

Date 9/6

Agenda Item _____

Roll Call # 01-3251

October 14, 2001

MEMORANDUM OF AGREEMENT
Housing Development
Vine Street Lofts
1st and Vine Streets
Des Moines, Iowa

WHEREAS, the Vine Street Housing Project (hereafter, Project) will receive loan and grant money from the United States Department of Housing and Urban Development (hereafter, HUD); and, whereas, the City of Des Moines (hereafter, City), pursuant to 24 CFR 58.1, has assumed the roles and responsibilities for environmental review, decision making, and actions that would otherwise apply to HUD under the National Environmental Policy Act (hereafter, NEPA) and other provisions of the law that further the purpose of NEPA, including Sections 101, 106 and 110 of the National Historic Preservation Act (NHPA), as specified in 24 CFR 58.5; and,

WHEREAS, the project will also receive grant money from HUD through the Iowa Department of Economic Development (hereafter, IDED) but HUD has delegated the NHPA compliance responsibilities to IDED and IDED has agreed to allow the City to assume the role of lead federal agency as allowed under 36 CFR 800.2 (a)(2); and,

WHEREAS, the City has determined that the project will have adverse effects on properties listed on and eligible for inclusion in the National Register of Historic Places; and,

WHEREAS, the project is situated within the known boundaries of site 13PK61 and contains components relating to pre-contact American Indian occupation, Fort Des Moines 2, and the early development of the City of Des Moines, and has been determined eligible for listing on the National Register; and is adjacent to the Civic Center Historic District, and the Warfield, Pratt and Howell Company Warehouse at 100 Court Avenue, properties listed on the National Register; and,

WHEREAS, the City has consulted with the State Historic Preservation Officer of Iowa (hereafter, SHPO) pursuant to 36 CFR 800.2(c)(1) and have come to an agreement on the project Area of Potential Effects (hereafter APE) pursuant to 36 CFR 800.4(a)(1); and,

WHEREAS, the Advisory Council on Historic Preservation (hereafter Council) has been notified of the adverse effect finding and has been invited to enter into consultation pursuant to 36 CFR 800.6 (a)(1) but has concluded that its participation in the consultation process will not be necessary to resolve the adverse effects; and,

WHEREAS, the City has sought to identify and invite the consultation of other parties that may have an interest in or specialized knowledge of historic properties that will be adversely affected by the implementation of this undertaking, including the Iowa Tribe of Oklahoma, Iowa Tribe of Kansas and Nebraska, Sac and Fox Nation of Mississippi in Iowa, and the Sac and Fox Nation of Oklahoma; and,

WHEREAS, the City respects the sovereignty of all federally recognized American Indian Tribes in the Section 106 consultation process and recognizes their expertise in identifying and assessing the religious and cultural significance of American Indian historic properties on and off of Tribal lands; and,

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WHEREAS, the Iowa Tribe of Oklahoma and the Iowa Tribe of Kansas and Nebraska have notified the City of its interest and has requested to be a consulting parties with concurring party status to this agreement and the City has agreed to their request; and,

WHEREAS, the City, in consultation with the SHPO, proposes to involve the Public by disseminating information about the undertaking and its effects on historic properties in a proper and timely fashion and will seek public participation as mandated by federal law by utilizing HUD procedures for soliciting public involvement found at 24 CFR Part 58.43; --58.45-46; --58.59 and other applicable sections of this part;

NOW, THEREFORE, the City, IDED, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the project on significant historic properties.

STIPULATIONS:

The City shall through consultation with the Iowa SHPO, IDED, and the other consulting parties listed above ensure that the following measures are executed.

I. ARCHITECTURALLY AND/OR HISTORICALLY SIGNIFICANT STRUCTURES

- 1. Prior to any construction activities, the City will consult with the SHPO to identify site-specific impacts on the Warfield, Pratt, and Howell Company Warehouse and/or the National Register eligible or listed buildings or structures in the Civic Center Historic District. If the signatories to this agreement reach a consensus that the undertaking will have 'no adverse effect' upon architecturally and/or historically significant structures the City shall secure a concurrence letter from the SHPO, which will demonstrate compliance with Stipulation I of this Memorandum of Agreement (MOA).
- 2. If the signatories to this agreement reach a consensus that the undertaking will result in an adverse effect upon architecturally and/or historically significant structures, the City, in consultation with the SHPO, will develop and implement a mitigation program to resolve the adverse effect. The City will secure a concurrence letter from the SHPO upon the successful conclusion of mitigation efforts, which will demonstrate compliance with Stipulation I of this MOA.
- 3. If the signatories to this agreement cannot reach a consensus regarding the project effects upon the above-referenced properties, the City will refer the matter to the Council for review and comment pursuant to 36 CFR 800.5(2-3).

II. ARCHAEOLOGY

- 1. The City shall ensure that archaeological investigations are conducted under the direct supervision of an archaeologist, who meets or exceeds the Secretary of Interior's professional qualifications for Historical and Prehistoric Archaeology (48 FR 44738-9). The Principal Investigator must demonstrate an ability to comprehend the theoretical approaches, develop research designs, and apply research and field methods that are particular to this discipline and appropriate for this site.

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2. Because archaeological deposits relating to the early development of the City of Des Moines, the early 19th century military facility known as Ft. Des Moines No. 2 and earlier prehistoric components are mantled by varying depths of urban fill, a four-stage mitigation procedure has been developed. This procedure includes the following tasks: (A) compilation of land-use history; (B) geoarchaeological investigations; (C) data recovery; and, (D) preservation.

A. Land-Use History

1. Prior to field investigations, historic maps and records (e.g. General Land Office (GLO) survey maps and notes, Sanborn Insurance maps, City of Des Moines engineering records, property abstracts, and other historical sources) shall be consulted to determine where, within the APE, previous urban development has reduced the potential for encountering *in situ* archaeological deposits beneath the mantle of urban fill. The results of land-use history studies serve as a guide for the implementation of geoarchaeological field methods and analyses and data recovery efforts.

B. Geoarchaeological Investigations

1. Geoarchaeological investigations shall be consistent with SHPO's *Guidelines for Archaeological Investigations in Iowa* and will be performed by a qualified geomorphologist in cooperation with the project's archaeological principal investigator. Mechanized equipment (i.e., back-hoe fitted with a 4', untoothed lawnscape bucket, and Geo-probe or Giddings-type auger) will be employed to address the following data sets: (1) areas of high, moderate, and low potential for encountering undisturbed archaeological deposits; (2) depth of fill mantle across the project area and elevations of buried soils (palesols) beneath the fill mantle; (3) delineation of areas that need not be further investigated owing to profound disturbance from former urban development, whose extant structures, structural remnants, or archaeological deposits and features in and of themselves do not qualify for listing on the National Register; and (4) integration of subsurface data with landform characterizations and buried topography with those produced by investigations at the contiguous Martin Luther King, Jr. Parkway and the City of Des Moines' Court Avenue Entertainment Center projects also located at 13PK61.

C. Data Recovery

1. A refined data recovery plan (DRP) with research design will be developed utilizing information produced during the Land-Use History and Geoarchaeological studies. A draft of the DRP will be submitted to the SHPO for review and approval prior to the commencement of data recovery. SHPO will have a maximum of thirty (30) calendar days to review the DRP and provide comments. Data recovery efforts will be conducted in accordance with the finalized DRP.
2. Given the urban setting of the project area and the known fill depths, data recovery will be operationalized by mechanized removal of the fill mantle to the interface with the underlying buried soil horizon. Through consultation with SHPO, a strategy will be developed to ensure adequate treatment, characterization and interpretation of site contexts. The approach taken will be dependent on the nature and extent of *in situ* deposits and will be closely coordinated with the SHPO. Finally, the data recovery plan will incorporate provisions for public outreach in the form of a published booklet of no less than 16 pages that, among other things, will present interpretations of the data recovery efforts and of the known and suspected historic contexts represented at 13PK61.

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3. All intact features, midden deposits and structural remains associated with the Fort Des Moines No. 2, the early settlement of Des Moines known as Ft. Des Moines, and any prehistoric components that may be present within the project APE will be fully mitigated through data recovery and recordation procedures when in-place preservation of the entire feature or deposit is not practicable. Intact artifact deposits and features associated with the post-1870 development of Des Moines will be subject to an archaeological sampling strategy that will be developed in consultation with the SHPO. The methods and procedures set forth in the data recovery plan will be consistent, but not necessarily the same, as those pursued during previous data recovery exercises at other location of 13PK61.
4. The signatories concur that the accomplishment of Tasks A (Land Use History) and B (Geoarchaeological Investigations), of necessity, may precede the formal execution of this agreement; and, that the implementation of Task C (archaeological data recovery) must await the fully executed MOA.
5. The principal investigator shall compile a report documenting the data recovery and analytical activities. The report format will be consistent with standards outlined in the SHPO's *Guidelines for Archaeological Investigations in Iowa*. Among other things, the report will detail field and laboratory procedures, describe the features and artifacts recovered, discuss the current, past, and present perceptions of the historic contexts represented at 13PK61, and synthesize the data recovered to further an understanding of those historic contexts. The report will include itemized catalogs of the artifacts recovered and features observed in the field. Review and acceptance of the data recovery report by the Iowa SHPO will serve to document compliance with Stipulation II of this Memorandum of Agreement.
6. The City will ensure that the artifacts, field notes, and associated documentation resulting from this data recovery effort will be permanently stored at the curation facility located at the Office of the State Archaeologist in Iowa City or at an accredited facility that applies similar curation standards.

D. Preservation

1. In consultation with SHPO, the City shall devise and implement a security plan that will allow for the protection of archaeological resources against vandalism, looting, and other unauthorized activities during data recovery.
2. In consultation with SHPO, the City will prepare and execute a plan to take into account the long-term preservation of all significant archaeological deposits and features that will be avoided by construction. This will include the intact portion of 13PK61 that underlies the enclosed courtyard facing SW 1st Street.

III. ADMINISTRATIVE CONDITIONS

A. Area of Potential Effects (APE). The signatories to this MOA understand and accept the following area definition as the project APE (see Attachment A).

- Lots 3, 4, 5, 6, 7, 8, 9, and 10 of Block 35 including the vacated north/south alley, which bisects Block 35. Areas of the proposed central courtyard and Southwest 1st Street that will remain undisturbed by construction activities, utility installation, landscaping, and other ground disturbing activities and where

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in-place preservation of archaeological features and midden deposits is feasible shall be omitted from the project APE.

- The east/west alley adjacent to Lot 10 and Lot 3 and running between SW 1st Street and SW 2nd Street for its entire length.
- Vine Street extending from SW 1st Street to SW 3rd Street, which will include areas of street improvement and alignment changes and adjacent areas subject to landscaping and/or other improvements. This area excludes the 26-foot easement (13 feet north and south of centerline) allowing for the railroad right-of-way which separates the north and south lanes of Vine Street.
- The section of SW 1st Street extending from the east/west alley referenced above and to within 16 feet of the railroad centerline, which will include all areas of utility installation, street improvements and alignment changes.
- The section of SW 2nd Street extending from the east/west alley referenced above and to within 16 feet of the railroad centerline, which will include all areas of utility installation, street improvements, and alignment changes.

The City shall appropriately document and immediately notify the SHPO and other parties of subsequent changes to the project APE and shall allow them a reasonable opportunity for review and comment. If necessary, revisions to the data recover plan shall be made by the project archaeologist and shall be submitted concurrently to the SHPO for review. The SHPO will respond to the City's notice of changes to the APE within five (5) calendar days of receipt of the notice.

B. Unanticipated Discoveries. The City shall ensure that all provisions of NAGPRA are observed. No human remains have been recovered from 13PK61 in the past and none are anticipated to be found during this data recovery work. However, any human remains and/or grave-associated funerary objects encountered during the data recovery are protected by provisions of the Iowa Codes 144.34 and 263B.7 through 263B.9, the Iowa Administrative Code Section 685, Chapter 11 and by the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058) and its implementing regulations at 43CFR part 10. The City shall ensure that, if human remains and/or grave associated objects are encountered, all construction and excavation activities will cease immediately within the area. The area will be secured, the material will be left in place with no further disturbance. A tarp, plastic sheeting, or other appropriate covering will be placed over the exposed remains and weighted with loose soil along the edges and the top. The SHPO and the Director of the Burials Program at the Office of the State Archaeologist of Iowa (319) 384-0740 will be contacted immediately. In the event that other discoveries of historical, architectural, or archaeological significance are encountered all construction and excavation activities will cease immediately within the area. The area will be secured, the material will be left in place with no further disturbance and the SHPO will be contacted immediately. The SHPO will respond within 48 hours of the discovery.

C. Termination. This agreement shall be null and void if its terms are not carried out within two (2) years from the date of its execution unless the signatories agree in writing to an extension for carrying out its terms. This agreement may be terminated prior to this time by either the City of Des Moines or the SHPO upon written notice to the other party with copies furnished to the Council and the other consulting parties. Upon termination of consultation, the City will coordinate with the Council in order to fulfill its compliance obligation under NHPA.

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D. Objections and Dispute Resolution. At any time during implementation of the measures set out under the Stipulations in this MOA, should a written objection to any such measure or its manner of implementation be raised by a signatory to this agreement, the City shall take the objection into account and consult as needed with the objecting party, the Iowa SHPO, or the Advisory Council on Historic Preservation to resolve the objection. The responsibility of the signatories to this MOA to carry out all actions under this MOA that are not the subject of the objection shall remain unchanged.

E. Monitoring. The City will forward a status report summarizing actions taken to implement the provisions of this agreement to the SHPO semi-annually. The reports will be due in June and December of each calendar year until completion of the proposed project.

F. Amendment. The signatories to this MOA may propose to amend the MOA by providing a written request for such amendment to the other signatories whereupon all parties shall consult as appropriate within thirty (30) calendar days of receipt of the written request. Any resulting amendments shall be developed in writing and shall be executed immediately upon consensus.

Execution of this Memorandum of Agreement by the City of Des Moines, the Iowa Department of Economic Development, and the State Historic Preservation Officer of Iowa, filing of the executed MOA with the Advisory Council on Historic Preservation, and implementation of its terms evidence that the City has afforded the Council an opportunity to comment on the Vine Street Lofts project and its effect on historic properties, and that the City has taken into account the effect of this undertaking on historic properties.

City of Des Moines, Iowa

By: Preston Daniels
Preston Daniels, Mayor

Attest: Diane Rauh
Diane Rauh, Deputy City Clerk

OCT 22 2001

Date: _____

Sandy Ehrig
C.J. Niles, State Director Sandy Ehrig, Division Administrator
Iowa Department of Economic Development

10/25/01
Date

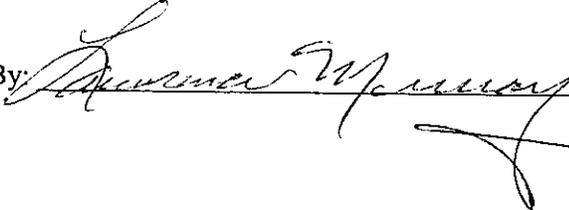
Lowell J. Soike
Lowell J. Soike, Deputy State Historic Preservation Officer
Community Programs Bureau
State Historical Society of Iowa

October 25, 2001
Date

October 14, 2001

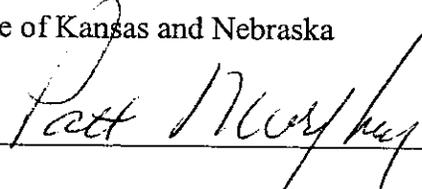
CONCURRING:

Iowa Tribe of Oklahoma

By: 

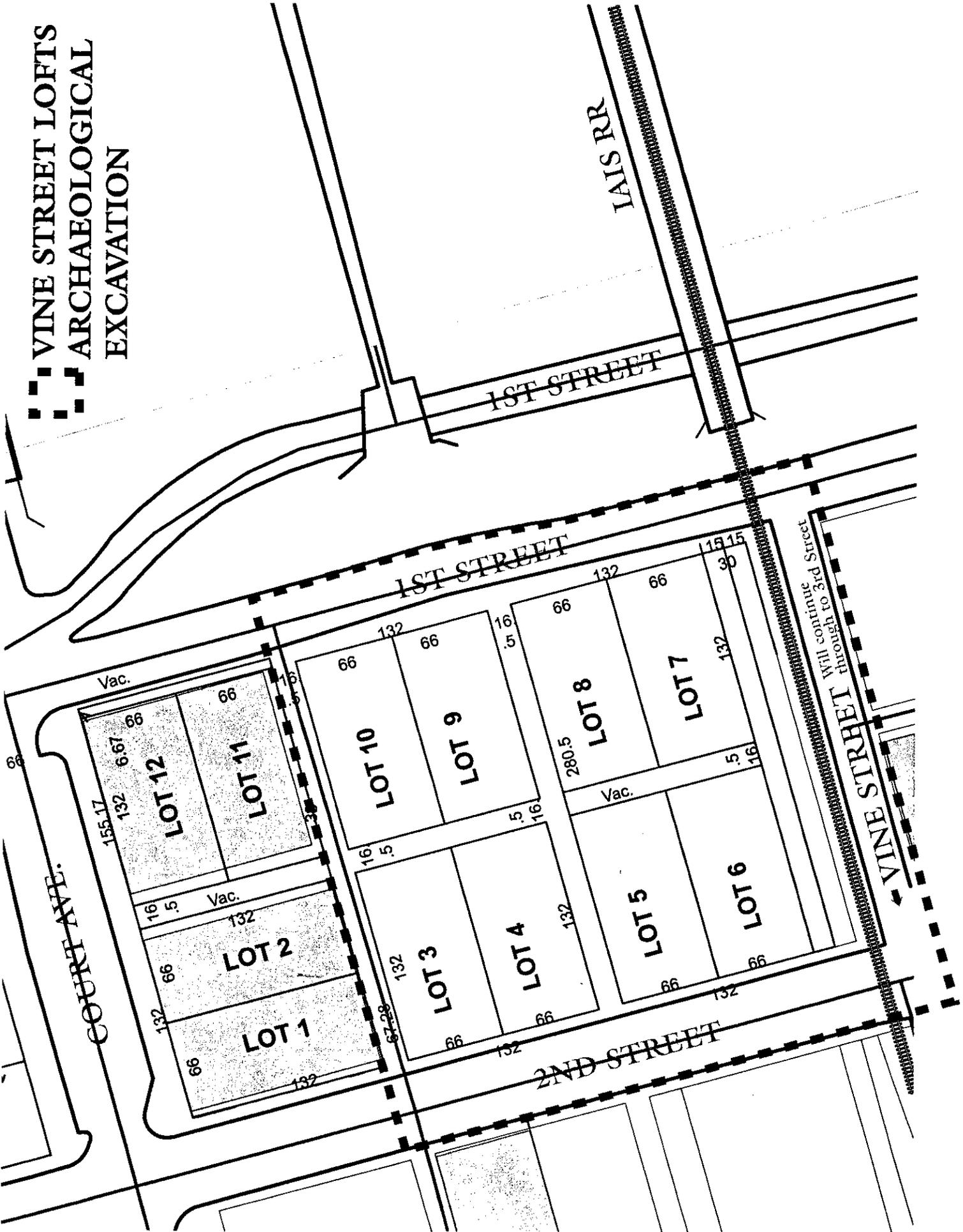
Date: 10-31-01

Iowa Tribe of Kansas and Nebraska

By: 

Date: 11-06-01

**VINE STREET LOFTS
ARCHAEOLOGICAL
EXCAVATION**



Will continue through to 3rd Street

VINE STREET

2ND STREET

1ST STREET

IAIS RR

COURT AVE.

Vac.

Vac.

Vac.

LOT 12

LOT 11

LOT 10

LOT 9

LOT 8

LOT 7

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 1

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BENCH MARKS

BM #1-82-27
 USGS BRONZE CAP ON WINDOW SILL OF 6TH WINDOW
 SOUTH OF THE NORTHWEST CORNER OF
 COUNTY COURT BLDG.
 ELEV=29.342'

UTILITIES

SANITARY SEWER AND STORM SEWER:
 CITY OF DES MOINES

WATER:
 DES MOINES WATER WORKS

COMMUNICATION:

US WEST
 McLOUD USA
 MCI
 AT&T FIBER
 AT&T CABLE
 SPRINT
 360° NETWORK

ELECTRIC AND GAS:
 MID AMERICAN ENERGY

IOWA ONE CALL PHONE # 1-800-292-8989

**KIRKHAM
 MICHAEL
 CONSULTING ENGINEERS**

IOWA

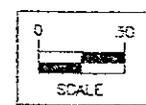
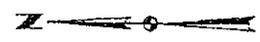
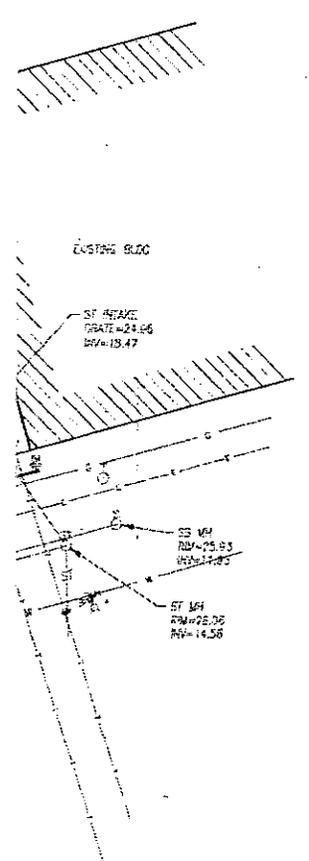
CA RIVERFRONT HOUSING

DES MOINES

TOPOGRAPHIC SURVEY

LEGEND

- ▲ BOLLARD
- W WATER VALVE
- F FIRE HYDRANT
- NG NATURAL GAS VALVE
- DG NATURAL GAS REGULATOR
- EM ELECTRIC MANHOLE
- UE UNDERGROUND ELECTRIC LINE
- WP POWER POLE, WOOD
- PL POWER POLE WITH LIGHT
- TS TRAFFIC SIGNAL
- PH PEDESTRIAN WALK SIGNAL
- TR TRAFFIC SIGNAL PULL BOX
- TC TRAFFIC SIGNAL CONTROLLER
- TM TELEPHONE MANHOLE
- UT UNDERGROUND TELEPHONE LINE
- TP TELEPHONE PEDESTAL
- CS SANITARY SEWER MANHOLE
- OS STORM SEWER MANHOLE
- CI CURB INLET
- CG CURB INLET WITH GRATE
- AI AREA INLET
- DT DECIDUOUS TREE
- FP FOUND PIN
- SP SET PIN
- XX CUT X
- OE OVERHEAD ELECTRIC LINE
- UG UNDERGROUND GAS LINE
- CE CITY UNDERGROUND ELECTRIC LINE



SURVEYOR ENGINEER
 KIRKHAM MICHAEL
 11021 AURORA AVE
 URBANDALE, IOWA 50322
 515-270-0848

OWNER DEVELOPER
 CA RIVERFRONT HOUSING
 DES MOINES IOWA

DATE MAY 2001
 DESIGNED BY KMS
 DRAWN BY KMS
 IPI NO. M 00000000X

SHEET **1**

NO.	DESCRIPTION	DATE	BY