021-000005)

Written Responses

2 in Favor

0 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacations subject to the following conditions:

1. Any fencing and/or gate(s) shall be architecturally compatible with the adjoining development, to the satisfaction of the City's Planning & Urban Design Administrator.
2. Reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The requested vacation of alley Right-of-Way would allow installation of fencing and gate(s) at the east terminus of the alley segment. The proposed controlled access is intended to minimize on going nuisance activity that has been occurring within the alley.
2. **Size of Site:** 1,007 square feet.
3. **Existing Zoning (site):** "DX1" Downtown Mixed-Use District.
4. **Existing Land Use (site):** Alley right-of-way.
5. **Adjacent Land Use and Zoning:**

North – "DX1"; Uses are mixed-use residential and multiple-tenant commercial.
South – "DX1"; Use is hotel building.
6. **General Neighborhood/Area Land Uses:** The surrounding area contains a mix of commercial, office, retail, and residential uses in the Downtown Core.
7. **Applicable Recognized Neighborhood(s):** The subject property is located within the Downtown Des Moines Neighborhood. All neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on November 29, 2021 and by mailing of the Final Agenda on December 6, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on December 6, 2021 (10 days prior to the public hearing) to the neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property adjoining the subject public right-of-way.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Services Department on the date of the mailing. The Downtown Des Moines

Neighborhood Association mailings were sent to Sebastian Hamirani, 1400 Walnut Street, Unit 413, Des Moines, IA 50309.

8. Relevant Zoning History: None.

9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation: Downtown Mixed Use.

10. Applicable Regulations: Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. Streets/Sidewalks:** The requested vacation would not negatively impact access to private properties or traffic patterns in the area. It is anticipated that the subject segment of alley will remain closed with restricted vehicle and pedestrian entry. Staff recommends approval be subject to the provision that any fencing and/or gate(s) shall be architecturally compatible with the adjoining development. This would ensure that the fence and gates are in character with the surrounding development.
- 2. Easements:** There are existing easements within the alley that would be maintained. Easements must be maintained until such time that they are abandoned or relocated.

SUMMARY OF DISCUSSION

Dory Briles asked if any member of the public or the commission desired to speak on the item. No one requested to speak.

COMMISSION ACTION:

Jann Freed made a motion for approval of the requested vacations subject to the following conditions:

1. Any fencing and/or gate(s) shall be architecturally compatible with the adjoining development, to the satisfaction of the City's Planning & Urban Design Administrator.
2. Reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated.

Motion passed: 9-0

Respectfully submitted,

Bert Drost

Bert Drost, AICP
Deputy Planning & Urban Design Administrator

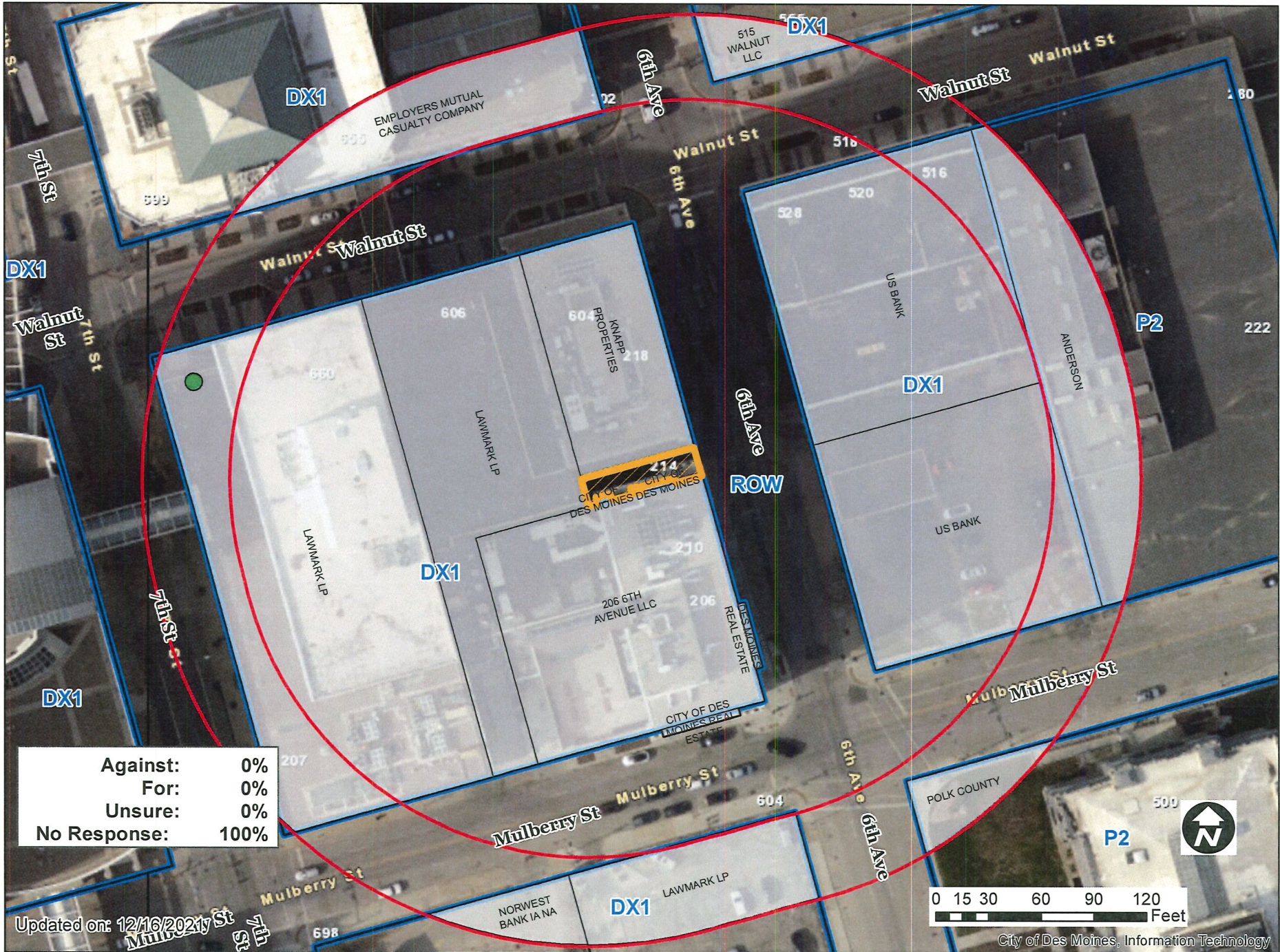
BAD:tjh



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City Initiated, Alley Segment West of 6th Avenue between Walnut and Mulberry Street

ROWV-2021-000005



Against:	0%
For:	0%
Unsure:	0%
No Response:	100%

Updated on: 12/16/2021

City of Des Moines, Information Technology

1 inch = 73 feet

Item: ROWV-2021-000005

Date: 12/10/21

Please mark one of the following

- I am in favor of the request
- I am not in favor of the request

Signature: _____

Name: Brandon Brown

Address: 120 SW 5th St. #701

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT

DEC 14 2021

Reason for opposing or approving this request may be listed below:

Hopefully, this will eliminate many of
the problems reported around the
Downtown Parking. Lucky forward to
the gate!

Item: ROWV-2021-000005

Date: _____

Please mark one of the following

- I am in favor of the request
- I am not in favor of the request

Signature: _____

Name: Jesse Binney

Address: 666 Walnut #1540

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT

DEC 14 2021

Reason for opposing or approving this request may be listed below:

EXHIBIT A

**PT LOT 7
BLOCK 11
FORT DES MOINES**

PT LOT 7

VACATED AREAS
OF ALLEY (ORD 15706)

NE CORNER
OF LOT 6

PT VAC EW ALLEY
66 FT

VAC N/S ALLEY

WEST LINE
OF LOT 6

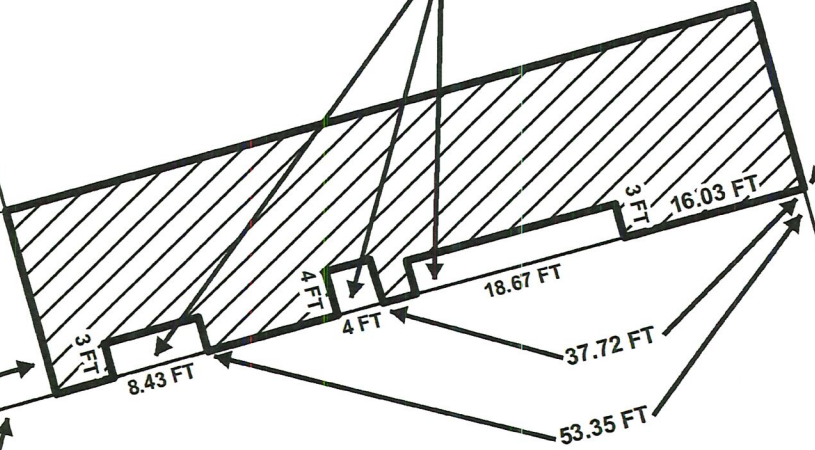
NORTH LINE
OF LOT 6

LOT 6

EASTLINE
OF LOT 6

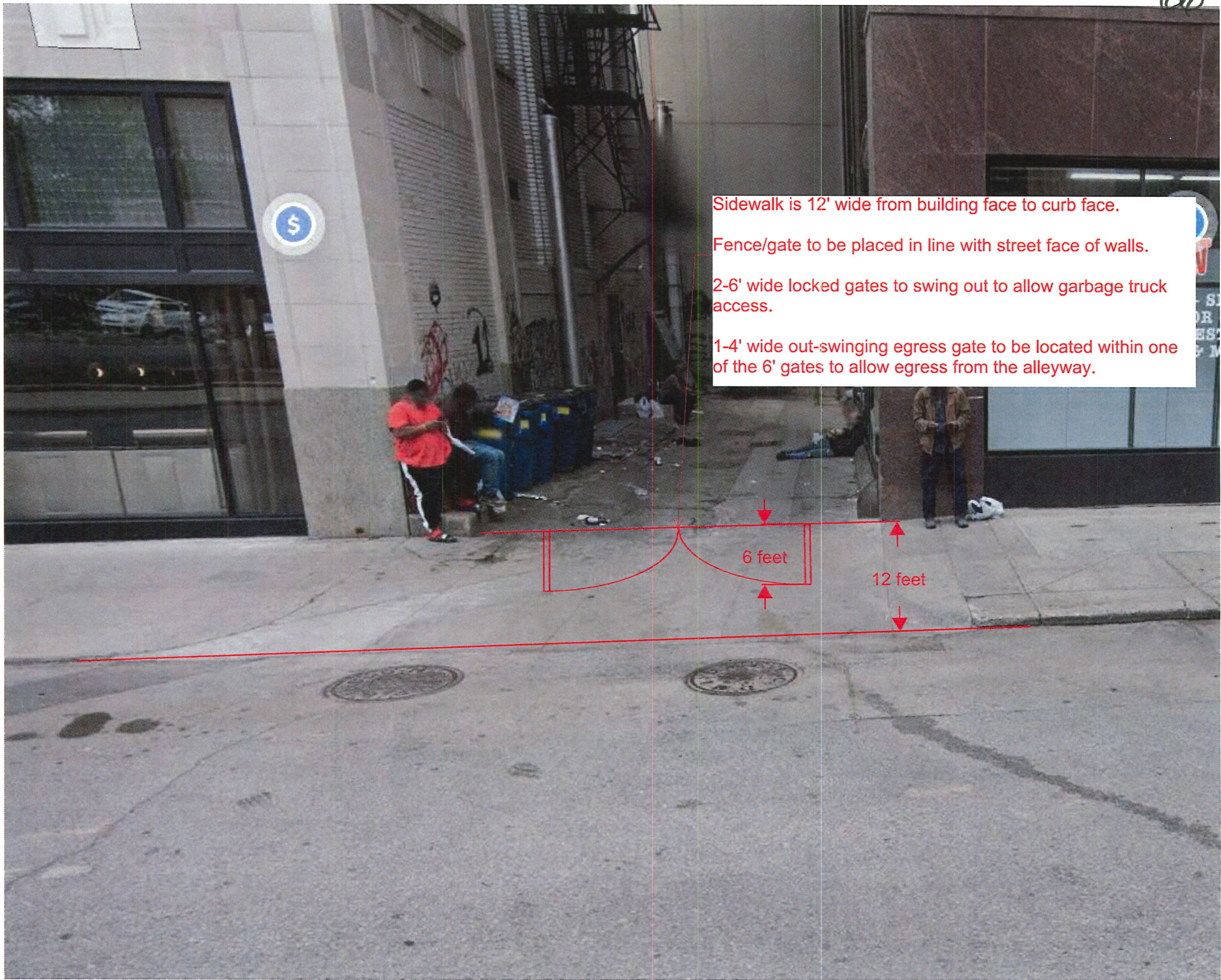
6th Ave

Legend
[Hatched Box] AREA TO BE VACATED



lde

ldo



Sidewalk is 12' wide from building face to curb face.

Fence/gate to be placed in line with street face of walls.

2-6' wide locked gates to swing out to allow garbage truck access.

1-4' wide out-swinging egress gate to be located within one of the 6' gates to allow egress from the alleyway.

AMERICAN FENCE COMPANY

Omaha Lincoln Des Moines Grand Island Sioux Falls Rochester Sioux City Cedar Rapids

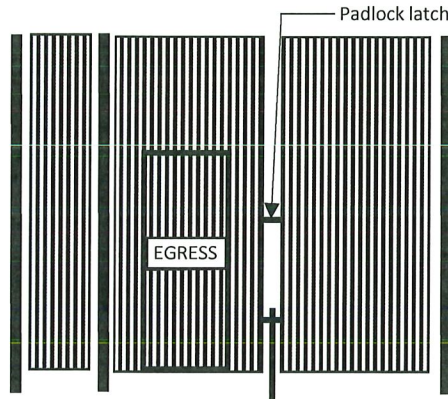
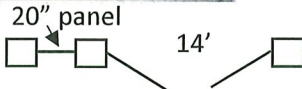
American Fence Corporation - Kansas City

6300 NW Beaver Drive Johnston Iowa 50131 Phone: 515-265-6100 Fax 515-265-6108

Date: <u>11/10/21</u>	Phone: <u>515-457-9000</u>	Fax: _____	Specification for Fencing	
Customer Name: <u>Nelson Construction</u>			Overall Length	Overall Height
Billing Address: <u>405 W 4th Ave</u>	<u>DSM</u>	<u>50309</u>		<u>10'</u>
Location of Job: <u>Same</u>			Wire Gauge	Dia. Corner/End Post
City: _____	State: _____	Zip: _____	<u>N/A</u>	<u>✓</u>
Cell Phone: <u>712-660-1314</u>	Contact E-Mail: <u>wade@nelsonconstruction.com</u>		Dia. Line Post	Dia. Top Rail
Invoice E-Mail: _____				<u>N/A</u>

Specifications:

Furnish and Install Materials



- Double gate w/ built in single gate
- Expanded metal on gate (8' tall)
- Double deep rods
- Accessible panic bar on single swing

Project Specific Notes

No permit, survey, staking or field verification included.
 No core drilling, rock drilling, sleeve(s) or blockage required or included.
 No temporary fence included.
 All staking and private utility locates must be complete prior to AFC commencing Work.
 No shop drawings, engineered drawings, delegated design or engineering included.
Note: Your project was estimated based on what we see. Objects below ground that interfere with your post installation will not be the responsibility of AFC such as your foundation, buried paving or pavers, roots, old fence footings, etc. Any adjustments additional materials, trips and labor will be at an additional expense.

NOTE: NOT RESPONSIBLE FOR SPRINKLERS SYSTEMS. ESTIMATE GOOD FOR 15 DAYS.

12 week for fabricate

Notes and Exclusions:

- 1) Unless otherwise noted, one mobilization is included for the installation of the fence.
- 2) Unless otherwise noted, block-out(s) in concrete/masonry for fence by others. No core drilling included.
- 3) No permit, survey and/or staking included. Fence line to be staked by others.
- 4) Unless otherwise noted, no removal, grading, grubbing and/or demolition included.
- 5) Private utilities to be located by others. Fence line to be staked clear of utilities.
- 6) Unless otherwise noted, no electrical wire, wiring, grounding, conduit and/or connections included.
- 7) No bonds, dues or completed operations included.
- 8) All items not specifically mentioned in this proposal are excluded.
- 9) Unless otherwise noted, no addenda were received.
- 10) This proposal may be withdrawn by AFC if not accepted within 30 days.
- 11) AFC will not be subject to liquidated damages.
- 12) Entire fence line must be concrete-truck accessible.
- 13) Waivers of subrogation are not included.

Customer assumes full responsibility for the location of property pins, staking of the fence, and any inaccurately placed pins and/or stakes. Customer understands that AFC has staked the fence based on the proposal and/or in consideration of existing utilities that may not reflect the actual location of customers property. Customer agrees to defend, hold harmless and indemnify American Fence Co. from and against all claims, liabilities and expenses for trespass and other damage or loss arising out of the location of said fence. Customer hereby assumes full responsibility for the damage to any marked and unmarked underground utility, telephone, T.V., cable or sprinkler system pipes. If the customer requests, agrees or allows American Fence Company to locate the fence within 18 inches of any buried utilities, the customer agrees to defend, hold harmless and indemnify American Fence Company from and against all claims, liabilities and expenses as a result of damage to these utilities and related property. If the contract price is not paid when due, the customer agrees to allow American Fence Co. to trespass on to their property and remove the fence at the company's discretion. Furthermore, the customer agrees to indemnify and hold harmless the Company for any damage done to the property as a result of removal of the fence. All modifications shall be in writing and shall be affixed to the original bid. This agreement and any subsequent modification/s shall be contingent upon strikes, accidents, shortages or delays beyond the control of American Fence Co. Any time stated for installation is purely estimated. The customer agrees and accepts that AFC will not extend discounts or credits for any delays or be held responsible for interest charges on any payments made by customer. Any changes to the fence due to varying ground conditions are not the responsibility of American Fence Co. Customer to carry fire, tornado and other necessary insurance. This proposal cannot be withdrawn by customer after acceptance of proposal. American Fence Co. has the right to reject any bid. All legal and related fees accrued in an effort to collect on this account for whatever reason will be the responsibility of the customer. By signing this proposal, the customer has completely reviewed and agreed with the prices, specifications and conditions as stated herein. Furthermore, the customer is authorizing American Fence Co. to complete the work. The customer is financially responsible for cancellation fees and costs of special order materials in the event the customer elects to cancel the contract. TERMS: 50% Down, Balance due on date of completion. A service and handling charge of 5% per month-50% per annum will apply to delinquent accounts past 10 days.

Due to unprecedented steel price increases, contractor to pay for stored materials or provide for subsequent future price increases after award of contract. AFC will provide storage.

Accounts not paid within thirty days will be charged eighteen percent (18%) per annum.

We agree to provide the work in accordance with the information stated here in the amount of,

Authorized Signature: _____

Customer/Contractor Signature: _____

Date: 11/10/2021

Date: _____

\$14921.00 tax included.