

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue South, Des Moines**

January 7, 2016 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

SWEARING IN OF COUNCILMEMBERS

SELECTION OF MAYOR

SELECTION OF MAYOR PRO TEM

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

EXECUTIVE SESSION

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT
EMERGING ISSUES

CONSENT AGENDA

Page 1 Item 1: APPROVAL OF MINUTES
Motion is to approve minutes from the November 5, November 12, November 19 and December 3, 2015 Council meetings, minutes from the November 14, 2015 Council retreat and minutes from the November 12 and November 19, 2015 Council Executive Sessions.

Page 33 Item 2: PUBLIC DEFENDERS CONTRACT
Motion is to approve the proposed contract with Julie Codd and Tracy Greenwood for public defense services for the period January 1, 2016 through December 31, 2017 substantially in the form as submitted.

Page 99 Item 3: 2016-2017 RECYCLING PROGRAM FUNDING AND PROFESSIONAL SERVICES CONTRACT
Motion 1 is to authorize the City Manager to sign the 2016 Local Hazardous Waste Management Program Grant No. EHS3673 between the City of Des Moines and the Seattle-King County Department of Public Health, substantially in the form as submitted.

Motion 2 is to authorize the City Manager to sign the Professional Services Contract for the 2016-2017 Recycling Program between the City of Des Moines and Olympic Environmental Resources, substantially in the form as submitted.

OLD BUSINESS

Page 119 Item 1: COMMUNICATIONS PLAN
Staff Presentation: City Manager Tony Piasecki

NEW BUSINESS

Page 133 Item 1: LOCAL GOVERNMENT 101
Staff Presentation: City Attorney Pat Bosmans

EXECUTIVE SESSION

The purpose of this Executive Session is to discuss the performance of a public employee under RCW 42.30.110(1)(g).

NEXT MEETING DATE

January 14, 2016 Regular City Council Meeting

ADJOURNMENT

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue South, Des Moines**

November 5, 2015 – 7:00 p.m.

CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Pennington.

ROLL CALL

Council present: Mayor Dave Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Luisa Bangs and Vic Pennington.

Councilmember Bob Sheckler was absent.

Direction/Action

Motion made by Mayor Pro Tem Pina to excuse Councilmember Sheckler; seconded by Councilmember Musser.

The motion passed 6-0.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Police Chief George Delgado; Marina Maintenance Manager Scott Wilkins; Assistant City Attorney Tim George; Municipal Court Judge Lisa Leone; Probation Officer Melissa Patrick; Court Administrator Jennefer Johnson; Court Clerk Deborah Phillipson; Prosecutor Matt Hutchins; Finance Director Dunyele Mason; Parks, Recreation & Senior Services Director Patrice Thorell; Planning, Building and Public Works Director Dan Brewer; Community Development Manager Denise Lathrop; Surface Water Management Utility Manager Loren Reinhold; Engineering Services Manager Brandon Carver; Associate Transportation Engineer Andrew Merges; Information System Administrator Chris Pauk; Councilmember-Elect Robert K. Back; City Clerk Bonnie Wilkins.

CORRESPONDENCE

There were no correspondences.

EXECUTIVE SESSION

At 7:03 p.m. Council went into Executive Session to discuss Potential Litigation per RCW 42.30.110(1)(i). In attendance were: Mayor Kaplan; Mayor Pro Tem Pina; Councilmembers Nutting, Musser, Bangs and Pennington; Incoming Councilmember Robert K. Back; City Manager Piasecki; City Attorney Bosmans; Assistant City Attorney Tim George.

At 7:19 p.m. Council resumed the regular meeting. No formal action was taken.

COMMENTS FROM THE PUBLIC

- Mary Eun, 806 S 273rd Court; Spoke on Council process with public comment.
- Kevin Isherwood, Redondo Beach Drive S; City employee furloughs and essential employees and Council Rules.
- Janise Disbrow, 5008 58th Street Court East; Supports the Park, Recreation & Senior Services Department.
- Sheila Brush, 24614 8th Avenue S; Inquired if Council had hired an attorney regarding the Woodmont Recovery Center.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington:

- Public Safety & Transportation Committee meeting:
 - Comprehensive Transportation Plan.
 - Pavement Management Program.
 - Update on Ferguson incident from Police Chief.
- Coffee with a Cop.
- Redondo Boardwalk:
 - Staff has done a great job securing funds
- Thanked the community for attending.

Councilmember Bangs:

- Squid-A-Rama:
 - November 14th @ MaST Center.
- Thanked everyone who voted and did not vote this election.

Mayor Pro Tem Pina:

- Attended the Bayside Brunch:
 - Great event.

Councilmember Musser:

- Thanked first speaker for bringing timer issue to Council:
 - Staff currently working on finding a system that will work with our current audio/visual system.
- Thanked Farmer's Market staff for a great season.
- Acknowledged Council and staff November birthday's.
- Sandy Gady, Design and Engineering Teacher at Pacific Middle School was awarded a \$10,000 grant from the Highline School Foundation.

Councilmember Nutting:

- Attended the Bayside Brunch:
 - Legacy Foundation is a 501c3 organization.
 - Over \$15,000 raised for youth scholarships.
 - Thanked Anthony's Restaurant staff who donated their time.

PRESIDING OFFICER'S REPORT

- Public Economic Development Meeting:
 - Held on Microsoft Campus.
 - December 11th.
 - All day session.
- Safe Call Now:
 - Opportunity for Employee Assistance Programs geared towards public safety officers.
- Congratulated recently elected/re-elected Councilmembers.
- Received Thank you from Ms. Muscolo and the Pacific Middle School kids:
 - They will be picking up litter in the Marina.
- Met with City staff and water and sewer district's regarding feedback received at last week's meeting.
- Woodmont:
 - Communication with Representative Orwall.
 - Progress is being made.
 - Hope to have an update soon.

ADMINISTRATION REPORT

- Item 1: AUDIT EXIT CONFERENCE
This item was moved to the November 19, 2015 Agenda due to illness.
- Item 2: EMERGING ISSUES:
 - SYRIAN REFUGEES
 - The United States has pledged to accept 10,000 refugees next year.
 - Some will find their way into the Pacific Northwest.
 - Side note: Des Moines, Iowa is expecting 50-100 Syrian refugees to show up in the next few months.
- Item 3: STATE OF THE COURT ADDRESS
Municipal Court Judge Leone delivered her first State of the Court Address to Council regarding Des Moines Municipal Court.
- Item 4: REDONDO BOARDWALK UPDATE
Associate Transportation Engineer Merges gave a brief update on a slide that happened at S. 251st Street. He also gave a brief update to Council on the progress of the Redondo Boardwalk repairs.

CONSENT AGENDA

- Item 1: CONSULTANT SERVICES CONTRACT WITH DAVID A. CLARK ARCHITECTS, PLLC FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE DES MOINES BEACH PARK HISTORIC PICNIC SHELTER/RESTROOMS REHABILITATION
Motion is to approve the Consultant Services Contract with David A. Clark Architects, PLLC for design and construction administration services for the Des Moines Beach Park Historic Picnic Shelter/Restrooms Rehabilitation in the total amount of \$54,795.00, and authorize the City Manager to sign the Consultant Services Contract substantially in the form as submitted.

- Item 2: SURFACE WATER MANAGEMENT RATES
Motion 1a is to suspend Rule 26(a) in order to enact Draft Ordinance No. 15-188 on first reading.

Motion 1b is to enact Draft Ordinance No. 15-188 increasing the utility rates on the Surface Water Management utility.
- Item 3: SURPLUS PROPERTY – VEHICLES AND EQUIPMENT
Motion is to adopt Draft Resolution No. 15-184 declaring the vehicle identified in Attachment 1 as surplus and authorizing disposal of said surplus vehicle by auction or trade-in.
- Item 4: TRANSPORTATION GATEWAY PROJECT SOUTH 216TH STREET, SEGMENT 1-A RIGHT OF WAY ACQUISITION SAFEWAY, INC., PARCEL 49
Motion is to purchase 1,220 square feet of land from Safeway Inc, in the amount of \$26,900.00, a 88 square foot Wall Easement in the amount of \$1,500.00, as well as compensate the owner \$4,600 for taken landscaping, pavement and a tree, per the terms of a stipulated settlement before the Washington State Superior Court, plus closing costs, and further authorize the City Manager to sign the Statutory Warranty Deed, Wall Easement, Construction Easement & Right of Entry and Real Property Voucher substantially in the form submitted and accept the right of way on behalf of the City of Des Moines.
- Item 5: 2016 BUSINESS LICENSE FEE SCHEDULE
Motion is to adopt Draft Resolution No. 15-189 updating the business license registration fee schedule.

Direction/Action

Motion was made by Councilmember Musser to approve the Consent Agenda; seconded by Councilmember Nutting.
The motion passed 6-0.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

- Item 1: DRAFT ORDINANCE 15-030; TEMPORARY ENCAMPMENTS FOR THE HOMELESS
Staff Presentation: Planning, Building and Public Works Director
Dan Brewer

At 8:26 p.m. Mayor Kaplan opened the Public Hearing.

Community Development Manager Denise Lathrop gave a power point presentation to Council.

Mayor Kaplan called for those that wished to speak.

- Kevin Isherwood, Redondo Beach Drive S; Valid identification and rules within structured shelters.
- Chad Wagner, 26212 17th Avenue S; Proximity to schools.

Mayor Kaplan asked 3 times if anyone else wished to speak. Seeing none Mayor Kaplan asked Council if they had any questions.

At 8:59 p.m. Mayor Kaplan closed the public hearing.

Direction/Action

Motion 1 made by Mayor Pro Tem Pina to suspend Rule 26(a) in order to enact Draft Ordinance No. 15-030 on first reading; seconded by Councilmember Nutting.

The motion passed 6-0.

Direction/Action

Motion 2 made by Mayor Pro Tem Pina to enact Draft Ordinance No. 15-030 related to the establishment of regulations on Temporary Encampments for the Homeless, pursuant to RCW 35.21.915, RCW 35A.21.360 and RCW 36.01.290; seconded by Councilmember Nutting.

Motion made by Mayor Pro Tem Pina to amend Section 3 subsection 3 to state "The maximum number of residents within a temporary homeless encampment is one hundred (100); however, this number may be limited as site conditions dictate and as deemed appropriate by South King County Fire and Rescue and the Des Moines Police Department"; seconded by Councilmember Nutting.

Motion made by Mayor Pro Tem Pina to amend Section 3 subsection 2(f) to state "Garbage and recycling containers shall be provided on site and collected and emptied a minimum of once per week and each site shall be cleared of all debris and litter within five (5) days of when the temporary homeless encampment moves from the site"; seconded by Councilmember Nutting.

Motion made by Mayor Pro Tem Pina to add new language to Section 3, subsection (2) to state "Temporary homeless encampments shall not be located within 1000 (one-thousand) feet of an elementary or secondary school"; seconded by Councilmember Pennington.
The motion, as amended, passed 4-2.

For: Mayor Pro Tem Pina; Councilmembers Nutting, Musser and Pennington.

Against: Mayor Kaplan; Councilmember Bangs.

Direction/Action

Motion made by Councilmember Pennington to add a subsection (d) to read, "If 1,000 feet includes another jurisdiction, the City shall notify the Chief Executive Officer of that city; seconded by Mayor Pro Tem Pina.

The motion passed 6-0.

OLD BUSINESS

Item 1: SURFACE WATER MANAGEMENT UTILITY TAX
Staff Presentation: Finance Director Dunyele Mason

Finance Director Mason gave a presentation to Council.

Direction/Action

Motion made by Councilmember Musser to pass Draft Ordinance No. 15-172 amending chapter 3.92 DMMC; seconded by Mayor Pro Tem Pina.
The motion passed 5-1

For: Mayor Kaplan; Mayor Pro Tem Pina; Councilmembers Musser, Bangs and Pennington.

Against: Councilmember Nutting.

NEW BUSINESS

Item 1: LODGING TAX COMMITTEE RECOMMENDATIONS
Staff Presentation: Parks, Recreation & Senior Services Director
Patrice Thorell

Parks, Recreation & Senior Services Director Thorell gave a presentation to Council.

Direction/Action

Motion made by Mayor Kaplan to approve the Des Moines Lodging Tax Advisory Committee's Recommendations for the Use of Des Moines Lodging Tax to become effective on January 1, 2016; seconded by Councilmember Nutting.
The motion passed 6-0.

Item 2: DES MOINES PARKS, RECREATION AND SENIOR SERVICES MASTER PLAN
Staff Presentation: Parks, Recreation & Senior Services Director
Patrice Thorell

Parks, Recreation & Senior Services Director Thorell gave a power point presentation to Council.

Motion made by Mayor Kaplan to extend the meeting until 10:05 p.m.; seconded by Councilmember Pennington.
The motion passed 6-0.

NEXT MEETING DATE

November 12, 2015 Regular City Council Meeting

ADJOURNMENT

The meeting was adjourned at 10:05 p.m.

Respectfully Submitted,
Bonnie Wilkins, CMC
City Clerk

MINUTES

DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers 21630 11th Avenue South, Des Moines

November 12, 2015 – 7:00 p.m.

CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Sheckler.

ROLL CALL

Council present: Mayor Dave Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Luisa Bangs, Bob Sheckler and Vic Pennington.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager/Economic Development Director Michael Matthias; Police Chief George Delgado; Detective Mike Thomas; Assistant City Attorney Tim George; Marina Maintenance Manager Scott Wilkins; Court Administrator Jennefer Johnson; Planning, Building and Public Works Director Dan Brewer; Engineering Services Manager Brandon Carver; Executive Administrative Assistant Autumn Lingle; Code Enforcement Office Nancy Uhrich; Surface Water Management Utility Manager Loren Reinhold; Parks, Recreation & Senior Services Director Patrice Thorell; Finance Director Dunyele Mason; Budget Manager Cecilia Pollock; Human Resources Manager Maureen Murphy; Municipal Court Judge Lisa Leone; Councilmember-Elect Robert K. Back; Master Sergeant Patti Richards; Master Police Officer Tony Nowacki; City Clerk Bonnie Wilkins

CORRESPONDENCE

- Letters received from two utility districts regarding water and utility issues and two letters from citizens in support of the proposed utility tax increase.

COMMENTS FROM THE PUBLIC

- Susan White, 28742 Redondo Beach Drive S; Main Street Program and Federal Way Symphony.
- Kevin Isherwood, Redondo Beach Drive; Asked Council to consider not adding more Rehab Centers, Homeless Encampments or Pot Shops to the work list or the streets of Des Moines during the November 14, 2015 Council retreat.
- Don Brame, 22003 10th Avenue S.; Supports the proposed utility tax increase.
- Jeff O'Dell, 1904 S 222nd Street; Distressed property-increased activity.

The following individuals oppose the proposed utility tax increase:

- Ken Kase, PO Box 3487, Kent.
- Alan Cooter, 20024 4th Avenue S, Des Moines.
- Jim Bailey, 26727 17th Place S, Des Moines.
- Eric Clarke, 922 S 219th Street, Des Moines.
- Terry Pellecchia, 22434 12th Avenue S, Des Moines.

- David Elliott, 21405 4th Avenue S, Des Moines.
- Matt Everett, 23828 30th Avenue S, Kent.
- Rick Johnson, 28824 Redondo Beach Drive, Des Moines.
- Peter Kwon, 4455 S 164th Street, SeaTac
- Rick Forschler, 13529 Military Road S, SeaTac.
- Suzie Genzale, Southwest Suburban Sewer District.
- Scott Hilsen, 115 SW 164th Place, Normandy Park.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington:

- Thanked the public for attending the meeting.
- Hopes to work with Council on a percentage reduction for utility taxes.

Councilmember Sheckler:

- Gave a brief history to the public regarding past services that have been affected by the budget over the years.
- Spoke to Mr. Forschler regarding his Public Comment.

Councilmember Bangs:

- Des Moines Police Department Advisory Group:
 - Safe Call Training.
 - Offers recovery programs for substance abuse and addictions.
 - Crime Stat Updates:
 - 2013
 - 2014
- Taxes and cuts are needed to balance the budget.
- Thanked the public for coming.

Mayor Pro Tem Pina:

- Des Moines Arts Commission meeting:
 - SoCo Culture Organization:
 - Training and Summit on February 24, 2016.
 - Rikki Marohl, Farmer's Market:
 - Partner and leverage Wednesday night concerts with Market.
 - Squid-A-Rama.
- Finance & Economic Development Committee meeting:
 - Development and process in changing zoning codes.
 - 2016 Work Program:
 - Business Park.
 - Several Marina District projects.
 - Prioritization with staff time.
- Distressed Property on 222nd:
 - Met with Police Chief.
- Redondo building issues.
 - Get suggestions to improve code in the area in work plan.
- Street Signs:
 - Result of a Grant.
 - Sailboat motif were pennies per sign.

- Commended Staff for writing grants and finding pockets of money:
 - Gateway Project on S 216th.
 - Citizens only paying 10% of project
 - All other costs paid by grants.

Councilmember Musser:

- Addressed those that spoke during public comment:
 - Cares greatly about the City.
 - Ran for office because of caring.
 - Asked the community to stay engaged and get involved.
- Thanked the public for attending the meeting.
- Human Services Volunteers:
 - Recognizing them in January.
 - Thanked four volunteers who have served maximum number of terms:
 - Eileen Severens
 - Deana Rader
 - Susan Corey
 - Eileen Byers

Councilmember Nutting:

- Thanked the public for attending the meeting.
- Squid-A-Rama.

PRESIDING OFFICER'S REPORT

- Council cares about all issues affecting the community.
- I-695 eliminated sales tax equalization.
 - Have been trying to build economic base.
- I-747 caps property tax on an annual basis.
- Levy Lid Lift:
 - Money went to police.
 - Were at 63 officers.
- Reduced staff by 30%.
- Spoke to Mr. Forschler and Mr. Kwon regarding speaking during Public Comment.

ADMINISTRATION REPORT

- Marijuana Retail Sites:
 - Map where locations are allowed and not allowed.
- Highline School District:
 - School Impact Fees.
 - Re-doing study.
 - Coming to Cities to enter into Interlocal Agreements.

CONSENT AGENDA

Item 1

APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfer included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#144854-145034	\$494,625.35
Electronic Wire Transfers	#617-617	\$ 30,683.80
Electronic Wire Transfers	#623-624	\$ 90,355.90
Payroll Checks	#18728-18730	\$ 5,408.73
Payroll Direct Deposit	#450001-450161	\$291,822.55
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers:		\$912,896.33

Item 2

PARKS AND RIGHT OF WAY LANDSCAPE MAINTENANCE CONTRACT WITH NORTHWEST LANDSCAPE SERVICES (NLS)

Motion is to approve the Goods and Services Contract for Landscape Maintenance Services with Northwest Landscape Services for a maximum annual contract amount of \$134,062.31, which includes \$112,272.52 for the base bid, and \$865.68 for bid alternate 2, \$4,328.40 for bid alternate 3, \$865.68 for bid alternate 4, \$8,568.99 for bid alternate 6 and \$7,161.04 for bid alternate 7, and authorize the City Manager to sign said Contract substantially in the form as submitted.

Item 3

JURY POOL SERVICES MOU

Motion is to approve the MOU between King County Superior Court and the City of Des Moines for jury pool services and to authorize the City Manager to sign the agreement substantially in the form submitted.

Direction/Action

Motion was made by Councilmember Nutting to approve the Consent Agenda; seconded by Councilmember Musser.

Mayor Pro Tem Pina pulled Consent Agenda Item #3.

The remainder of the Consent Agenda passed 7-0.

Mayor Pro Tem Pina asked Court if they agree with recommendations.

Direction/Action

Motion made by Mayor Pro Tem Pina to approve the MOU between King County Superior Court and the City of Des Moines for jury pool services and to authorize the City Manager to sign the agreement substantially in the form submitted; seconded by Councilmember Nutting.

The motion passed 7-0.

Mayor Kaplan asked for Council's indulgence to move Old Business Item #1 ahead of the Public Hearing Items.

OLD BUSINESS

Item 1:

2016 UTILITY TAX RATES

Staff Presentation: Finance Director Dunyele Mason

Finance Director Mason gave a presentation to Council.

Direction/Action

Motion made by Councilmember Musser to suspend Rule 26(a) in order to enact Draft Ordinance 15-171 regarding the solid waste tax on first reading; seconded by Councilmember Sheckler.

The motion passed 7-0.

Direction/Action

Motion made by Councilmember Musser to enact Draft Ordinance 15-171 increasing the utility tax on solid waste utilities by ten percent; seconded by Councilmember Sheckler.

The motion passed 7-0.

Mayor Kaplan read Draft Ordinance No. 15-171 into the record.

Direction/Action

Motion made by Councilmember Musser to suspend Rule 26(a) in order to enact Draft Ordinance 15-185 regarding cable rates on first reading; seconded by Councilmember Sheckler.

The motion passed 7-0.

Direction/Action

Motion made by Councilmember Musser to enact Draft Ordinance 15-185 increasing the utility tax on cable by two percent; seconded by Councilmember Sheckler.

The motion passed 7-0.

Mayor Kaplan read Draft Ordinance No. 15-185 into the record.

Direction/Action

Motion made by Councilmember Sheckler to suspend Rule 26(a) in order to enact Substitute Draft Ordinance 15-173 on first reading.

Motion died for a lack of a second.

Direction/Action

Motion made by Councilmember Pennington to move Substitute Draft Ordinance 15-173 and Substitute Draft Ordinance 15-186 to the November 19, 2015 agenda; seconded by Mayor Pro Tem Pina.

The motion passed 6-1.

For: Mayor Kaplan; Mayor Pro Tem Pina; Councilmembers Nutting, Bangs and Pennington.

Against: Councilmember Sheckler.

At 9:36 p.m. Councilmember Bangs and Councilmember Sheckler left the meeting.

Per Council consensus Mayor Kaplan extended the Council retreat to 2:30 and added budget discussion to the agenda.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Item 3: YEAR 2016 GENERAL PROPERTY TAX LEVIES
Staff Presentation: Finance Director Dunyele Mason

Mayor Kaplan opened the public hearing at 9:37 p.m.

Finance Director Mason gave a presentation to Council.

Mayor Kaplan asked three times if anyone wished to speak. Seeing none Mayor Kaplan asked Council if they had any questions.

Mayor Kaplan closed the public hearing at 9:45 p.m.

Direction/Action

Motion made by Councilmember Musser to enact Draft Resolution No. 15-187 declaring a "substantial need" for purposes of setting the limit factor for the property tax levy for 2016; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Direction/Action

Motion made by Councilmember Musser to suspend Rule 26(a) in order to enact Draft Ordinance No. 15-132 on first reading; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Direction/Action

Motion made by Councilmember Musser to enact Draft Ordinance No. 15-132 determining the amount of funds to be raised by ad valorem taxes for the year 2016 for general City expenditures; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Direction/Action

Motion made by Councilmember Musser to suspend Rule 26(a) in order to enact Draft Ordinance No. 15-187 on first reading; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Direction/Action

Motion made by Councilmember Musser to enact Draft Ordinance No. 15-187, authorizing the increase in ad valorem taxes for the year 2016 for general City expenditures; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Mayor Kaplan read Draft Ordinance No. 15-132 into the record.

Mayor Kaplan read Draft Ordinance No. 15-187 into the record.

- Item 2: DRAFT ORDINANCE 15-179; ASSUMPTION OF TRANSPORTATION BENEFIT DISTRICT
Staff Presentation: Engineering Services Manager Brandon Carver

Mayor Kaplan opened the public hearing at 9:47 p.m.

Engineering Services Manager Carver gave a power point presentation to Council.

Mayor Kaplan asked three times if anyone wished to speak. Seeing none Mayor Kaplan asked Council if they had any questions.

Mayor Kaplan closed the public hearing at 9:50 p.m.

Direction/Action

Motion made by Mayor Pro Tem Pina to suspend Council Rule 26(a) in order to enact Draft Ordinance No. 15-179 on first reading; seconded by Councilmember Nutting.

The motion passed 5-0.

Direction/Action

Motion made by Mayor Pro Tem Pina to enact Draft Ordinance No. 15-179 to assume the Des Moines Transportation Benefit District by the Des Moines City Council; seconded by Councilmember Nutting.

The motion passed 5-0.

Mayor Kaplan read Draft Ordinance No. 15-179 into the record.

Direction/Action

Motion made by Mayor Kaplan to extend the meeting until 10:15 p.m.; seconded by Councilmember Nutting.

The motion passed 5-0.

- Item 1: DRAFT RESOLUTION NO. 15-181; REPLACEMENT OF SURFACE WATER MANAGEMENT FLUSH TRUCK

Staff Presentation: Surface Water Management Utility Manager
Loren Reinhold

Mayor Kaplan opened the public hearing at 9:53 p.m.

Planning, Building and Public Works Director Brewer gave a power presentation to Council.

Mayor Kaplan asked three times if anyone wished to speak. Seeing none Mayor Kaplan asked Council if they had any questions.

Mayor Kaplan closed the public hearing at 10:03 p.m.

Direction/Action

Motion made by Councilmember Nutting to adopt Draft Resolution No. 15-181 declaring the vehicle and equipment identified in Exhibit A as surplus and authorize disposal of said surplus vehicle and equipment by auction or trade-in; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Direction/Action

Motion made by Councilmember Nutting to authorize the City Manager or his designee to sign the purchase order for the purchase of the new flush truck from Enviro-Clean in the amount of \$351,360.00, after trade in of our existing flush truck; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Direction/Action

Motion made by Councilmember Nutting to direct administration to include an increase of \$66,000 in the 2015 vehicle assessment to cover the additional cost for the replacement of the flush truck as part of a 2015 budget amendment; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

Item 4:

2016 OPERATING & CAPITAL BUDGETS

Staff Presentation: Finance Director Dunyele Mason

Mayor Kaplan opened the public hearing at 10:05 p.m.

Mayor Kaplan called for those that wished to speak:

- Nancy Johnson; spoke in support of the Parks, Recreation & Senior Services Director.

Mayor Kaplan asked three times if anyone else wished to speak. Seeing none Mayor Kaplan asked Council if they had any questions.

Mayor Kaplan closed the public hearing at 10:08 p.m.

Direction/Action

Motion made by Councilmember Musser to pass Draft Ordinance No. 15-183 to the November 19, 2015 meeting for enactment establishing the 2016 Operating and Capital Budgets; seconded by Mayor Pro Tem Pina.
The motion passed 5-0.

NEXT MEETING DATE

November 14, 2015 City Council Planning/Budget Retreat

ADJOURNMENT

Motion made by Councilmember Nutting to adjourn; seconded by Councilmember Pennington.
The motion passed 5-0.

The meeting was adjourned at 10:10 p.m.

Respectfully Submitted,

Bonnie Wilkins, CMC
City Clerk

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MINUTES

DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers 21630 11th Avenue South, Des Moines

November 19, 2015 – 7:00 p.m.

CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Bangs

ROLL CALL

Council present: Mayor Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Luisa Bangs, Bob Sheckler and Vic Pennington.

Staff present: City Manager Tony Piasecki; Assistant City Manager Michael Matthias; City Attorney Pat Bosmans; Assistant City Attorney Tim George; Planning, Building and Public Works Director Dan Brewer; Finance Director Dunyele Mason; Commander Barry Sellers; Commander Bob Bohl; Police Chief George Delgado; Engineering Services Manager Brandon Carver; Finance Manager Cecilia Pollock; Community Development Manager Denise Lathrop; Harbormaster Joe Dusenbury; Information Systems Manager Dale Southwick; Acting City Clerk Autumn Lingle.

CORRESPONDENCE

A letter from Highline Water District General Manager Matt Everett regarding utility tax was introduced to Council.

Mayor Kaplan gave an update on the Woodmont Recovery Center (WRC). He announced that a meeting with State Representative Tina Orwall, Jim Vollendroff from King County, Valley Cities Ken Taylor and City Manager Tony Piasecki, resulted in all acute services for Woodmont Recovery Center moving to the Kent property. Valley Cities requested another extension to March 31, 2016. Voiced appreciation to the Des Moines Community for their participation in is change. No need for a formal Good Neighbor Association.

COMMENTS FROM THE PUBLIC

- Sheila Brush, 24614 8th Avenue S., Des Moines; Thanked fellow citizens and Charlie for being involved in efforts against the WRC.
- Harry Steinmetz, 917 S 258th Place, Des Moines; Asked which WRC services are being relocated, if CPU is valid for 5 years and commented that the piece of property is the largest remaining Des Moines commercial property.
- Wendy Leonard, 1417 S 245th St, Des Moines; Opposed utility rate increase.
- Cheryl Johnson, 28748 Soundview Drive S., Des Moines; Questioned TBD absorption, insurance for TBD and SWM tax for street maintenance.

- Ron Hall, Southwest Suburban Sewer District; Questioned Finance Directors utility tax rate figures and mentioned surrounding cities utility tax rates.
- Dan Johnson, 131 SW 194th, Normandy Park; Thanked Council for their hard work and Councilmember Sheckler for his 20+ years of service for Des Moines. Question legality of utility tax.
- Kevin Isherwood, Redondo, Des Moines; Thanked everyone for the effort in changing the Valley Cities Woodmont Recovery Center. Asked if they need to resubmit proposal and will this affect the City's budget.
- Kristie Brame, 22003 10th Ave S, Des Moines; Stated that she and her husband support the utility tax and Council.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington

- Woodmont Recovery Center (WRC)
 - Thanked community for involvement
 - Acknowledged Mayor Kaplan and City Manager Piasecki for their part in negotiations
 - Encouraged maintaining community involvement
- Windstorm
 - Thanked employees for their participation in the cleanup
- FAA
 - Job opportunities

Councilmember Sheckler

- FAA
 - Economic benefits
 - Family wage jobs

Councilmember Bangs

- Community for involvement.
 - Thanked community
 - Noted it is important
 - Hopes it continues
- Stated that Des Moines future looks bright

Mayor Pro Tem Pina

- Thanked community, encouraged continuing involvement
- Interested in meeting with community groups
- Ron Hall meeting and discussion
- Retreat
 - Budget
 - Police
 - Roads
 - Services
 - Senior
 - Before and After school care
 - Balancing act
 - Operating reserves
 - Business friendly
 - Researching alternatives

- Furloughs/layoffs
- Outsourcing
- Reducing staff/programs/hours

Councilmember Musser

- Thanked Sheila Brush for her community participation
- Robert Ruth, former City employee very ill

Direction/Action

Motion was made by Councilmember Musser to approve \$100 donation to the Ruth family from the Council's Hearts and Flowers Fund; seconded by Councilmember Sheckler. The motion passed 7-0.

Councilmember Nutting

- Second WATCHDOGS dads and kids pizza night at North Hill grade school

PRESIDING OFFICER'S REPORT

- Puget Sound Regional Council
 - Approved City's comprehensive plan
 - Thanked City staff for their work
- WRC
 - Community input essential
 - Council will be diligent ensuring potential future development
- Retreat
 - Budget
 - Communications
 - Facebook
 - Twitter
 - City101 videos
 - Community engagement
 - Neighborhood meetings

ADMINISTRATION REPORT

- Asked Council not to act on Item 6 from the Consent Calendar due to possible staff restrictions because of budget
- Thanked Council for donation to Robert Ruth's family. Noted Robert Ruth's dedication as a former City employee and wished his family well.

Item 1: AUDIT EXIT CONFERENCE
State Auditor Evans Anglin summarized results of the most recent City audit

CONSENT AGENDA

Item 1: APPROVAL OF MINUTES
Motion is to approve the minutes from the October 29, 2015 Executive Session, the October 29, 2015 Council Presentation to Pacific Middle School Students and the October 29, 2015 Regular City Council meeting.

- Item 2: DRAFT ORDINANCE NO. 15-193; MUNICIPAL COURT SEAL
Motion 1a is to suspend Council Rule 26(a) to enact Draft Ordinance No. 15-193 on first reading.

Motion 1b is to enact Draft Ordinance No. 15-193 creating a municipal court seal for the Des Moines Municipal Court.
- Item 3: UPDATE ON CITY OF DES MOINES RIGHT-OF-WAY ACQUISITION PROCEDURES
Motion is to approve and authorize the Mayor to sign the City of Des Moines Right-of-Way Acquisition Procedures substantially in the same form as submitted.
- Item 4: INTERLOCAL AGREEMENT BETWEEN THE CITIES OF SEATAC, DES MOINES, COVINGTON, AND TUKWILA FOR PLANNING, FUNDING AND IMPLEMENTATION OF A JOINT MINOR HOME REPAIR PROGRAM
Motion is to authorize the City Manager to approve revised Exhibit A of the Interlocal Agreement between the Cities of SeaTac, Des Moines, Covington and Tukwila accepting \$30,000 for the Minor Home Repair Program substantially in the form as submitted.
- Item 5: KING COUNTY YOUTH SPORTS FACILITIES GRANT
Motion is to accept the 2016 King County Youth Sports Facilities Grant for the Parkside Park Renovation Project Sports Court in the amount of \$25,000 and authorize the City Manager to sign the Agreement.
- Item 6: INTERLOCAL AGREEMENT BETWEEN DES MOINES POOL METROPOLITAN PARK DISTRICT AND CITY OF DES MOINES FOR TECHNOLOGY SERVICES
Motion is to approve the Interlocal Agreement between the Des Moines Pool Metropolitan Park District and the City of Des Moines for the provision of Technology Services, whereby the Des Moines Pool Metropolitan Park District will pay the City of Des Moines the amount of \$1,200 per month, and authorize the City Manager to sign the Agreement substantially in the form as submitted.

Direction/Action

Motion was made by Councilmember Nutting to approve the amended Consent Agenda; seconded by Councilmember Musser. The motion passed 7-0.

OLD BUSINESS

- Item 1: 2016 UTILITY TAX RATES

Direction/Action

Motion made by Mayor Pro Tem Pina to move Draft Ordinance 15-173 to December 17 Council meeting; seconded by Councilmember Pennington. Passed 6-1

Item 2: 2016 OPERATING & CAPITAL BUDGETS

Direction/Action

Motion made by Mayor Pro Tem Pina to move Draft Ordinance 15-183 to December 17 Council meeting; seconded by Councilmember Pennington.
Passed 6-1

At 8:18 p.m. Councilmember Sheckler left the meeting.

NEW BUSINESS

Item 2: DRAFT ORDINANCE NO. 15-175; 2016 MARINA MOORAGE RATES FOR 2016
Harbormaster Joe Dusenbury provided a PowerPoint presentation to the Council.

Direction/Action

Motion made by Councilmember Musser to suspend Rule 26(a) to enact Draft Ordinance No. 15-175 on first reading; seconded by Mayor Pro Tem Pina.
The motion passed 6-0.

Direction/Action

Motion made by Councilmember Musser to enact Draft Ordinance No. 15-175 to update Marina moorage rates for 2016; seconded by Mayor Pro Tem Pina.
The motion passed 6-0.

Mayor Kaplan read Draft Ordinance No. 15-175 into the record.

Item 3: DRAFT RESOLUTION NO. 15-191; ACCEPTING FINDINGS OF FACT THAT AN EMERGENCY EXISTED
Planning, Building and Public Works Director Dan Brewer updated Council regarding emergency conditions.

Direction/Action

Motion made by Councilmember Musser to adopt Draft Resolution 15-191 to allow the waiver of competitive bidding requirements for contract authorized by the City Manager pursuant to the November 3, 2015 Proclamation of Emergency pursuant to RCW 39.04.280; seconded by Councilmember Nutting.
The motion passed 6-0.

Item 1: 2016 INTERGOVERNMENTAL POLICIES AND POSITIONS
City Manager Tony Piasecki distributed a document the Soundside Alliance and Highline Forum compiled.

Direction/Action

Motion made by Councilmember Musser to remove from the State of Washington Item 1; seconded by Councilmember Bangs.
The motion passed 6-0.

Council consensus is to add Southwest King County language to the State of Washington Item 15.

Council consensus is to change Federal Item 2 to the following language "The City supports expansion of the noise mitigation program to provide insulation. The City supports construction of a Ground Run-up Enclosure."

Council directed staff to develop a policy position in regard to marijuana and bring back to council December 17.

Direction/Action

Motion made by Councilmember Pennington to move King County Metro route review to the Public Safety and Transportation Committee for review on December 3; seconded by Councilmember Bangs. The motion passed 6-0.

Council consensus is to add language from Southwest King County to Interjurisdictional and Regional Item 1, second sentence.

Council consensus is to remove Interjurisdictional and Regional Item 4.

Council consensus is to add Southwest King County language to the State of Washington Item 36.

NEXT MEETING DATE

December 3, 2015 City Council Study Session

ADJOURNMENT

Motion made by Councilmember Nutting to adjourn; seconded by Mayor Pro Tem Pina. The motion passed 6-0.

The meeting was adjourned at 9:17 p.m.

Respectfully Submitted,
Autumn Lingle
Acting City Clerk

MINUTES

DES MOINES CITY COUNCIL STUDY SESSION City Council Chambers 21630 11th Avenue South, Des Moines

December 3, 2015 – 7:00 p.m.

CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Mayor Pro Tem Pina.

ROLL CALL

Council present: Mayor Dave Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Bob Sheckler and Vic Pennington.

Councilmember Luisa Bangs was absent.

Direction/Action

Motion made by Councilmember Pennington to excuse Councilmember Bangs; seconded by Councilmember Musser
The motion passed 6-0.

Staff present: City Manager Tony Piasecki; Assistant City Manager/Economic Development Director Michael Matthias; Police Chief George Delgado; Marina Maintenance Manager Scott Wilkins; Parks, Recreation & Senior Services Director Patrice Thorell; Councilmember-Elect Robert K. Back; City Clerk Bonnie Wilkins

COMMENTS FROM THE PUBLIC

- There were no correspondences.

EMERGING ISSUES

- SR509 Extension has been funded at the State Level.
- Massive public records request received.
- Passing of former employee Robert Ruth.

DISCUSSION ITEMS

Federal Way School District Superintendent, Dr. Tammy Campbell, gave a power point presentation to Council.

Highline School District Superintendent Dr. Susan Enfield gave a power point presentation to Council.

Highline College President Dr. Jack Birmingham gave a power point presentation to Council.

Central Washington University Regional Director Lucas Rucks gave an oral presentation to Council.

At 9:00 p.m. Councilmember Sheckler left the meeting.

Tina Smith, President of Northwest Associated Arts, invited Council and the Community to the Holiday Concert, *Joy*.

NEXT MEETING DATE

December 10, 2015 Regular City Council Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Nutting to adjourn; seconded by Councilmember Pennington
The motion passed 6-0.

The meeting was adjourned at 9:20 p.m.

Respectfully Submitted,

Bonnie Wilkins, CMC
City Clerk

MINUTES

DES MOINES CITY COUNCIL COUNCIL RETREAT Beach Park Dining Hall 22030 Cliff Avenue S

November 14, 2015 – 9:00 a.m. to 2:30 p.m.

CALL TO ORDER

Mayor Kaplan called the retreat to order at 9:06 a.m.

ROLL CALL

Council present: Mayor Dave Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Luisa Bangs, Bob Sheckler and Vic Pennington.

Staff present: City Manager Tony Piasecki; Assistant City Manager Michael Matthias; Police Chief George Delgado; Parks, Recreation & Senior Services Director Patrice Thorell; Court Administrator Jennefer Johnson; Municipal Court Judge Lisa Leone; Finance Director Dunyele Mason; Planning, Building and Public Works Director Dan Brewer; City Attorney Pat Bosmans; Marina Maintenance Manager Scott Wilkins; Harbormaster Joe Dusenbury; Budget Manager Cecilia Pollock; Executive Administrative Assistant Autumn Lingle; City Clerk Bonnie Wilkins

REVIEW OF 2015 STRATEGIC OBJECTIVES AND COUNCIL/CITY SUCCESSES

City Manager Piasecki initiated discussion and spoke on the achievements and successes of Council's short term strategic objectives.

REVIEW, DISCUSS AND MODIFY AS NEEDED THE CITY COUNCIL VISION AND MISSION STATEMENTS AND GOALS

2016 Des Moines City Council

Vision (No change)

An inviting, livable, safe waterfront community embracing change for the future while preserving our past.

Mission Statement (No change)

We protect, preserve, promote and improve the community by providing leadership and services reflecting the pride and values of Des Moines citizens.

Goals

Council asked that the numbering be removed and revised the Goals as follows:

- Protect people and property
- Promote economic growth, stability and vitality
- Improve and enhance the City's transparency through community communications
- Maintain, and when possible, enhance the City's infrastructure
- Preserve and celebrate the historic elements of the City of Des Moines
- Encourage community involvement
- Preserve livability for all generations
- Participate in regional and state issues and decisions
- Protect the natural environment

Council revised the Strategic Objectives as follows:

Short Term

- Aggressively remediate nuisance properties.
- Implement and practice the City's Emergency Management Plan.
- Finalize and begin implementation of a Marina, Beach Park and Redondo Business Plan.
- Create and implement a financial sustainability plan for the Marina, including a public input process.
- Ensure that infrastructure is in place to support Marina District development.
- Aggressively pursue alternative revenue sources, including restoration of the state's Sales Tax Equalization program.
- Increase opportunities to recognize community members/organizations and City staff.
- Review and modify as needed regulations along commercial corridors.
- Develop and implement a written, measurable communications plan.
- Continue and enhance the City's collaborations with the educational communities.
- Develop and implement an economic development strategic plan, to include business retention and attraction and a marketing/branding program for the City.
- Work with our neighboring cities, Highline College and Sound Transit to develop the best Link Light Rail alternative and connecting services for Des Moines.
- Continue to support development opportunities on Port of Seattle-owned property in Des Moines.

Long Term

- Support on-going programs to improve public safety.
- Aggressively remediate nuisance properties.
- Pursue mass transit and other multi-modal transportation options.
- Maintain the Police Department's accreditation.
- Develop and implement an economic development strategic plan, to include business retention and attraction and a marketing/branding program for the City.
- Continue and enhance the City's collaborations with the educational communities.
- Develop a comprehensive facilities, infrastructure, and technology replacement and maintenance plan to include collaboration with other community partners/entities.
- Continue to educate the business and development community to City process improvements and innovations.

At 10:50 a.m. Council took a break and the meeting resumed at 11:07 a.m.

Process

- Educational Communities
- Neighborhood Advisory Committee/Community Engagement
- Criminal Justice Summit (early 2016): Police, Prosecution, Defense, Court and Jail
- Communications/Civic Engagement/User Interactions
- Study Session (Series): City Government 101 (comprehensive series, recorded for posting at the website)

At 11:57 a.m. Council took a break and resumed the meeting at 12:15 p.m.

At 12:00 p.m. Councilmember Sheckler left the meeting.

Council discussed a number of budget balancing strategies for 2016.

WRAP UP AND SUMMARY

Mayor Kaplan thanked Council and staff for their participation in retreat discussion.

The meeting was adjourned at 2:30 p.m.

Respectfully Submitted,
Bonnie Wilkins
City Clerk

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MINUTES

SPECIAL MEETING TO HOLD EXECUTIVE SESSION

November 12, 2015

CALL MEETING TO ORDER

The Special Meeting was called to order at 5:00 p.m. by Mayor Kaplan in Council Chambers.

ROLL CALL

Present were: Mayor Dave Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Luisa Bangs and Vic Pennington; City Manager Tony Piasecki; Assistant City Manager Michael Matthias; City Attorney Pat Bosmans; Human Resources Manager Maureen Murphy.

PURPOSE

The purpose of the Special Meeting was to hold an Executive Session to discuss Labor Negotiations under RCW 42.30.140(4)(a).

No formal action was taken.

The meeting was adjourned at 5:30 p.m.

Respectfully submitted,
Tony Piasecki
City Manager

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MINUTES

SPECIAL MEETING TO HOLD EXECUTIVE SESSION

November 19, 2015

CALL MEETING TO ORDER

The Special Meeting was called to order at 6:00 p.m. by Mayor Kaplan in Council Chambers.

ROLL CALL

Present were Mayor Dave Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremey Nutting, Melissa Musser, Vic Pennington and Luisa Bangs; City Manager Tony Piasecki; Assistant City Manager Michael Matthias, City Attorney Pat Bosmans, Assistant City Attorney Tim George, Human Resource Manager Maureen Murphy and outside counsel Bruce Schroeder.

Purpose

The purpose of the Special Meeting was to hold an Executive Session to discuss Labor Negotiations under RCW 42.30.140(4)(a).

No formal action was taken.

The meeting was adjourned at 7:00pm.

Respectfully submitted,
Tony Piasecki
City Manager

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BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

FOR AGENDA OF: January 7, 2016

ATTACHMENTS:

1. Letter from Ms. Codd and Ms. Greenwood
2. Wilbur v. The City of Mount Vernon – Memorandum of Decision
3. Comparison with other cities: Caseloads v. Compensation
4. Proposed Contract
5. Public Defender Contract 2011 through 2015
6. Contract Addendum dated July 1, 2015
7. 2015 Public Defender budget and expenditure report
8. 2016 Public Defender budget

DEPT. OF ORIGIN: AdministrationDATE SUBMITTED: December 31, 2015

CLEARANCES:

[X] Legal 56

[NA] Finance

[NA] Marina

[NA] Parks, Recreation & Senior Services

[NA] Planning, Building & Public Works

[NA] Police

[NA] Courts

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to request City Council approval of a new contract with the City's public defenders, Julie Codd and Tracy Greenwood.

Motion

"I move to approve the proposed contract with Julie Codd and Tracy Greenwood for public defense services for the period January 1, 2016 through December 31, 2017, substantially in the form as submitted."

Background

Ms. Julie Codd has been providing contract public defense services to indigent defendants in the Des Moines Municipal Court since 2003. Ms. Greenwood began providing these services in 2006. In their time as contract public defenders, Ms. Codd and Ms. Greenwood have provided exceptional defense services to their clients. They now seek to have their contract extended for another two years and their compensation adjusted to a reasonable level, particularly in light of the *Wilbur v. The City of Mount Vernon* decision. Ms. Codd and Ms. Greenwood outlined the issues that came out of this case in their

attached letter and provided a copy of the Memorandum of Decision issued by United States District Judge Robert S. Lasnik for Council's information.

Discussion

Ms. Codd and Ms. Greenwood's proposal for a new contract contains the basic boilerplate language found in previous contracts. The most notable change to the contract is the compensation.

First, the amount of base monthly compensation goes from \$6,800 to \$15,000 or \$81,600 to \$180,000 annually. However, the proposed contract has in the base amount services that are paid separately in the current contract. The current contract has an additional \$2,000 per month for video court (via the July 2015 amendment), while the proposed contract includes this service in the base. Also, scheduled arraignment calendars (a total of 52 per year) are billed separately under the current contract at an amount equal to \$13,800 per year, bringing the annual amount in the current contract to \$119,400. The proposed contract includes these services in the base.

In addition, the current contract calls for a payment of \$95 for each defendant who is transported to the Court for first appearance hearings, regardless of whether or not the day of the week is a regularly scheduled court day. This does happen on occasion. The proposed contract calls for a payment of \$120 only if the hearing is held on a non-court day.

Both the current and proposed contracts called for additional payments if jury trials are held on non-court days and for appeals to Superior Court. In the past several years, there have been no such appeals filed and almost all jury trials have been held on regular court days.

Finally, both the current and proposed contract require the City to provide discovery and the new contract requires payment for a variety of non-routine expenses, such as investigation expenses, medical and expert witness expenses, interpreters, etc. These are cost that the City has been obligated to cover in the past but were not called out in the current or previous contracts. These types of expenses rarely are incurred—other than interpreter expenses.

Alternatives

Council may chose not to approve the proposed contract and direct staff to conduct a competitive process for these services, such as issuing a Request for Proposals. Staff does not recommend doing so because Ms. Codd and Ms. Greenwood have provide a highly competent level of service for several years and the propose compensation is competitive with that paid to other contract public defenders.

Council could also direct staff to continue negotiations with Ms. Codd and Ms. Greenwood to obtain a contract more favorable to the City. This alternative is not recommended because staff believes the proposed contract is fair and reasonable agreement for public defender services, particularly when compared with other jurisdictions' compensation for such services.

Financial Impact

The total value of the contract without any of the additional charges for services rendered outside of court days is \$180,000. The budget for public defenders in 2015 was \$126,700. The budget for 2016 was set at \$180,500. While the increase in compensation is significant, it is the first increase to compensation, other than the additional \$800 per month for video court authorized in July 2015, which Ms. Codd and Ms. Greenwood have been provided since 2011. Since the base pay is split 50/50, the amount each receives is \$90,000, which they both must use to pay all applicable taxes and purchase benefits. As a comparison, the City Prosecutor's base pay for 2016 is \$73,008, which does not include the cost of any of the payroll taxes the City pays or the benefits he receives, such as medical insurance, pension, etc. Finally, if any case requires any of the rarely incurred expenses as noted above, staff will bring a budget amendment forward for Council approval at the appropriate time.

Recommendation

Staff recommends that Council approve the proposed contract with Ms. Codd and Ms. Greenwood substantially in the form as submitted.

Concurrence

None.

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October 7, 2015

Mr. Anthony Piasecki
City Manager
21630 11th Ave. S. Suite A
Des Moines, WA 98198

Dear Mr. Piasecki:

Julie Codd and Tracy Greenwood have worked as the Public Defense Attorneys for the City of Des Moines since 2006

We are writing this letter in support of the proposed contract for our continued work with the City of Des Moines in providing public defense services for indigent clients accused of criminal misdemeanor and gross misdemeanor charges.

Julie Codd and Tracy Greenwood (hereafter to be referred to as "the attorneys") are experienced Criminal Defense Attorneys with a combined experience of over thirty years of practice. They have held the contract for the public defense services for the City of Des Moines since 2006, with Ms. Codd having the contract with a former partner since 2003. In addition, Ms. Codd and Ms. Greenwood presently hold the contract for public defense services for the City of Normandy Park, and with the exception of the last two year, one or the other has held that contract for two of the last four years.

In the 9 years that the attorneys have held the Des Moines contract, they have performed this work to the satisfaction of the court and have enjoyed an amicable relationship with court staff and administration. The attorneys have provided reliable and competent service insuring excellent representation for the clients, and have not had a formal complaint during this time.

Representation of indigent clients involves working with a variety of people from all backgrounds, including many who have English as a second language, who have mental health or addiction issues, and who may be facing immigration consequences.

The attorneys are familiar with the myriad of issues these clients face and are adept at working with them and referring to and utilizing various providers and agencies to facilitate resolution of their legal issues, such as mental health professionals, chemical dependency professionals, interpreters, investigators, and expert witnesses.

The last contract the attorneys entered into with the City is dated January of 2012 and since that date the attorneys have not had a pay increase with the exception of the recent amendment allowing for an additional \$800 for SCORE in custody representation.

Standards for Indigent Defense, Washington Defender Association Standards for Public Defense, and Wilbur v. The City of Mount Vernon

In recent years the Washington State Supreme Court and the recommendations of the Washington Defender Association (WDA) Standards for Public Defense Services have mandated caseload limits for public defense attorneys as well as guidelines for practice. They have established obligations to insure the adequacy of the services provided, which include among the following:

- Certify to the court on a quarterly basis that each attorney is in compliance with the Standards for Indigent Defense
- Adhere to the Caseload Standards as established by the individual cities
- Keep and submit to the city monthly records detailing the number and type of cases assigned.
- Keep and submit to the City monthly records which will show the frequency of use of investigators and expert witnesses; the frequency with which cases are resolved by outright dismissal or a nonconviction disposition; the frequency of pleas to a lesser charge and the number of trials bench v. jury conducted and the outcome of the trials.
- Maintain detailed records of the work done on each case which will include client contact information, phone call records, office visits, client concerns, defenses, time spent on each case, and the reasoning for case decisions made as well as the final case disposition.
- Make contact with each newly appointed client within 72 hours of that appointment and provide any new appointee with an engagement letter and advisement of rights statement. The client through these means shall be advised of his right to a jury trial and a speedy trial; the elements of the charge; the clients

right to present a defense; that it is the client's decision to accept or reject any plea offer and will have the opportunity to discuss and determine any potential witnesses or necessary investigation to be done on his case.

- Maintain adequate administration, support services and infrastructure which shall include but not be limited to: travel, phones, fax, email, law library or access to electronic research capabilities, financial accounting, case management systems, computers and appropriate office supplies.
- Provide a phone and fax number to the clients.
- Maintain a private office which will be available to meet clients to preserve confidentiality.
- Have access to mental health professionals, chemical dependency professionals, interpreters, as well as to investigators and expert witness which may be implemented in the services provided to the clients.
- Have additional resources available via Defense organizations such as the Washington Defenders Association which provides brief banks, continuing legal education and immigration advisories; and the Office of Public Defense along with the public defenders list serve.
- Provide the client with information that explains the process for resolving or making a complaint regarding the public defense services.

On December 4, 2013 the United States District Court, Western Division, found the City of Mount Vernon liable for lack of compliance with such standards and imposed injunctive relief as well as a significant award of damages against the city. (Wilbur v. Mount Vernon attached for your information).

As a result of all of the above, requirements have been imposed on public defense attorneys, who are also called on to bear the costs of providing the services mandated by these standards. Although, one would hope that all public defense attorneys have indeed been providing those services regardless of having them spelled out by the courts, the financial implications of the mandates are significant.

However, one aspect of the imposed standards that previously was not of consequence to public defense attorneys is that as a result of the caseload limits, the public defense attorney's practice is limited to the amount of clients allowed, INCLUDING, the attorney's private practice. Essentially a public defense attorney must derive all his or her income from that employment if she or he is a full time public defense attorney, and

no other employment in the law field will be allowed over the case limits. If that attorney does exceed the case load, that attorney may not accept any new cases for the remainder of that year.

Most public defense attorneys are in fact contract attorneys without any type of benefits, and on top of limiting the amount of work that a public defense attorney can take in, the attorney has no sick pay, no health insurance or no vacation pay, or retirement benefits, which an attorney must pay for or obtain on his or her own. It should be noted that these case load limits have been imposed on public defense attorneys alone, and not on private attorneys practicing criminal defense law, nor on prosecutors.

As a personal example for illustration, last year I worked as a public defense attorney in both the City of Des Moines with Ms. Codd and in Auburn with Tricia Grove, and then I accepted the relatively small Normandy Park contract. While I would have preferred keep all three jobs for the additional income, it was necessary to leave the Auburn work to avoid going over my case load limits. In fact, my employer at Auburn had already cut back my caseload (and my salary) because I was approaching my case load limit. At present, with two contracts, I do not have sufficient income to purchase health insurance, or to take vacation, nor have I been able to do so since I left my employment in private practice nearly 10 years ago. Because both Ms. Codd and I are self-employed contractors, we routinely have to pay for competent legal coverage should we want or need to take a day from work for vacation, or to cover a conflicting court calendar.

The WDA standards (attached for your information) on page six cites the American Bar Association Standards for Criminal Defense in noting that:

“The American Bar Association Standards for Criminal Justice (5-3.1) suggests that defender salaries be “comparable to that provided their counterparts in the prosecutorial offices” so that the quality of the defense bar remains high and so that public defenders might have the same career opportunities as prosecutors.

Parity between public defense attorneys and staff and those in prosecutors’ offices should not be limited to salary. Rather, the total compensation package, including medical, sick leave, insurance, and retirement benefits, should be equal.

All these factors should be considered according to the WDA and to some extent the decision in Wilbur, in considering the compensation afforded to the public defense attorney.

To clarify, the attorneys are not in any way requesting these types of benefits, but are pointing out that the Washington Defender Association recognizes that most independent contractors must seek out and pay for these benefits in comparison to an

equally qualified attorney employed by a firm, or a similarly qualified prosecutor. As such, the attorneys have factored some of those costs into the proposed compensation figure.

Comparable Contracts in Nearby Cities

In light of the recent decision in Wilbur, numerous cities have reviewed their existing contracts with various public defense contractors and many of these have currently been revised. In preparation for the upcoming renewal of our contract, we have prepared a spreadsheet listing the current Des Moines contract amount and the current and future contract amounts for various jurisdictions in the area.

Two closely related jurisdictions in both location and size include the Burien Municipal Court and the SeaTac Municipal Court. Those contracts pay \$14,000 and \$15,175 per month, respectively, with SeaTac paying an additional \$500 per jury trial.

This spreadsheet has been provided for your information, and since the comparison is sometimes "apples and oranges", rather than elaborate on it now, the attorneys would be happy to discuss any questions you might have about it with you at a later date.

Specific Points Unique to the Des Moines Contract

Since entering into the contract for public defense services in 2006, changes have occurred in court staffing and calendaring that have caused or will cause the attorneys to spend more time in fulfilling their contractual obligations.

Starting this January the attorneys are being asked to be available on Thursday afternoons for potential calendaring of pretrial and other matters. While previously this was a possibility, the attorneys were never required to appear on a Thursday afternoon, and for the proposed contract it will be required to add this afternoon in. An afternoon calendar would normally be billed at an additional \$300.00 but will simply be rolled into the flat fee provisions of the attorneys proposed contract.

Clerk staffing concerns are likely to require the attorneys to appear for on call SCORE calendars at a different time than the present times of 9am Tuesday through Friday and 1:30 on Monday. The calendar time is most likely to be mid-day or late afternoon, causing the attorneys to block out a larger portion of their calendar day in case there are on call in custodies to be heard. What this means for the attorneys is that whether or not they need to appear on any given day; that time block cannot be used by the attorneys to schedule for any other work related purpose, taking away from potential income to the attorneys, or at least, using up valuable work time. As scheduled now at

9am, the attorneys can be done with the SCORE calendar at an early enough time that the rest of the day is available for other work.

In addition, staff unavailability now requires that the attorney of the day at SCORE must prepare all the paperwork faxed by the court for the defendant and ensure that the defendant receive and sign the proper paperwork, as well as providing appropriate copies to the jail staff. This must be done after the defendants are heard by the judge and the attorneys spend additional time doing what was previously a clerk function at the jail.

Trial work is essential under the new guidelines and Wilbur. While it is always the client's decision to proceed to trial, we do foresee many more trials going forward as a result of the standards. Depending on the type of trial, many hours of preparation and trial time go into this process. The time spent preparing for a trial is in addition to the attorneys' regular casework. The trials are included in the proposed contract as a flat fee, only incurring extra costs if the trial time exceeds the two days allotted for the monthly trials set (i.e. special sets). As of this date, no special set trials have actually gone forward though they have been set.

Summary

In sum, Julie Codd and Tracy Greenwood have brought their combined experience in criminal defense to their positions as the public defense attorneys for the City of Des Moines (and Normandy Park) since 2006 (2003 for Ms. Codd) working well with the city and staff and with the city prosecutor, and with absolutely no bar complaints filed, and no reprimands or sanctions of any type with the Washington State Bar.

Ms. Codd and Ms. Greenwood have not received a pay increase since 2012 (excepting SCORE). During this time the Washington State Supreme Court and the WDA have imposed case load constraints that protect the defendant client but in the process limit the practice of the full time public defense attorney. Wilbur v. Mt Vernon brought teeth to those standards and imposed responsibility on the cities that contract with the public defense attorneys for public defense services. As a result, mandated standards are in place to assure the defendant gets the quality representation he or she is constitutionally entitled to, along with assuring that the public defense attorneys have the resources and the financial means to meet the standards and to adequately represent each and every client.

This includes the attorney being able to provide staffing, office space, and so on, but also ensures that the city pay the attorney a salary that is commensurate with the attorneys' skills and the time the attorney spends in his or her work. It is also meant to

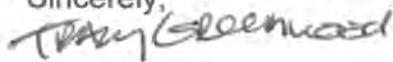
ensure, that since full time public defense attorneys are now essentially boxed into the case limits, with no additional work allowed to be derived in the legal field, that those attorneys are able to make a living on that salary. If not, the obvious implication is that those attorneys who are fully qualified to do the work will seek work in private practice and less experienced, underqualified attorneys will fill the gap. The salary negotiated by the employer cities, per the WDA, should also take into account that most public defense attorneys do not have benefits, and should be fully considered when determining compensation for these services.

Considering all the above, including the changes noted regarding the extra calendaring, trials, paperwork at SCORE, calendaring that requires blocking out more attorney time, and considering the comparable amounts being paid to similarly experienced attorneys in nearby cities; the attorneys feel that the request in compensation as set out in the proposed contract is reasonable and well earned.

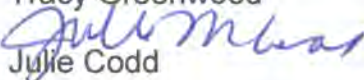
It should be also be noted that in the wake of Wilber, a city could easily be considered remiss in seeking out a low proposal for services where the contractor is inexperienced, not well qualified, or has in fact had contract performance issues with either the city or the bar or both.

Julie Codd and Tracy Greenwood have thoroughly enjoyed and are honored to have worked in cooperation with the city in this contract for the past several years and hope to continue to do so. Having set this out for your information, the attorneys do understand that the city has a budget, and are happy to negotiate a reasonable compensation for the work that is required and would love to meet with you to discuss any and all questions you have about the proposed contract.

Sincerely,



Tracy Greenwood



Julie Codd

Attorneys

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH JEROME WILBUR, *et al.*,

Plaintiffs,

v.

CITY OF MOUNT VERNON, *et al.*,

Defendants.

No. C11-1100RSL

MEMORANDUM OF DECISION

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” Plaintiffs filed this lawsuit in Skagit County Superior Court in order to challenge the constitutional adequacy of the public defense system provided by the City of Mount Vernon and the City of Burlington. The defendant municipalities removed the case to federal court on July 5, 2011. Testimony on this matter was heard by the Court commencing on June 3, 2013, and concluding on June 18, 2013. Additional briefing closed in August of 2013.¹

At trial, plaintiffs set out to prove that the Cities of Mount Vernon and Burlington are regularly and systematically failing to provide effective assistance of counsel to indigent persons charged with crimes, thereby violating both the federal and state constitutions and

¹ In addition to the evidence presented at trial, the Court has considered the post-trial submissions of the parties, the Washington Defender Association, and the United States. The “Motion of Washington Defender Association For Leave to File Amicus Curiae Brief” (Dkt. # 321) is GRANTED.

MEMORANDUM OF DECISION

necessitating injunctive relief. Defendants took the position that, whatever defects may have existed in their public defense systems before 2012, they have taken significant steps to improve the representation provided, including contracting with a different law firm to provide defense services, hiring additional public defenders, and paying them more. The Court must determine whether a constitutional right has been violated, whether the Cities are responsible for the violation, and what the appropriate remedy is.

FINDINGS OF FACT

Plaintiffs have shown, by a preponderance of the evidence, that indigent criminal defendants in Mount Vernon and Burlington are systematically deprived of the assistance of counsel at critical stages of the prosecution and that municipal policymakers have made deliberate choices regarding the funding, contracting, and monitoring of the public defense system that directly and predictably caused the deprivation. The period of time during which Richard Sybrandy and Morgan Witt (hereinafter, Sybrandy and Witt) provided public defense services for the Cities was marked by an almost complete absence of opportunities for the accused to confer with appointed counsel in a confidential setting. Most interactions occurred in the courtroom: discussions regarding possible defenses, the need for investigation, existing physical or mental health issues, immigration status, client goals, and potential dispositions were, if they occurred at all, perfunctory and/or public. There is almost no evidence that Sybrandy and Witt conducted investigations in any of their thousands of cases, nor is there any suggestion that they did legal analysis regarding the elements of the crime charged or possible defenses or that they discussed such issues with their clients. Substantive hearings and trials during that era were rare. In general, counsel presumed that the police officers had done their jobs correctly and negotiated a plea bargain based on that assumption.² The appointment of

² When asked to explain why there were so few trials during his tenure as public defender, Mr. Witt essentially said that trials were unnecessary because “we all knew where we were going.”

1 counsel was, for the most part, little more than a formality, a stepping stone on the way to a case
2 closure or plea bargain having almost nothing to do with the individual indigent defendant. To
3 the extent that “adequate representation” presumes a certain basic representational relationship,
4 there was a systemic failure in the Sybrandy and Witt era. Adversarial testing of the
5 government’s case was so infrequent that it was virtually a non-factor in the functioning of the
6 Cities’ criminal justice system.

7 This situation was the natural, foreseeable, and expected result of the caseloads the
8 attorneys handled. Sybrandy and Witt, both of whom also had private practices (Mr. Witt spent
9 only 40% of his time providing public defense services), each closed approximately 1,000 public
10 defense cases per year in 2009, 2010, and 2011 and often spent less than an hour on each case.
11 Although both counsel testified that they did not feel rushed or overworked, it is clear that, in
12 light of the sheer number of cases they handled, the services they offered to their indigent clients
13 amounted to little more than a “meet and plead” system. While this resulted in a workload that
14 was manageable for the public defenders, the indigent defendants had virtually no relationship
15 with their assigned counsel and could not fairly be said to have been “represented” by them at
16 all. The Cities, which were fully aware of the number of public defenders under contract,
17 remained wilfully blind regarding their overall caseloads and their case processing techniques.
18 The City officials who administered the public defense contracts did not feel it was necessary for
19 them to know how many non-public defense cases Sybrandy and Witt were handling, the
20 number of public defense cases they were assigned, or even whether the defenders were
21 complying with the standards for defense counsel set forth in the Cities’ own ordinances and
22 contracts. Even when Sybrandy and Witt expressly declined to provide basic services requested
23 by the Cities – such as initiating contact with their clients and/or visiting in-custody defendants –
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25
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1 the Cities were not particularly concerned.³ Eric Stendal, the contract administrator for the City
 2 of Mount Vernon, testified that as long as things were “quiet and good” and there was no
 3 significant increase in the costs the Cities incurred for their public defense system, defendants
 4 were happy with the arrangement and continued to contract with Sybrandy and Witt.

5 After this lawsuit was filed, Sybrandy and Witt were no longer willing to provide
 6 public defense services for the Cities. The Cities issued a request for proposals and ultimately
 7 hired Mountain Law to provide the necessary services. Mountain Law came on-line in April
 8 2012 with two attorneys. The evidence regarding initial caseloads varies significantly: the
 9 Cities negotiated the new public defense contract on the assumption that over 1,700 cases would
 10 be transferred from Sybrandy and Witt during the transition period, but Mountain Law’s
 11 caseload statistics show that it was assigned approximately 1,100 cases. Whatever the true
 12 numbers, it is clear that by the end of May each of the two public defenders was handling well
 13 over 400 cases. By the end of 2012, Mountain Law had added a third attorney and another 963
 14 cases. The Cities were kept apprised of these numbers. They were also aware that, on June 15,
 15 2012, the Supreme Court of Washington established 400 unweighted misdemeanor cases per
 16 year as “the maximum caseload[] for fully supported full-time defense attorneys for cases of
 17 average complexity and effort,” assuming a “reasonably even distribution of cases throughout
 18 the year.” Because the 400 caseload limit would not be effective until September 1, 2013,
 19 neither Mountain Law nor the Cities were particularly concerned that Michael Laws and Jesse
 20 Collins were each handling over 500 cases at any given time between April and August 2012.
 21 The mantra during that period and continuing through trial was that Mountain Law would

22
 23 ³ While negotiating the public defense contract in 2008, Mr. Sybrandy notified the Cities that
 24 “[t]here is much in the proposed contract which is not possible for us to comply with, at least at the level
 25 of compensation we have proposed.” Tr. Ex. 36. Rather than raise the level of compensation to obtain
 26 the level of services required under Ordinance 3436 and, by extension, the standards endorsed by the
 Washington State Bar Association for the provision of public defense services, the Cities simply struck
 or ignored requirements related to, among other things, client interactions and reporting/monitoring.

1 continue to work toward the 400 annual caseload limit by adding attorneys as needed. As of the
 2 time of trial, Mountain Law had added two additional attorneys (one in August 2012 and another
 3 in March 2013), presumably reducing the per attorney caseload to some extent. The
 4 preponderance of the evidence shows, however, that Mountain Law continues to handle
 5 caseloads far in excess of the per attorney limits set forth in the Supreme Court's guidelines.⁴

6 The Court does not presume to establish fixed numerical standards or a checklist
 7 by which the constitutional adequacy of counsel's representation can be judged. The experts,
 8 public defenders, and prosecutors who testified at trial made clear that there are myriad factors
 9 that must be considered when determining whether a system of public defense provides indigent
 10 criminal defendants the assistance required by the Sixth Amendment. Factors such as the mix
 11 and complexity of cases, counsel's experience, and the prosecutorial and judicial resources
 12 available were mentioned throughout trial. The Washington Supreme Court took many of the
 13 relevant factors into consideration when it imposed a hard cap on the number of cases a public
 14 defender can handle over the course of a year:⁵ the 400 caseload limit applies as long as counsel

16 ⁴ The parties generally agree that the Standards for Indigent Defense adopted by the Washington
 17 Supreme Court provide a sort of best practices to which the Cities aspire. The evidence in the record
 18 strongly suggests that, even with the addition of Sade Smith and Stacy DeMass to the public defender
 19 ranks, defendants still run afoul of the per annum limitation. The question is not whether, on any
 20 particular day, a public defender has more or less than 400 open cases. No attorney can reasonably be
 21 expected to handle 400 criminal cases at once. Pursuant to the Standards, the goal is to have no more
 22 than 400 cases assigned to each public defender over the course of an entire year, with the assignments
 temporally spaced so that he or she can give each client the representation that is constitutionally
 required. Mountain Law opened 2,070 cases between April and December 2012 – even if all four
 attorneys had been on board during the entire period (and they were not), they would have far exceeded
 the Supreme Court's guidelines.

23 ⁵ The Washington Defender Association ("WDA"), a statewide organization of public defenders
 24 and public defender agencies that first proposed the caseload limits, argues that:

25 Caseload levels are the single biggest predictor of the quality of public defense
 26 representation. Not even the most able and industrious lawyers can provide effective
 representation when their workloads are unmanageable. Without reasonable caseloads,

handles only misdemeanor cases, is employed full-time in public defense, is handling cases of average complexity and effort, counts every matter to which he or she is assigned to provide representation,⁶ is fully supported, and has relevant experience. Where counsel diverges from these assumptions, the caseload limit must be lowered in an attempt to protect the quality of the representation provided.

While a hard caseload limit will obviously have beneficial effects and the Washington Supreme Court's efforts in this area are laudable, the issue for this Court is whether the system of public defense provided by the defendant municipalities allows appointed counsel to give each case the time and effort necessary to ensure constitutionally adequate representation for the client and to retain the integrity of our adversarial criminal justice system. Mount Vernon and Burlington fail this test. Timely and confidential input from the client regarding such things as possible defenses, the need for investigation, mental and physical health issues, immigration status, client goals, and potential dispositions are essential to an informed representational relationship. Public defenders are not required to accept their clients' statements at face value or to follow every lead suggested, but they cannot simply presume that the police officers and prosecutor have done their jobs correctly or that investigation would be futile. The nature and scope of the investigation, legal research, and pretrial motions practice in a particular case should reflect counsel's informed judgment based on the information obtained

even the most dedicated lawyers cannot do a consistently effective job for their clients. A warm body with a law degree, able to affix his or her name to a plea agreement, is not an acceptable substitute for the effective advocate envisioned when the Supreme Court extended the right to counsel to all persons facing incarceration.

WDA 2007 Final Standards for Public Defense Services with Commentary at 13 (<http://www.defensenet.org/about-wda/standards>).

⁶ If the Cities adopt a numerical case weighting system that recognizes the greater or lesser workload required for various types of cases (and therefore more accurately estimates workload rather than just case counts), the Supreme Court's standards would limit each public defender to 300 weighted misdemeanor cases.

1 through timely and confidential communications with the client. A failure of communication
 2 precludes the possibility of informed judgment. If actual, individualized representation occurs –
 3 as opposed to a meet and plead system – the systemic result is likely to be more adversarial
 4 testing of the prosecutor’s case throughout the proceeding and a healthier criminal justice system
 5 overall. Again, no hard and fast number of pretrial motions or trials is expected, but when the
 6 number of cases going to trial is both incredibly small (in absolute and comparative terms) and
 7 wildly out of line with the number of trials that occurred in nearby (and sometimes overlapping)
 8 jurisdictions, it may be, and in this case is, a sign of a deeper systemic problem.

9 A number of defendants’ witnesses, including former Pierce County Executive and
 10 Prosecutor John Ladenburg, pointed out that the adequacy of counsel cannot fairly be judged in a
 11 vacuum: the Court must also take into consideration the resources available to the other side. If,
 12 in a time of fiscal constraint, the prosecutor is also overwhelmed and/or the municipal jail cannot
 13 accommodate any more inmates, the resulting plea offers are likely to be as good as or better
 14 than the public defender could negotiate even if he or she spent untold hours on legal research
 15 and investigation.⁷ The Court does not dispute the fact that many, if not the vast majority, of the
 16 plaintiff class obtained a reasonable resolution of the charges against them. The problem is not
 17 the ultimate disposition: if plaintiffs were alleging that counsel had affirmatively erred and
 18 obtained a deleterious result, the Sixth Amendment challenge would have been brought under
 19 Strickland v. Washington, 466 U.S. 668 (1984), rather than Gideon v. Wainwright, 372 U.S. 335

20
 21 ⁷ It is clear from the testimony of a former city attorney assigned to prosecute misdemeanor
 22 cases for one of the municipalities that the people of the City received even more ineffective
 23 representation than the individuals charged with crimes. There is no constitutional right regarding the
 24 quality of the people’s lawyer, however, and the Court is not in a position to address the negative
 25 impacts that budgetary constraints have had on any part of the criminal justice system other than the
 26 provision of indigent defense. While the city attorney’s willingness to grant overly-lenient plea
 agreements may explain Sybrandy and Witt’s determination that investigation, research, and
 communication were unnecessary impediments to the expeditious resolution of their cases, it does not
 excuse their consistent failure to establish a meaningful attorney/client relationship with the people they
 represented.

1 (1963). The point here is that the system is broken to such an extent that confidential
2 attorney/client communications are rare, the individual defendant is not represented in any
3 meaningful way, and actual innocence could conceivably go unnoticed and unchampioned.
4 Advising a client to take a fantastic plea deal in an obstruction of justice or domestic violence
5 case may appear to be effective advocacy, but not if the client is innocent, the charge is
6 defective, or the plea would have disastrous consequences for his or her immigration status. It is
7 the lack of a representational relationship that would allow counsel to evaluate and protect the
8 client's interests that makes the situation in Mount Vernon and Burlington so troubling and gives
9 rise to the Sixth Amendment violation in this case.

10 Given the fiscal constraints imposed on both sides of the criminal justice equation
11 in Mount Vernon and Burlington, it is not surprising that the Mountain Law attorneys had to
12 adopt some of the same time-saving and "efficient" case management practices that dominated
13 the Sybrandy and Witt era in order to handle the caseload they inherited in April 2012 and the
14 additional cases that have been assigned to them each and every month thereafter. The evidence
15 is clear that Mountain Law, while more willing to conduct an initial interview with their clients,
16 is simply unable to do so in a majority of cases. Although Mountain Law staff schedule a
17 meeting with the client as soon as the case is assigned, the attorneys' courtroom and other
18 commitments often make it impossible to hold the meeting before the client's first appearance.
19 Thus, the public defenders often meet their clients for the first time in the courtroom, sometimes
20 with a plea offer already in hand. At that point, there is really no opportunity for a confidential
21 interview, the client may or may not understand the proceedings, and the public defender is
22 unprepared to go forward on the merits of the case. The client is given a choice between
23 continuing the hearing so he or she can meet with the public defender or to accept whatever offer
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1 happens to be on the table.⁸ While there is some evidence of investigations, legal research, and
 2 an uptick in the number of cases set for trials in Mount Vernon and Burlington since Mountain
 3 Law took over, the numbers are still shockingly low. Mr. Laws apparently spoke to only three
 4 or four witnesses in the whole of 2012, a review of fifty Mountain Law case files showed no
 5 documentation of any legal analysis or research, and there is evidence of only one pre-trial
 6 motion and five or six trials in 2012.

7 The Court finds that, as of the date of trial, the representation provided to indigent
 8 defendants in Mount Vernon and Burlington remains inadequate. The Court would have to
 9 make several unsupported assumptions regarding Mountain Law's ability to clear the backlog of
 10 cases it inherited, the distribution of cases within the office, counsels' experience and
 11 proficiency, and the number of new cases opened each month to conclude that the defenders'
 12 current caseloads allow the kind of individualized client representation that every indigent
 13 criminal defendant deserves and on which our adversarial system of criminal justice depends.
 14 Even if the Court were willing to make those assumptions, there is no evidence that Mountain
 15 Law has rethought or restructured the case management procedures that were developed during
 16 the first few hectic months of its contract with the Cities. Rather than providing an opportunity
 17 for a representational relationship to develop and following up as appropriate given the facts of
 18 each case, Mountain Law allowed the massive caseload to determine the level of representation

19
 20 ⁸ Defendants made much of the fact that other professionals involved in the criminal justice
 21 system – the judges and prosecutors – did not see anything wrong with the representation provided in
 22 any particular case. As the Court has already noted, the result obtained in an individual case would
 23 likely appear reasonable, especially when the client assures the presiding judicial officer that he or she is
 24 making a knowing and informed decision to plead guilty. But what the judges and prosecutors had no
 25 way of knowing was whether the client ever had a chance to meet with the public defender in a
 26 confidential setting, whether the attorney conducted an investigation or knew anything about the case
 other than what was in the charging document and/or police report, or whether a meaningful
 attorney/client relationship actually existed. No indigent criminal defendant testified that they enjoyed a
 representational relationship with Sybrandy, Witt, or Mountain Law, despite having positive things to
 say about certain conflict counsel and/or the Skagit County public defenders.

1 that would be afforded and has continued those practices even after adding additional attorneys.

2 The Court's findings should not be interpreted as an indictment of Mountain Law,
3 its attorneys, or their legal acumen. The Court is encouraged by some of the changes Mountain
4 Law is making in Mount Vernon and Burlington: the public defense system is definitely
5 trending in the right direction, and the Court sees great promise in Mountain Law's dedicated
6 young lawyers. By accepting a contract with the Cities of Mount Vernon and Burlington,
7 however, Mountain Law became embroiled in an ongoing debate regarding the adequacy of our
8 public defense systems in times of fiscal constraint and the meaning of the right to counsel fifty
9 years after it was promised in Gideon v. Wainwright, 372 U.S. 335 (1963). Although the right to
10 the assistance of counsel regardless of economic status is established by the Constitution,
11 legislative enactments are required to ensure that the right is maintained, and funding limitations
12 imposed over the past few years are having a cumulative and adverse impact at both the state and
13 national levels.⁹ In the State of Washington, there are undoubtedly a number of municipalities

14
15 ⁹ The federal judiciary's system of indigent public defense services, long considered the gold
16 standard in the United States, has been adversely affected by successive years of reduced budgets and
17 the 2013 sequestration cuts. For the first time, federal public defenders were forced to take furlough
18 days, making them unavailable to their clients and unable to attend court hearings. More cases were
19 shifted to private lawyers, whose pay was reduced and delayed in an effort to cut costs. On November
20 6, 2013, fifty-eight Members of Congress sent a letter to the Speaker of the House and the Minority
21 Leader indicating their grave concern that the underfunding of public defense at the federal level was
22 placing the Sixth Amendment right to counsel in jeopardy ([http://quigley.house.gov/uploads/
23 FederalDefenderLetter1.pdf](http://quigley.house.gov/uploads/FederalDefenderLetter1.pdf)).

24 At the intersection of staggering caseloads and insufficient resources we even find federal courts
25 struggling to justify procedures that simply do not hold up under constitutional scrutiny. For instance,
26 United States Magistrate Judges in Arizona faced with an explosion in the number of illegal entry cases
across the Mexican border started doing "mass" plea proceedings with up to seventy defendants
pleading guilty at the same time. United States v. Arqueta-Ramos, 730 F.3d 1133, 1135-36 (9th Cir.
2013). During one such hearing, there were fifteen defense attorneys present, each representing
between three and five defendants. Id. at 1136. The court advised the large group of defendants of their
rights and then questioned them in groups of five, collectively asking questions to ascertain whether
they understood their rights and the consequences of pleading guilty. Id. at 1139. The Ninth Circuit
Court of Appeals struck down the court's collective group questioning because the court did not address
any defendant personally during its advisement of rights or the small group questioning. Id. ("We act

1 whose public defense systems would, if put under a microscope, be found wanting. As defense
 2 counsel rightly pointed out, this is a test case that cannot properly be laid at Mountain Law's
 3 door. It was the confluence of factors in place in Mount Vernon and Burlington in 2011 - long
 4 before Mountain Law began providing public defense services - that brought the Cities to the
 5 attention of the ACLU and prompted this Sixth Amendment challenge.

6 CONCLUSIONS OF LAW

7 A. Right to Counsel

8 The Sixth Amendment to the United States Constitution provides that "[i]n all
 9 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for
 10 his defense."¹⁰ Such assistance is vital to the proper functioning of our criminal justice system:
 11 in the absence of adequate representation, the prosecution's case may not be subjected to
 12 meaningful adversarial testing and the defendant may be unable to assert other rights he may
 13 have or to pursue valid defenses. U.S. v. Cronin, 466 U.S. 648, 654, 659 (1984). See also
 14 Powell v. Alabama, 287 U.S. 45, 68-69 (1932) ("The right to be heard would be, in many cases,
 15 of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and
 16 educated layman has small and sometimes no skill in the science of law. If charged with crime,
 17 he is incapable, generally, of determining for himself whether the indictment is good or bad. He
 18 is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial
 19 without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the
 20 issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his
 21 defense, even though he have a perfect one. He requires the guiding hand of counsel at every

22 _____
 23 within a system maintained by the rules of procedure. We cannot dispense with the rules without setting
 24 a precedent subversive of the structure." (quoting United States v. Roblero-Solis, 588 F.3d 692, 693 (9th
 Cir. 2009)).

25 ¹⁰ Plaintiffs have also asserted a claim under Article I, Section 22 of the Washington State
 26 Constitution. Because the parties did not offer any evidence or legal argument peculiar to that claim, it
 has not been separately analyzed.

1 step in the proceedings against him. Without it, though he be not guilty, he faces the danger of
 2 conviction because he does not know how to establish his innocence.”). The United States
 3 Supreme Court has determined that the right to counsel is “fundamental and essential to a fair
 4 trial” and applies in both federal and state proceedings. Gideon v. Wainwright, 372 U.S. 335,
 5 343-44 (1963) (“[I]n our adversary system of criminal justice, any person haled into court, who
 6 is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.
 7 This seems to us to be an obvious truth.”).

8 Despite the broad language of the Sixth Amendment, Powell, and Gideon, it was
 9 not until 1972 that the Supreme Court made clear that the right to counsel extends to all cases in
 10 which the accused may be deprived of his liberty, whether characterized as a felony or a
 11 misdemeanor. In Argersinger v. Hamlin, 407 U.S. 25, 33 (1972), the Supreme Court noted that
 12 the legal and constitutional questions involved in the prosecution of petty offenses are not
 13 necessarily any less complex than those that arise in felony cases. In addition, the sheer volume
 14 of misdemeanor cases may give rise to unique procedural challenges that threaten the fairness of
 15 the criminal justice system:

16 The volume of misdemeanor cases, far greater in number than felony prosecutions,
 17 may create an obsession for speedy dispositions, regardless of the fairness of the
 18 result. . . . An inevitable consequence of volume that large is the almost total
 19 preoccupation in such a court with the movement of cases. The calendar is long,
 20 speed often is substituted for care, and casually arranged out-of-court compromise
 21 too often is substituted for adjudication. Inadequate attention tends to be given to
 22 the individual defendant, whether in protecting his rights, sifting the facts at trial,
 23 deciding the social risk he presents, or determining how to deal with him after
 24 conviction. . . . Suddenly it becomes clear that for most defendants in the criminal
 25 process, there is scant regard for them as individuals. They are numbers on
 26 dockets, faceless ones to be processed and sent on their way. The gap between the
 theory and the reality is enormous. . . . One study concluded that misdemeanants
 represented by attorneys are five times as likely to emerge from police court with
 all charges dismissed as are defendants who face similar charges without counsel.

Id. at 34-36 (internal quotation marks and citations omitted). The Washington Supreme Court

1 recognized the primacy of the Argersinger decision in McInturf v. Horton, 85 Wn.2d 704, 707
 2 (1975), overruling an earlier opinion that held there was no right to appointment of counsel in
 3 misdemeanor prosecutions. See also Washington Criminal Rule for Courts of Limited
 4 Jurisdiction 3.1 (“The right to a lawyer shall extend to all criminal proceedings for offenses
 5 punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or
 6 otherwise.”).

7 Mere appointment of counsel to represent an indigent defendant is not enough to
 8 satisfy the Sixth Amendment’s promise of the assistance of counsel. While the outright failure
 9 to appoint counsel will invalidate a resulting criminal conviction, less extreme circumstances
 10 will also give rise to a presumption that the outcome was not reliable. For example, if counsel
 11 entirely fails to subject the prosecution’s case to meaningful adversarial testing, if there is no
 12 opportunity for appointed counsel to confer with the accused to prepare a defense, or
 13 circumstances exist that make it highly unlikely that any lawyer, no matter how competent,
 14 would be able to provide effective assistance, the appointment of counsel may be little more than
 15 a sham and an adverse effect on the reliability of the trial process will be presumed. Cronic, 466
 16 U.S. at 658-60; Avery v. Alabama, 308 U.S. 444, 446 (1940).

17 **B. Municipal Liability under Section 1983**

18 Under 42 U.S.C. § 1983, a municipality is a person and may therefore be liable for
 19 a constitutional deprivation. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
 20 2006).¹¹ Although a municipality may not be sued under § 1983 simply because an employee
 21 inflicted constitutional injury, where the injury is the result of a policy or custom of the
 22 municipality, the injury-generating acts are “properly speaking, acts of the municipality – that is,
 23 acts which the municipality has officially sanctioned or ordered.” Pembauer v. City of

24
 25 ¹¹ Plaintiffs are not suing the individual public defenders for the way in which they performed a
 26 lawyer’s traditional functions (a claim likely precluded by Polk County v. Dodson, 454 U.S. 312, 325
 (1981)).

1 Cincinnati, 475 U.S. 469, 480 (1986) (internal quotation marks omitted). Discrete decisions by a
 2 government official with ultimate authority over the matter in question generally give rise to
 3 official municipal policy for purposes of § 1983. Id. at 480-81.

4 The Court finds that the public defense system in Mount Vernon and Burlington
 5 has systemic flaws that deprive indigent criminal defendants of their Sixth Amendment right to
 6 the assistance of counsel. Although counsel are appointed in a timely manner, the sheer number
 7 of cases has compelled the public defenders to adopt case management practices that result in
 8 most defendants going to court for the first time – and sometimes accepting a plea bargain –
 9 never having had the opportunity to meet with their attorneys in a confidential setting. The
 10 attorney represents the client in name only in these circumstances, having no idea what the
 11 client’s goals are, whether there are any defenses or mitigating circumstances that require
 12 investigation, or whether special considerations regarding immigration status, mental or physical
 13 conditions, or criminal history exist. Such perfunctory “representation” does not satisfy the
 14 Sixth Amendment. See Strickland, 466 U.S. at 691 (counsel have a Sixth Amendment duty to
 15 conduct a reasonable investigation or to make a decision, based “on informed strategic choices
 16 made by the defendant and on information supplied by the defendant,” that a particular
 17 investigation is unnecessary); Cronic, 466 U.S. at 658-60; Avery, 308 U.S. at 446; Powell, 287
 18 U.S. at 58 (“It is not enough to assume that counsel thus precipitated into the case thought there
 19 was no defense, and exercised their best judgment in proceeding to trial without preparation.
 20 Nether they nor the court could say what a prompt and thorough-going investigation might
 21 disclose as to the facts.”); Hurrell-Harring v. State of New York, 930 N.E.2d 217, 224 (N.Y.
 22 2010) (recognizing that “[a]ctual representation assumes a certain basic representational
 23 relationship,” such that the failure to communicate and/or appear at critical stages of the
 24 prosecution may be reasonably interpreted as nonrepresentation rather than ineffective
 25 representation).

26 Having found that plaintiffs’ Sixth Amendment rights were violated, the Court

1 must determine whether the Cities are responsible for the constitutional deprivation. Plaintiffs
 2 have shown that the constitutional deprivations at issue here were the direct and predictable
 3 result of the deliberate choices of City officials charged with the administration of the public
 4 defense system. Intentional choices made while negotiating the public defender contracts and
 5 allocating funds to the public defender system left the defenders compensated at such a paltry
 6 level that even a brief meeting at the outset of the representation would likely make the venture
 7 unprofitable. And the Cities knew it. When Mountain Law took over the public defense
 8 contract, the Cities estimated there would be approximately 1,700 cases transferred from
 9 Sybrandy and Witt and yet chose a proposal pursuant to which they would pay only \$17,500 per
 10 month. That works out to \$10 per case for April 2012, with the per case rate reduced in future
 11 months by each additional case assigned to Mountain Law. Mountain Law had (and still has)
 12 every incentive to close cases as quickly as possible and to minimize the time spent on each
 13 case. While every attorney, whether privately or publicly retained, must be cognizant of costs
 14 when choosing a course of action, defending an indigent criminal defendant – any indigent
 15 criminal defendant – on \$10 per month inclusive of staff, overhead, and routine investigation
 16 costs makes it virtually impossible that the lawyer, no matter how competent or diligent, will be
 17 able to provide effective assistance.¹²

18 Legislative and monitoring decisions made by the policymaking authorities of the
 19 Cities ensured that any defects in the public defense system would go undetected or could be
 20 easily ignored. Despite receiving monthly reports listing case assignments, types of cases,
 21 dispositions, and hours worked on each case, the administrators made no effort to calculate the
 22 number of cases assigned to Mountain Law or to evaluate the nature or extent of the services
 23 provided under the contract. After this litigation was filed, the City of Mount Vernon twice
 24

25 ¹² The Court recognizes that approximately 1,100 cases were transferred from Sybrandy and
 26 Witt to Mountain Law, making the actual pay per case closer to \$16 for April 2012. Nevertheless, the
 conclusion that the Cities knowingly underfunded their public defense system remains inescapable.

1 amended its ordinance related to the provision of public defender services, both times removing
 2 what little “teeth” the previous ordinances had. For example, in January 2012, the City
 3 jettisoned its previously acknowledged obligation to develop “a procedure for systematic
 4 monitoring and evaluation of attorney performance based on published criteria” in favor of a
 5 newly-found concern that such monitoring and evaluation “is not practical nor consistent with
 6 attorney/client privilege nor the constitutional rights of indigent defendants.” Tr. Exs. 45 and
 7 147. In November 2012, Mount Vernon deleted references to specific duties of the public
 8 defenders, redefined “case” to exclude from the caseload calculation matters that would clearly
 9 count toward the 400 unweighted limit under the Supreme Court’s Standards for Indigent
 10 Defense, and removed the requirement that the public defenders report hours worked on and the
 11 disposition of each case.

12 The Court finds that the combination of contracting, funding, legislating, and
 13 monitoring decisions made by the policymaking authorities for the Cities directly caused the
 14 truncated case handling procedures that have deprived indigent criminal defendants in Mount
 15 Vernon and Burlington of private attorney/client consultation, reasonable investigation and
 16 advocacy, and the adversarial testing of the prosecutor’s case. The Cities are therefore liable
 17 under § 1983 for the systemic Sixth Amendment violation proved by plaintiffs. See Miranda v.
 18 Clark County, 319 F.3d 465 (9th Cir. 2003) (finding that county could be liable for constitutional
 19 deprivations arising from funding and case assignment policies); Clay v. Friedman, 541 F. Supp.
 20 500, 502, 505-06 (N.D. Ill. 1982) (finding that administrative head of public defender’s office
 21 could be liable for non-representative decision-making and that county could be liable for
 22 promulgating policies and customs that led to the constitutional deprivation).¹³

24 ¹³ To the extent Gausvik v. Perez, 239 F. Supp.2d 1047, 1065 (E.D. Wash. 2002), stands for the
 25 proposition that hiring an independent contractor, such as Mountain Law, to provide public defense
 26 services discharges a municipality’s Sixth Amendment obligations, the Court finds it unpersuasive and
 unsupported by the cited authorities.

1 C. Injunctive Relief

2 Plaintiffs have succeeded on the merits of their claim, establishing both a systemic
3 deprivation of the right to the assistance of counsel and the Cities' responsibility for the
4 deprivation.¹⁴ In order to obtain injunctive relief, plaintiffs must also show irreparable injury
5 and the inadequacy of available legal remedies. Sierra Club v. Penfold, 857 F.2d 1307, 1318
6 (9th Cir. 1988). This burden is easily met here. A system that makes it impossible for appointed
7 counsel to provide the sort of assistance required by the Sixth Amendment works irreparable
8 harm: the lack of an actual representational relationship and/or adversarial testing injures both
9 the indigent defendant and the criminal justice system as a whole. The exact impacts of the
10 constitutional deprivation are widespread but difficult to measure on a case by case basis,
11 making legal remedies ineffective. See Walters v. Reno, 145 F.3d 1031, 1048 (9th Cir. 1998).

12 This Court has broad authority to fashion an equitable remedy for the
13 constitutional violations at issue in this case. Swann v. Charlotte-Mecklenburg Bd. of Educ.,
14 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district
15 court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent
16 in equitable remedies."). The Court has considered whether merely declaring that a
17 constitutional right has been violated would be enough to work a change in defendants' conduct,
18 such that affirmative injunctive relief would be unnecessary. Having carefully considered the
19 testimony of the Cities' officials and reviewed the recent legislative and contractual
20 developments, the Court has grave doubts regarding the Cities' ability and political will to make
21 the necessary changes on their own. The Cities' unwillingness to accept that they had any duty
22 to monitor the constitutional adequacy of the representation provided by the public defenders,
23 their steadfast insistence that the defense services offered by Sybrandy and Witt were not just

24
25 ¹⁴ In Farrow v. Lipetzky, 2013 WL 1915700 (N.D. Cal. May 8, 2013), the case defendants cite
26 for the proposition that a federal court has declined to use its equitable powers to monitor a public
defense agency, the court found that no Sixth Amendment violation had occurred.

adequate, but “outstanding,” their surprisingly slow response to the pendency of this litigation and the Supreme Court’s adoption of specific caseload limits, and their budgetary constraints all lead to the conclusion that a declaration will not be sufficient to compel change.

The Court is sensitive to the Cities’ interests in controlling the manner in which they perform their core functions, including the provision of services and the allocation of scarce resources. Having chosen to operate a municipal court system, however, defendants are obligated to comply with the dictates of the Sixth Amendment, and the Court will “not shrink from [its] obligation to enforce the constitutional rights of all persons.” Brown v. Plata, __ U.S. __, 131 S. Ct. 1910, 1928 (2011) (internal quotation marks omitted). A continuing injunction is hereby entered against defendants as follows:

– Within seven days of the date of this Order, the officials charged with administering the public defense contracts in Mount Vernon and Burlington and all full- and part-time public defenders in those municipalities shall read the Washington Defender Association’s 2007 Final Standards for Public Defense Services with Commentary (<http://www.defensenet.org/about-wda/standards>).

– The Cities of Mount Vernon and Burlington shall, within thirty days of the date of this Order, re-evaluate their existing contract for the provision of public defense in light of the Court’s findings and ensure that the document encourages and is no way antithetical to a public defense system that allows for private attorney/client communications at the outset of the relationship and the ability to follow up as appropriate given the circumstances, including the client’s status, input, and goals. While the standards adopted by the Washington Supreme Court and the experiences of the Washington Defender Association will undoubtedly inform any evaluation of the adequacy of defendants’ system going forward, the constitutional benchmark cannot be reduced to a number, and the Court declines to adopt a hard caseload limitation. The critical issue is whether the system provides indigent criminal defendants the actual assistance of counsel, such that defendants have the opportunity to assert any rights or defenses that may be

1 available to them and appropriate adversarial testing occurs.

2 – The Cities shall hire one part-time Public Defense Supervisor to work at least
3 twenty hours per week. The Public Defense Supervisor may be either a contractor or a part-time
4 employee, but the funds for this position shall not come out of the existing budget for public
5 defense services. The parties shall have sixty days from the date of this Order to reach
6 agreement on selection of a Public Defense Supervisor. The Public Defense Supervisor will be
7 part of the attorney/client confidential relationship between Mountain Law and its clients, but
8 will not be part of the Mountain Law firm. The Public Defense Supervisor may not have worked
9 previously for the Cities, Mountain Law, Baker Lewis, or any of the Cities' witnesses or
10 attorneys. The Public Defense Supervisor must have a minimum of five years of experience as a
11 public defender, including jury trial experience. If the parties fail to reach agreement within
12 sixty days from the date of this Order, each side shall submit the names and resumes of two
13 candidates willing to serve as the Public Defense Supervisor to the Court, which will then select
14 the Public Defense Supervisor.

15 – The duties of the Public Defense Supervisor shall include:

16 1. Supervision and evaluation of whether the public defenders are making contact
17 (in-person or by phone) in a confidential setting with each new client within 72 hours of
18 appointment. If contact cannot be made within that time period, the Public Defense Supervisor
19 shall document the reason(s) for the failure and whether an opportunity for confidential
20 communications occurred prior to the client's first court hearing. The Public Defense Supervisor
21 will also take steps to ensure that the public defenders perform the following tasks when they
22 first meet with a client following a new case assignment: (i) advise the client of the right to jury
23 trial and right to a speedy trial; (ii) advise the client of the elements of the charge and that the
24 prosecutor must prove each element beyond a reasonable doubt to obtain a conviction;
25 (iii) advise the client of the right to present a defense; (iv) advise the client that it is solely the
26 client's decision whether to accept or reject any plea offer; and (v) discuss with the client any

1 potential witnesses or avenues of investigation.

2 2. Monthly supervision and evaluation of the first contact with clients,
3 documenting whether the public defenders are determining if each client: (i) appears competent
4 to proceed with the court process; (ii) has a sufficient literacy level to understand written court
5 documents such as the guilty plea form and sentencing orders; (iii) needs an interpreter; and
6 (iv) is a non-citizen in need of expert immigration advice from the WDA or another source.

7 3. Monthly supervision and evaluation of whether the public defenders are
8 responding appropriately to information provided by the client and discovery obtained in each
9 case, including pursuing additional discussions with the client, investigations, medical
10 evaluations, legal research, motions, etc., as suggested by the circumstances.

11 4. Establishing a policy for public defenders to respond to all client contacts and
12 complaints (including jail kites), including the length of time within which a response must
13 occur. The Public Defense Supervisor shall review any and all client complaints obtained from
14 any source and the public defender's response. Use or non-use of any particular complaint
15 process shall in no way be considered a waiver of the client's rights. The Public Defense
16 Supervisor shall establish a process for clients to pursue a complaint if the Public Defense
17 Supervisor fails to resolve it to the client's satisfaction.

18 5. Monthly supervision and evaluation of whether the public defenders are
19 appropriately using interpreters and translators before any decisions are made by the client.

20 6. Supervision and evaluation of courtroom proceedings to ensure that the public
21 defenders are fulfilling their role as advocate before the court on the client's behalf.

22 7. Supervision and evaluation of whether the public defenders are fully advising
23 clients of their options regarding possible dispositions, including information on treatment
24 services, any options for a less onerous disposition based on treatment, explanations of plea
25 offers, the consequences of a conviction, conditions that are normally imposed at sentencing, any
26 applicable immigration consequences, and any other consequences about which the client has

1 expressed concern.

2 8. Supervision and evaluation of whether the public defenders are maintaining
3 contemporaneous records on a daily basis showing the amount of time spent on each task for
4 each case, recorded in tenth-of-an-hour increments.

5 9. Quarterly supervision and evaluation of whether cases are being allocated to
6 each public defender fairly and in consideration of existing workloads, the seriousness of the
7 charge(s), any factors that make the case more complex or time-consuming, and the attorney's
8 experience level.

9 10. Quarterly selection and review of fifteen randomly chosen files from each
10 public defender to ensure that the necessary tasks are being performed and documented, with
11 appropriate time being spent on each task. The Public Defense Supervisor shall conduct a
12 quarterly meeting with each public defender to advise how their performance can be improved
13 based on the file review.

14 11. Collecting data on a quarterly basis showing: (i) the frequency of use of
15 investigators and expert witnesses; (ii) the number of motions on substantive issues that are filed
16 and the outcome of each motion; (iii) the frequency with which cases are resolved by outright
17 dismissal or a nonconviction disposition; (iv) the frequency of pleas to a lesser charge; and
18 (v) the number of trials (broken down by bench vs. jury trials) conducted and the outcome of the
19 trials.

20 12. Conducting a quarterly analysis of whether the Cities' public defense system
21 (i) provides actual representation of and assistance to individual criminal defendants, including
22 reasonable investigation and advocacy and, where appropriate, the adversarial testing of the
23 prosecutor's case and (ii) complies with all provisions of the public defense contract and all
24 applicable provisions of the Cities' ordinances and regulations. The Public Defense Supervisor
25 shall meet with the officials charged with administering the public defense contract to advise
26 how the Cities' performance can be improved based on the quarterly analysis.

1 13. Submission of biannual reports to the parties explaining: (i) whether all of the
 2 duties specified above have been performed in the most recent six-month period, and if not, why
 3 not, including a specific discussion of each duty that has not been performed and the Public
 4 Defense Supervisor's recommendations for how to achieve compliance; (ii) whether the Cities'
 5 public defense system (a) provides actual representation of and assistance to individual criminal
 6 defendants, including reasonable investigation and advocacy and, where appropriate, the
 7 adversarial testing of the prosecutor's case and (b) complies with all provisions of the public
 8 defense contract and all applicable provisions of the Cities' ordinances and regulations, and if
 9 not, why not, including a specific discussion of each item where the Cities fall short and the
 10 Public Defense Supervisor's recommendations for how to achieve compliance. The Public
 11 Defense Supervisor shall submit his or her first report to the parties six months after the date of
 12 this Order. The Public Defense Supervisor shall continue to submit a report every six months
 13 thereafter for a period of 24 months or until the Court orders otherwise.

14 – Twelve months, 24 months, and 34 months after the entry of this Order, the Cities
 15 shall provide fifty case files, randomly selected by the Public Defense Supervisor, to plaintiffs'
 16 counsel so that they may evaluate the Cities' compliance with this Order and whether the Public
 17 Defense Supervisor is properly performing his or her duties. This Court shall retain jurisdiction
 18 over this case for three years from the date of entry of this Order, and this injunction shall
 19 remain in effect for that period. However, if the Public Defense Supervisor's annual reports
 20 show prior to that date that the system provides indigent criminal defendants actual
 21 representation by and assistance of counsel, such that defendants have the opportunity to assert
 22 any rights or defenses that may be available to them and appropriate adversarial testing occurs,
 23 defendants may petition the Court to dismiss the case and terminate the injunction at that point in
 24 time.

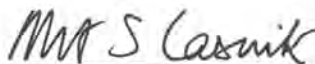
25 – If plaintiffs believe that the Cities' efforts to provide an adequate system of public
 26 defense are not trending in the right direction or a dispute arises as to compliance with the

1 injunctive provisions of this Order, plaintiffs' counsel shall notify defendants in writing of any
 2 objections they have regarding the Cities' efforts or compliance. Within fourteen days of receipt
 3 of the objections, the parties shall meet and confer to discuss and attempt to resolve the dispute.
 4 If the parties are not able to resolve the objections, plaintiffs may file a motion seeking
 5 appropriate relief. The motion shall be noted for consideration on the third Friday after filing,
 6 the motion and opposition pages shall not exceed 24 pages, and the reply shall not exceed twelve
 7 pages.

8 CONCLUSION

9 It has been fifty years since the United States Supreme Court first recognized that
 10 the accused has a right to the assistance of counsel for his defense in all criminal prosecutions
 11 and that the state courts must appoint counsel for indigent defendants who cannot afford to retain
 12 their own lawyer. The notes of freedom and liberty that emerged from Gideon's trumpet a half a
 13 century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that
 14 reduce the promise to a hollow shell of a hallowed right.

15
 16 Dated this 4th day of December, 2013.

17 
 18 Robert S. Lasnik
 19 United States District Judge
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COMPARABLES: CASELOAD V. COMPENSATION

Jurisdiction:	Caseload 2014	YTD 2015	Current Yearly Contract amount*	Avg Dollar amount per case	Courts paying monthly flat fee	Monthly pymt per case	SCORE
DES MOINES	845	373	\$ 119,700	\$ 142.00	10,000 approx		incl (\$2k)
Burien	841	409	\$ 168,000	\$ 200.00	14,000.00		Jail services included
SeaTac	795	444	\$ 182,103	\$ 275.00	15,175.29		Jail services included
Redmond	767	545	\$ 310,440	\$ 404.00	25,870.00		no
Shoreline	861	409	\$ 310,000	\$ 360.00	19,000.00		no

Other Jurisdictions:

	Caseload 2014	YTD 2015					
Normandy Park Muni	147	92	\$ 36,000	\$ 245.00	3,000.00		Jail services included
Kenmore	386	235	\$ 60,000	\$ 155.00	5,000.00		no (\$2.1k)
Bonney Lake Muni	1037	529	\$ 163,234	\$ 225.00		13,602.86	no
Renton	2403	1333	\$ 436,248	\$ 245.00	36,354.00		Jail services included
Tukwila	1905	1353	\$ 391,200	\$ 205.00	\$32,600.00		Jail services included
Puyallup	3023	1678	\$ 356,695	\$ 155.00		29,724.57	no
Lakewood	3222	2059	\$ 676,620	\$ 300.00		56,385.00	no

OTHER INFO:

**Seatac \$300 per case in 2016

***Redmond - higher if over 80 cases per month

Seatac, Bothell, Lakewood & Kenmore addit'l \$500 per jury trial

2013 Crim Case filings PD Expenses

Bothell	871	not avail
Burien	886	128,221
Redmond	908	339,453
Shoreline	966	224,003
SeaTac	969	196,422
Des Moines	1040	117,100
Issaquah Muni	1063	unk
Tukwila	1967	unk

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AGREEMENT FOR PUBLIC DEFENDER SERVICES
FOR DES MOINES MUNICIPAL COURT

WHEREAS, the City of Des Moines, Washington (hereinafter "City") provides public defense services pursuant to contract, and

WHEREAS, a decision by the Federal Court for the Western District of Washington, the Honorable Robert Lasnik, in a case styled *Wilbur v. Mt. Vernon* (hereinafter "the Decision") emphasizes the need for the City to provide indigent defense services to misdemeanor clients in municipal and district courts in a manner which fully complies with the City's obligations under the Sixth Amendment to the United States Constitution, and

WHEREAS, the Washington Supreme Court has adopted standards regarding the caseload of Public Defenders and the Washington State Office of Public Defense has provided guidance regarding case weighting systems, and

WHEREAS, the City has conducted an evaluation of its public defense system, including the court system and appointment process, and

WHEREAS, the City desires to adopt this contract in compliance with the guidance of the Decision, Supreme Court Standards and the standards for the provision of indigent defense services adopted by the City in Executive Order No. 14-005, NOW THEREFORE,

In consideration of the mutual benefits to be derived and the promises contained herein, the City of Des Moines, Washington, a municipal corporation ("City") and Julie M. Codd and Tracy Greenwood, the individual Public Defenders who perform services under this contract (the "Public Defender") have entered into this Agreement.

1. Scope of Services, Standards and Warranties. The Public Defender will provide indigent defense services in misdemeanor cases in accordance with the standards adopted by the City in Executive Order No. 14-005 as the same exists or is hereafter amended (hereinafter "Standards") and the Decision. The Public Defender individually warrants that he/she, and every Attorney/Public Defender and/or intern employed by the Public Defender to perform services under this contract, has read and is fully familiar with the provisions of the Standards adopted

by the City and the Decision. Compliance with these Standards and the Decision goes to the essence of this Agreement. The Public Defender, and every Public Defender and/or Attorney or intern performing services under this Agreement shall certify compliance with Supreme Court Rule and governing case load quarterly with the Des Moines Municipal Court on the form established for that purpose by court rule. A copy of each and every such certification shall be provided to the City contemporaneously with filing. The Public Defender and every Public Defender and/or Attorney or intern warrants that he/she shall conform to the case load limitations not only with respect to services under this Agreement but also with respect to his/her practice as a whole, including other contracts for public defense and/or private practice.

1.1 Screening. Determination of indigency for eligibility for appointed counsel under this agreement shall be determined by an independent screening process established by the City. Should the Public Defender performing the screening determine a defendant is not eligible for assigned counsel, the Public Defender shall so advise the Des Moines Municipal Court.

1.2 Twenty-Four Hour Telephone Access. The Public Defenders shall provide to the Des Moines Police Department a telephone number or numbers at which a Public Defender can be reached twenty-four (24) hours each day for advice to defendants during the course of police investigations or arrests for violations of law.

1.3 Client Contact. Public Defender agrees to attempt to contact the client within five (5) days of receiving the notice of appointment by the Des Moines Municipal Court. Public Defender shall make reasonable efforts to confer with defendants about cases prior to court hearings and the Public Defender shall be available for office consult and shall respond to defendant inquiries within a reasonable time to ensure the effective assistance of counsel whether such inquiries are received by letter, telephone, email, or otherwise.

1.4 Recordkeeping: Public Defender will maintain records documenting all work performed on each assigned case.

a. Monthly Reports: Public Defender will maintain and provide to the City a monthly report detailing the number of cases to which the Public Defender was appointed, the names of the defendants to which the Public Defender was appointed, the

case number, the date of appointment, and the charge(s) filed against the defendant.

b. Quarterly Reports: Public defender shall submit quarterly reports which include the number of appellate cases filed during the preceding quarter, if any, the total number of cases assigned to each Public Defender during the preceding quarter, year-to-date appointments and CLE/training hours completed for each Public Defender during the preceding quarter.

1.5 Each Public Defender agrees to attend a minimum of seven (7) hours of criminal defense training/continued legal education classes each year. Each Public Defender may submit proof of payment of such training to the City and the City agrees to reimburse the Public Defender up to a maximum of \$500 each, per year for the costs of such training/education. The training must be approved by the Washington State Office of Public Defense (OPD) in compliance with the OPD Improvement Program Training requirements. This requirement also applies to associate counsel. Each Public Defender shall submit a copy of their CLE credit transcript from the WSBA annually.

1.6 The Public Defender further warrants that his/her proposal, reflected in Section 2, Compensation, reflects all infrastructure, support, administrative services, routine investigation, and systems necessary to comply with the Decision and Standards except as provided in Section 2.4 below.

1.7 The Public Defender promises that he/she will promptly notify the City if any circumstance, including change in rule or law, renders it difficult or impossible to provide service in compliance with the Decision and/or the Standards.

2. Compensation. As used below, payment to "Public Defenders" means a single payment and not a payment to each Public Defender.

2.1 The City shall pay to the Public Defenders for services rendered under this Agreement, a flat rate of \$15,000.00 per month for the period of January 1, 2016 through December 31, 2017. This contract contemplates regularly scheduled Court hearings to occur at the following times and thus court hearings scheduled at these times will not be subject to payment of additional compensation:

Every Wednesday and Thursday mornings and afternoons;

Two (2) days per month for scheduled jury trials.
Video court at Score Monday through Friday (see below);

Courtesy counsel at arraignment calendars once per week (40 scheduled arraignment calendars held on a Thursday per year and 12 held on a Wednesday afternoon)

Courtesy counsel once per month for the DWLS 3 Relicensing calendar (currently 12 per year, held the first Thursday of the month at 10:30 am);

a. Video Court: The Public Defenders shall appear Monday through Friday for video court public defender services to defendants charged under ordinances of the City or state misdemeanor or gross misdemeanor statutes who are detained at the South Correctional Entity ("SCORE"). Public defense services will be provided in a manner consistent with the accepted practices for similar services, performed to the City's satisfaction and in conformance with WSBA's standards for the provision of public defense services as codified in the Rules for Professional Conduct, the Decision and the Des Moines Municipal Code as now existing or hereafter adopted or amended.

b. Non-Court day Transports: The City shall pay an additional \$120.00 for first appearance hearings for inmates physically transported to court on days other than regularly scheduled court days. These inmates are transported on Monday, Tuesday, Thursday (jury trial days only) and Friday. The court shall contact the Public Defenders by 8 AM each Monday, Tuesday and Friday to determine whether or not the Public Defenders are required to appear at the court for an in-custody hearing. It is contemplated by this contract that any such appearance by Public Defenders shall commence at 9 AM for one hour, unless other arrangements have been made between the parties.

c. The City shall pay an additional \$650 to Public Defenders for a "special set" jury trial and \$450 for a special set bench trial that is scheduled and held on a court day other than the regularly scheduled 2 trial days per month as per Article 2(a) herein.

d. The City shall pay an additional \$750 per RALJ appeal to the Superior Court in which a brief has been filed by the Public Defenders, which sum is over and above all compensation paid for legal services before the Court.

e. The City may schedule additional Court days with 30 days written notice to the Public Defender, or such shorter time upon agreement by the Public Defender. Public Defenders shall be compensated an additional \$400.00 per half day calendar and \$800.00 per full day calendar for such additional court days.

2.2 The compensation amount represents the salary and benefits necessary to provide the services of two (2) Public Defenders to provide public defense for the City and as supplemented in Section 2.4 below all infrastructure, support, and systems necessary to comply with the Standards and Decision including by way of illustration and not limitation, training, investigation, translation, and mental and physical evaluation services. As provided in Section 2.5 and its sub paragraphs below, the parties will periodically review staffing in light of changes in court rule and case load in order to adjust staffing based on experience. The parties believe that they have provided sufficient capacity to ensure that, in all respects and at all times, public defense service will comply with the Standards and Decision with an adequate reserve capacity for each Public Defender.

2.3 Case Counts. Based upon case counts maintained by Public Defender and reviewed by the City, current estimates for annual case counts for all indigent cases filed by the City is approximately 400 cases per year. As provided in the Standards, the case counts also include the Public Defender's appearance at all arraignment calendars. The terms "case" and "credit" shall be defined in accordance with the Washington State Supreme Court rule and Washington Office of Public Defense guidelines. The City has adopted an unweighted case count.

2.4 Adjustment; Internal Allocation. As provided in the Standards, case counts may be revised upwards based upon a variety of factors. Upon the Public Defender's request, the City shall review any particular case with the Public Defender to determine whether greater weighting should be assigned, and upward revisions shall not be unreasonably refused. The annual

caseload shall be reviewed annually on or about June 30th each year.

2.5 Base Compensation. Except as expressly provided in Section 2.6, the cost of all infrastructure, administrative, support and systems as well as standard overhead services necessary to comply with the established standards are included in the base payment provided in Section 2.1 above.

2.6 Payments in Addition to the Base Compensation. The City shall pay for the following case expenses when reasonably incurred and approved by the Court from funds available for that purpose:

a. Discovery. Discovery shall be provided in accordance with law and court rule by the City Prosecutor. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, prosecuting Public Defenders making any charge or court files pertaining to the underlying case.

b. Preauthorized Non-Routine Expenses. Non-routine case expenses requested by the Public Defender and preauthorized by order of the Court. Unless the services are performed by Public Defender's staff or subPublic Defenders, non-routine expenses include, but are not limited to:

- (i) investigation expenses;
- (ii) medical and psychiatric evaluations;
- (iii) expert witness fees and expenses;
- (iv) interpreters;
- (v) polygraph, forensic and other scientific tests;
- (vi) unusually extensive computerized legal research;
- (vii) any other non-routine expenses the Court finds necessary and proper for the investigation, preparation, and presentation of a case. In the event any expense is found by the Court to be outside of its authority to approve, the Public Defender may apply to the Contract Administrator for approval, such approval not to be unreasonably withheld.

c. Lay Witness Fees. Lay witness fees and mileage incurred in bringing defense witnesses to court, but not

including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

d. Copying Clients' Files. The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus Public Defender's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

e. Copying Direct Appeal Transcripts Supreme Court Rules for the Administration of Courts of Limited Jurisdiction RALJ Appeals. The cost of making copies of direct appeal transcripts for representation in post-conviction relief cases. Public Defender is limited to no more than two copies;

f. Records. To the extent such materials are not provided through discovery, medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

g. Process Service. The normal, reasonable cost for the service of a subpoena.

2.7 Review and Renegotiation.

a. Due to Increases or Decreases in Case Load. The City and the Public Defender shall, at the option of either party, renegotiate this contract if there is a significant increase or decrease in the number of cases assigned. Significant "decrease" shall mean a change of more than ten percent (10%) in the number of cases assigned. If cases are estimated to approach or exceed 400 cases per year or 100 cases per quarter, the parties may renegotiate this contract to increase case coverage and compensation to Public Defender. At the request of either party, the City and Public Defender will periodically review case assignment trends, requests for additional credits and any other matters needed to determine contract compliance or necessary contract modifications. Public Defender shall promptly notify the City when quarterly case loads can reasonably be anticipated to require use of overflow or conflict counsel to assure that cases assigned to Public Defender remain within the limits adopted in this contract and comply with state and local standards.

b. Renegotiation Due to Change in Rule or Standard. This contract may be renegotiated at the option of either party if the Washington State Supreme Court, the Washington State Bar or the City significantly modifies the Standards for Indigent Defense adopted pursuant to the Court rule or City Ordinance/Resolution/Executive Order.

3. Term of Agreement. The term of this agreement shall be from the January 1, 2016 for a two (2) year initial term through December 31, 2017, unless sooner terminated as provided herein. The Agreement may be extended for one (1) additional two (2) year term at the mutual agreement of the parties, not to exceed four (4) years in total.

3.1. For Cause. This agreement may be terminated for good cause for violation of any material term of this agreement. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of court, the ethical obligations established by the Washington State Bar Association, the willful disregard of the rights and best interests of the client, a willful violation of the Standards or the Decision, the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Public Defender or any Public Defender providing service under this agreement, has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of contract violation shall be provided to the Public Defender who shall have thirty (30) business days to cure the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this contract, the City may agree in writing to alternative corrective measures.

3.2 Termination on Mutual Agreement. The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed to in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.

3.3 Obligations survive Termination. In the event of termination of this agreement, the following obligations shall survive and continue:

a. Representation. The compensation established in this agreement compensates Public Defender for services relating to each and every assigned case. Therefore, in the event this agreement is terminated, the Public Defender will

continue to represent clients on assigned cases until a case is concluded on the trial court level through dismissal, plea or sentencing, provided however, that the public defender may withdraw after thirty (30) calendar days with respect to any matter which has not been set for trial within sixty (60) days of termination. Probation will be assigned to successor counsel.

b. The provisions of sections 1 through 5 shall survive termination as to the Public Defender. The City shall remain bound by the provisions of section 2.4 with respect to additional costs incurred with respect to cases concluded after the termination of this contract.

4. Nondiscrimination. Neither the Public Defender nor any person acting on behalf of the Public Defender, shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this agreement.

5. Indemnification. The Public Defender agrees to hold harmless and indemnify the City, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Public Defender's fees or awards, and including claims by Public Defender's own employees to which Public Defender might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Public Defender, his/her officers or agents.

5.1 It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Public Defender's waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.

5.2 The City agrees to hold harmless and indemnify the Public Defender, his/her officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Public Defender's fees or awards, arising out of or in connection with any willful

misconduct or negligent error or omission of the City, its officers or agents.

5.3 This clause shall survive the termination or expiration of this agreement and shall continue to be in effect for any claims or causes of action arising hereunder.

6. Insurance. The Public Defender shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work hereunder by the Public Defender, or the agents, representatives, employees, or sub-Public Defenders of the Public Defender.

6.1 Public Defenders shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to person or damage to property which may arise from or in connection with the performance of the work hereunder by Public Defender. Public Defenders shall obtain and maintain Professional Liability insurance appropriate to Public Defenders' profession. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. Public Defenders' insurance shall be primary insurance as respects the City. Public Defenders' insurance coverage shall not be cancelled except after thirty (30) days prior written notice to the City by certified mail, return receipt requested. Public Defenders shall furnish the City with written certificates evidencing compliance with insurance requirements within 30 days of commencement of work.

6.2 Verification of Coverage. Public Defender shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work. Policies shall provide thirty (30) days written notice of cancellation to the City. The Public Defender shall provide the City with proof of insurance for "tail coverage" no later than December 31 of the year of termination of the Contract. The purpose of "tail coverage" is to provide insurance coverage for all claims that might arise from occurrences during the term of the Contract or extension(s) thereof, but not filed during the term of the Contract.

7. Work Performed by Public Defender. In addition to compliance with the Standards, in the performance of work under

this Agreement, Public Defender shall comply with all federal, state and municipal laws, ordinances, rules and regulations which are applicable to Public Defender's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

8. Work Performed at Public Defender's Risk. Public Defender shall be responsible for the safety of its employees, agents, and sub-Public Defenders in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Public Defender's own risk, and the Public Defender shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Public Defender shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and all other employment related charges, taxes or fees in accordance with law and IRS regulations.

9. Personal Services, no Subcontracting. This Agreement has been entered into in consideration of the Public Defender's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Public Defender has personally signed this Agreement below to indicate that he/she is bound by its terms. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by the Public Defender without the express written consent of the City shall be void.

10. Modification. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and the Public Defender. An additional Public Defender may be added to this Agreement by adding his or her signature to these agreements.

11. Entire Agreement; Prior Agreement Superseded. The written provisions in terms of this Agreement, together with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. Upon execution, this Agreement shall supersede any and all prior agreements between the parties.

12. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

CITY:

City of Des Moines
21607 11th Ave. South
Des Moines, WA 98198

PUBLIC DEFENDER:

Julie M. Codd, WSBA 27448
15401 1st Avenue South, Ste. A
Burien WA 98148-1075

PUBLIC DEFENDER:

Tracy Greenwood, WSBA 25916
2108 SW 152nd Street
Burien WA 98166-2027

13. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

14. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Contract Administrator, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Standards or which relate to any manner whatsoever to trial strategy or an ongoing case, shall be referred to the Judge of the City's Municipal/District Court or to the Washington State Bar Association as appropriate. Nothing herein shall be construed to obligate, require or permit the City, its officers, agents, or employees to inquire into any privileged communication between the Public Defender and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable Public Defender's fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action

arising out of this Agreement shall be in King County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 20____.

CITY OF DES MOINES:

CITY OF DES MOINES:

Pat Bosmans, City Attorney
Approved as to form

Anthony Piasecki, City Manager

PUBLIC DEFENDERS

By: _____
Julie M. Codd

By: _____
Tracy Greenwood

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**AGREEMENT FOR PUBLIC DEFENDER SERVICES
FOR DES MOINES MUNICIPAL COURT**

THIS AGREEMENT is made and entered into this 2nd day of December, 2011, by and between the City of Des Moines, a municipal corporation of the State of Washington, herein referred to as "City" and Julie Codd and Tracy Greenwood, herein referred to as "Attorneys."

In consideration of the covenants and conditions herein, the parties agree as follows:

Section 1. Purpose. The purpose of this Agreement is to retain Attorneys to provide representation to indigent criminal defendants charged under ordinances of the City or State misdemeanor statutes who qualify for assigned counsel in the Des Moines Municipal Court.

Section 2. Services.

(a) **Scope of Service.** Attorneys shall provide legal representation for each eligible defendant from the time of court appointment for assigned counsel through trial, sentencing, and review.

(b) **Number of Attorneys.** The Attorneys will provide an adequate number of defense counsels to efficiently manage each court calendar, in a manner that avoids unnecessary delay in completing the calendar. The attorneys will ensure that multiple defense counsels are present whenever the court's calendar necessitates the presence of more than one attorney to effectively and efficiently manage the calendar.

(c) **Screening.** Determination of indigency for eligibility for appointed counsel under this agreement shall be determined by an independent screening process established by the City. Should the Attorney performing the screening determine a defendant is not eligible for assigned counsel, the Attorney shall so advise the Des Moines Municipal Court.

(d) **Twenty-Four Hour Telephone Access.** The Attorneys shall provide to the Des Moines Police Department a telephone number or numbers at which an attorney can be reached twenty-four (24) hours each day for advice to defendants during the course of police investigations or arrests for violations of law.

(e) **Associated Counsel.** Any counsel associated with or employed by the Attorneys shall have the authority to perform the services outlined herein. The Attorneys and all associated counsel shall be admitted to practice in the State of Washington pursuant to the rules of the Supreme Court of the State of Washington and will meet the requirements of Section 3 of this Agreement.

(f) **Insurance.** Attorneys shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to person or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor. Attorneys shall obtain and maintain Professional Liability insurance appropriate to Attorneys' profession. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. Attorneys' insurance shall be primary insurance as respects the City. Attorneys' insurance coverage shall not be cancelled except after thirty (30) days prior written notice to the City by certified mail, return receipt requested. Attorneys shall furnish the City with written certificates evidencing compliance with insurance requirements within 30 days of commencement of work.

Section 3. Professional Requirements.

(a) The Attorneys shall be admitted to practice law before the courts of record for the State of Washington. The Attorneys must immediately report to the City any change affecting the maintenance of their membership in good standing with the Washington State Bar Association.

(b) The Attorneys shall comply with the Rules of Professional Conduct and be subject to ethics laws and rules applicable to being an officer of the court.

(c) The Attorneys agree not to participate in any matter in which they participated personally and substantially as a prosecutor, public officer or employee, or where there exists an actual or apparent conflict of interest detrimental to the Defendant. (Reference Rules of Professional Conduct 1.10 and 1.11)

Section 4. Non –Exclusive Contract. This shall be a non-exclusive contract as to the parties. The City reserves the right to contract for additional defense attorneys in the future should the City deem it to be warranted or desired.

Section 5. Client Contact. Attorney shall initiate contact with the client within five (5) days of receiving the appointment by the Des Moines Municipal Court.

Section 6. Compensation. As used below, payment to "Attorneys" means a single payment and not a payment to each attorney.

(a) The City shall pay to the Attorneys for services rendered under this Agreement, a flat rate of \$6,800 per month for the period of January 1, 2012 through December 31, 2015. This contract contemplates regularly scheduled Court hearings to occur at the following times and thus court hearings scheduled at these times will not be subject to payment of additional compensation: 1) every Wednesday morning afternoon, and Thursday morning 2) two (2) days per month for scheduled jury trials. The Court may schedule additional court days

with 30 days written notice to the Attorneys, or upon such shorter time upon agreement by the Attorneys., Attorneys shall be compensated an additional \$300 per half day calendar and \$580 per full day calendar for such additional court days.

- (b) The City shall pay an additional \$300 for each scheduled arraignment calendar in which the Public Defender appears. The arraignment calendar is held one day a week. There are 40 scheduled arraignment calendars held on a Thursday per year. There are 12 arraignment calendars held on a Wednesday per year. The additional 12 arraignment calendar will only be charged at the rate of \$150 per calendar.
- (c) The City shall pay Attorneys an additional \$1,200 a month for video court public defender services to defendants charged under ordinances of the City or state misdemeanor or gross misdemeanor statutes who are detained at the South Correctional Entity ("SCORE"). Public defense services will be provided in a manner consistent with the accepted practices for similar services, performed to the City's satisfaction and in conformance with WSBA's standards for the provision of public defense services as codified in the Rules for Professional Conduct and the Des Moines Municipal Code as now existing or hereafter adopted or amended.
- (d) The City shall pay an additional \$95 for first appearance hearings for inmates physically transported to court. These inmates are transported on Monday, Tuesday and Friday. Attorneys shall contact the court by 8 AM each Monday, Tuesday and Friday to determine whether or not the Attorneys are required to appear for that day. It is contemplated by this contract that any such appearance by Attorneys shall commence at 9 AM for one hour. Unless other arrangements have been made between the parties.
- (e) The City shall pay an additional \$500 per RALJ appeal to the Superior Court in which a brief has been filed by the Attorneys, which sum is over and above all compensation paid for legal services before the Court.

Section 7. Billing. Attorneys shall submit monthly billing statements to the City for the monthly installment set forth in Section (6), above.

Section 8. Attorney Responsible for Taxes. Attorneys shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment for services rendered under this Agreement.

Section 9. Business License. Attorneys shall apply for and obtain a business license from the City of Des Moines to conduct business in the City.

Section 10. Independent Contractor/Conflict of Interest. It is the intention and understanding of the parties that the Attorneys shall be independent contractors and that the City shall be neither liable nor obligated to pay Attorneys sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. Attorneys shall pay all income and other taxes as due. Industrial or any other insurance which is purchased for the benefit of the City, regardless of whether such insurance provides a secondary or incidental benefit to the Attorneys, shall not be deemed to convert this Agreement to an employment contract. It is recognized that the Attorneys may or will be performing professional services during the term of this Agreement for other parties, however, such performance of other services shall not conflict with or interfere with Attorneys ability to perform the services under this Agreement. Attorneys agree to resolve any such conflicts of interest with regard to the performance of professional services in favor of the City.

Section 11. Indemnification.

(a) **Attorneys Indemnification.** Attorneys agree to indemnify and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representative, arising from, resulting from, or connected with the Agreement to the extent caused by the negligent acts, errors or omissions of the Attorneys, his partners, shareholders, agents, employees, or by the Attorneys breach of this Agreement. Attorneys indemnification shall not limit the amount of damages, compensation or benefits payable to or by any third party under worker's compensation acts, disability benefit acts or any other benefits, acts or programs.

(b) **City Indemnification.** The City agrees to indemnify and hold the Attorneys, their officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

Section 12. Discovery provided. The City shall, at no cost to the Attorneys (Public Defender) provide hard copies or electronic access to discoverable material in possession or control of the prosecution.

Section 13. Standards for Public Defense Services. Attorneys shall comply with the standards for public defense services as may be adopted by the City pursuant to Chapter 10.101 RCW. Including compliance with indigent defense standards as adopted by the Office of Public Defense.

Section 14. Assignment. Neither the Attorneys nor the City shall have the right to transfer or assign, in whole or part, any or all of its obligations and rights herein without the prior written consent of the other Party.

Section 15. Dispute Resolution. In the event of a dispute under the terms of this Agreement, the Parties agree to the following dispute resolution process:

(a) The City Manager and the Attorneys shall meet to discuss the dispute and attempt to resolve the matter.

(b) In the event the dispute is not resolved by the City Manager and the Attorneys, the parties agree to forward the dispute to Mediation/Arbitration.

(1) First to settle the dispute in an amicable manner by mediation administered by a mediator. The mediator may be selected by agreement of the parties or through the American Arbitration Association.

(2) Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

Section 16. Term. This Agreement shall expire December 31, 2015, unless this Agreement is terminated as provided herein.

Section 17. Termination. This Agreement may be terminated by either Party without cause by providing thirty (30) day's written notification.

Section 18. Notice. Notice given pursuant to this Agreement shall be given in writing to the Parties as follows:

Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage paid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

Notice given pursuant to this Agreement shall be given in writing by directing it to: the City Manager, Des Moines City Hall, 21630 11th Ave. S., Suite C, Des Moines, WA 98198-6398, or to the Attorneys addressed to such address as the Attorneys may request.

Section 19. Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional services or treatments may be authorized during the term of this Agreement upon the mutual written consent of the Parties. The Parties shall review this Agreement after six (6) months of operation to determine whether any additional terms should be added to the Agreement and on what basis.

Section 20. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competitive jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

Section 21. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

Section 22. Waiver. The waiver by either Party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

Section 23. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

Section 24. Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

Section 25. Concurrent Originals. This Agreement may be signed in counterpart originals.

Section 26. Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

Section 28. Subsequent Change in Law. The Parties recognize that this Agreement is governed by the Revised Code of Washington and rules promulgated by the Washington Supreme Court and applicable court decisions and therefore, agree that

any modifications and/or amendments to the law or court rule or court decisions during the term of this Agreement will control.

IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.

Ms. Julie Codd By: <u>Julie M. Codd</u> (signature) DATE: <u>12/2/2011</u> Ms. Tracy Greenwood By: <u>Tracy Greenwood</u> (signature) DATE: <u>12/5/2011</u>	CITY OF DES MOINES: By: <u>[Signature]</u> (signature) Print Name: <u>Anthony A. Piasecki</u> Its <u>City Manager</u> (Title) DATE: <u>12/8/11</u> AS APPROVED BY THE CITY COUNCIL ON: <u>12/11/11</u> Attest: <u>[Signature]</u> City Clerk DATE: <u>12-8-11</u> Approved as to Form: <u>[Signature]</u> City Attorney DATE: <u>12/7/2011</u>
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CONTRACT AMENDMENT/ADDENDUM FORM

CONTRACT FOR PUBLIC DEFENDER SERVICES BETWEEN THE CITY OF DES MOINES AND JULIE CODD AND TRACY GREENWOOD

THIS AMENDMENT/ADDENDUM is entered into on this 1st day of July, 2015, pursuant to that certain Contract entered into on the 2nd day of December, 2011, between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **Julie Codd and Tracy Greenwood**, (hereinafter "Attorneys"),.

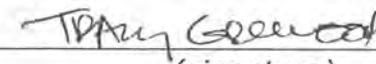
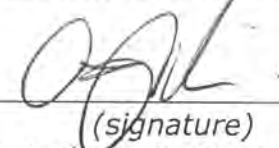
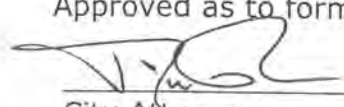
The parties herein agree that the Contract dated December 2nd, 2011, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

I) **SECTION 6 (c)** of the Contract dated December 2nd, 2011, is hereby amended to read as follows:

(c) The City shall pay Attorneys an additional \$2,000 a month for video court public defender services to defendants charged under ordinances of the City or state misdemeanor or gross misdemeanor statutes who are detained at the South Correctional Entity ("SCORE"). Public defense services will be provided in a manner consistent with the accepted practices for similar services, performed to the City's satisfaction and in conformance with WSBA's standards for the provision of public defense services as codified in the Rules for Professional Conduct and the Des Moines Municipal Code as now existing or hereafter adopted or amended.

Except as modified hereby, all terms and conditions of contract dated December 2nd, 2011, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the date first above written.

Ms. Julie Codd: By: <u></u> (signature) DATE: <u>7/8/15</u> Ms. Tracy Greenwood: By: <u></u> (signature) DATE: <u>7/8/15</u>	CITY OF DES MOINES: By: <u></u> (signature) Print Name: <u>Anthony A. Piasecki</u> Its <u>City Manager</u> By Direction of the Des Moines City Council in Open Public Meeting on June 25, 2015 (Title) DATE: <u>7/7/15</u> Approved as to form: <u></u> City Attorney DATE: <u>6/26/15</u>
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Expenditure Status Report

City of Des Moines
11/1/2015 through 11/30/2015

001 GENERAL FUND		Account Number	Adjusted Appropriation	Expenditures	Year-to-date Expenditures	Year-to-date Encumbrances	Balance	Prct Used
150 PUBLIC DEFENDER								
		001 150 40						
		OTHER SERVICES & CHARGES						
		001 150 023 515 91 41 04	500.00	0.00	320.00	0.00	180.00	64.00
		PROF SERV-INTERPRETING						
		001 150 023 515 91 41 05	110,000.00	10,399.00	94,434.84	0.00	15,565.16	85.85
		PROF SERVICES-PUBLIC DEFENDER						
		001 150 023 515 91 41 06	14,700.00	2,000.00	17,200.00	0.00	-2,500.00	117.01
		PROF SERVICES-VIDEO ARRAIGNMENT						
		001 150 023 515 91 49 22	1,000.00	0.00	399.00	0.00	601.00	39.90
		DUES, SCHOOLS & CONFERENCES						
		001 150 023 515 91 49 31	500.00	0.00	0.00	0.00	500.00	0.00
		EXPERT WITNESSES						
		Total PUBLIC DEFENDER	126,700.00	12,399.00	112,353.84	0.00	14,346.16	88.68

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Expenditure Status Report

City of Des Moines
 1/1/2016 through 1/31/2016

001	GENERAL FUND	Adjusted Appropriation	Expenditures	Year-to-date Expenditures	Year-to-date Encumbrances	Balance	Prct Used
150	PUBLIC DEFENDER						
Account Number							
001.150.023.515.91.41.04		500.00	0.00	0.00	0.00	500.00	0.00
001.150.023.515.91.41.05		180,000.00	0.00	0.00	0.00	180,000.00	0.00
Total GENERAL FUND		180,500.00	0.00	0.00	0.00	180,500.00	0.00
Grand Total		180,500.00	0.00	0.00	0.00	180,500.00	0.00

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2016-2017 Recycling Program
Funding and Professional Services Contract

FOR AGENDA OF: January 7, 2016

ATTACHMENTS:

1. Seattle & King County Department of Public Health Local Hazardous Waste Management Program (LHWMP) 2016 Grant No. EHS3673
2. Draft Professional Services Contract for the 2016-2017 Recycling Program

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: December 31, 2015

CLEARANCES:

- [X] Legal PB
 [] Finance _____
 [] Marina _____
 [] Parks, Recreation & Senior Services _____
 [X] Planning, Building & Public Works DSB
 [] Police _____
 [] Courts _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation

The purpose of this agenda item is to provide information to Council, enabling it to take action on both the acceptance of grants and the contracting of professional services for the City's Recycling Program for the service period of 2016-2017. The follow motions will appear on the consent calendar:

Suggested Motions

Motion 1: "I move to authorize the City Manager to sign the 2016 Local Hazardous Waste Management Program Grant No. EHS3673 between the City of Des Moines and the Seattle-King County Department of Public Health, substantially in the form as submitted."

Motion 2: "I move to authorize the City Manager to sign the Professional Services Contract for the 2016-2017 Recycling Program between the City of Des Moines and Olympic Environmental Resources, substantially in the form as submitted."

Background

Grants

Staff is requesting Council to authorize acceptance of one of three grants for the City's recycling program, the 2016 Seattle-King County Department of Public Health Local Hazardous Waste

Management Program (LHWMP) Grant (Attachment 1). The City Manager was authorized to sign the 2015-2016 King County Solid Waste Division Waste Reduction and Recycling (WR/R) Grant No. 5728395 by the City Council on December 31, 2014 and the 2015-2017 Washington State Department of Ecology Coordinated Prevention Grant (CPG) Agreement No. W2RCPG-1517-DeMDSD-00033 on October 22, 2015.

These three grants will fund the City's semi-annual Household Waste Collection and Recycling Events and annual Business Recycling Events for 2016 and 2017.

Professional Services Contract

In addition to maintaining funding for City recycling programs, this agenda item also requests Council to secure professional services for planned events in 2016 and 2017. Specifically, a contract between the City of Des Moines and Olympic Environmental Resources (OER) is requested to be approved. Under the consultant contract, OER will be the event coordinator for all City residential and business recycling and collection events through December 2017.

Discussion

The City uses grant funds to sponsor recycling and collection events for Des Moines residents and promotes recycling or the use of recycled-content products. For the 2016-2017 Recycling Program, the City will sponsor two residential recycling collection events per year (i.e. the Fall and Spring events), and co-sponsor one business recycling event per year with the Cities of Normandy Park and Burien.

This agenda item seeks City Council approval of the 2016 LHWMP contract. The LHWMP grant will allocate \$12,441.27 for household recycling collection events in 2016. The City Council is required to review all Interlocal Agreements between the City and other public agencies.

If the City Council accepts the LHWMP grant for 2016, the City will continue to reduce the amount of hazardous and non-hazardous materials going into the local waste stream at no additional cost to the City. Action/acceptance of this grant must be submitted to the grantor agencies by February 2016 in order to secure grant funds and schedule the Spring 2016 residential recycling event.

Household Collection and Recycling Events – For almost 20 years, the City has used grant monies to sponsor semi-annual Household Waste Collection and Recycling Events. The Spring and Fall Events have proven to be exceptionally popular among Des Moines residents because they provide a local site to recycle materials that are not accepted by the curbside recycling program. Residents will be able to recycle items including oil filters, porcelain toilets and sinks, large cardboard, petroleum based products, antifreeze, tires, batteries, electronic equipment, scrap metals, appliances, propane tanks, and reusable household items. Additional items continue to be explored as the number and type of materials collected curbside have increased under the solid waste contract that began collection on November 1, 2011.

Business Recycling Event – The annual Business Recycling Events are typically held in July at the Washington Criminal Justice Training Center in SeaTac. The City will pool a portion of its grant resources with the Cities of Normandy Park and Burien to provide a comprehensive recycling event where businesses may drop off items including: clean scrap wood/pallets, electronic equipment, fluorescent lights, cellular phones, office recyclables/cardboard, toner cartridges, and plastics. As with

the household collection and recycling events, the Business Recycling Event will accept the above items at little or no cost to business owners.

Professional Services Contract – For almost 20 years, the City has negotiated a contract with Olympic Environmental Resources (OER) to be the Recycling Event coordinator. The 2014-2015 contract with OER expired on December 31, 2015. The estimated budget for the 2016-2017 Recycling Program is for up to \$88,396.00, depending on grant funding for 2017. Should expected grant funds for 2017 not become available, the contract budget will be reduced accordingly. Administration initiated a Request for Proposals (RFP) to make sure that all qualified consultants, including women and minority owned businesses, had a chance to compete for the contract.

One proposal, from Olympic Environmental Resources, was received. OER is a qualified candidate due to its extensive experience of working with King County cities for over twenty years on recycling and collection events identical to Des Moines' events. OER also has detailed knowledge of the grant process for King County, the Health Department, and the Department of Ecology. A draft version of the contract between the City of Des Moines and OER is included in this agenda item as Attachment 2.

Alternatives

1. The City Council may choose to accept the 2016 LHWMP Grant No. EHS3673 between the City of Des Moines and the Seattle-King County Department of Public Health; and authorize the City Manager to sign the Professional Services Contract for the 2016-2017 Recycling Program between the City of Des Moines and Olympic Environmental Resources.
2. The City Council may choose not to accept the 2016 LHWMP Grant No. EHS3673 between the City of Des Moines and the Seattle-King County Department of Public Health; and/or may not authorize the City Manager to sign the Professional Services Contract with Olympic Environmental Resources and forego grant funds.
3. The City Council may continue this Agenda Item and request that staff provides additional information on the LHWMP grant program and the OER Professional Services Contract. Continuance of this item may result in loss of grant funds for the 2016-2017 grant cycle.

Financial Impact

If the City Council accepts the LHWMP grant, there will be no fiscal impact to the City related to Contract Number EHS3673. However, if the City Council does not accept the LHWMP grant, then the City will need to use General Fund monies to maintain the City's recycling program.

Recommendation or Conclusion

Staff recommends that the City Council choose Alternative 1, thereby accepting the 2016 Seattle-King County Department of Public Health LHWMP Grant, and authorizing the City Manager to sign the 2016-2017 OER Professional Services Contract substantially in the form as submitted.

Concurrence

Planning, Building and Public Works and the Legal Departments concur.

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AMENDMENT**PHSKC Agreement #EHS3673
Amendment #1**

This Amendment between PHSKC and the Recipient changes the referenced Agreement for the following purpose(s): Extends end date of agreement to 12/31/2016 and adds year two funding of **\$12,441.27** to continue hazardous waste collection activities to protect residents' health and the environment.

Recipient Name & Address: City of Des Moines
21630 11th Ave. S., Suite "D"
Des Moines, WA 98198

Project Title: Local Hazardous Waste Management Program

Effective Date of Amendment: June 1, 2015

Agreement End Date: ☐ No Change ☒ Change to: **December 31, 2016**

Agreement Amount: ☐ No Change ☒ Change to: **\$24,560.36**

Funding Details: ☐ No Change ☒ Revise the following funding details:

<u>Funding Source</u>	<u>PHSKC Contract #</u>	<u>Amount</u>	<u>Effective Dates</u>	<u>New or Revised</u>
County - LHWMP		\$12,441.27	6/1/2015 – 12/31/2016	NEW

Funding Summary: ☐ No Change ☒ Revise to read:
FEDERAL: \$0 COUNTY: **\$24,560.36** STATE: \$0 OTHER: \$0

Exhibits: ☐ No Change ☒ Revise as follows: **REPLACE** following exhibits as attached hereto:

- EXHIBIT A – Scope of Work
- EXHIBIT B – Budget
- EXHIBIT C – Invoice

King County Terms & Conditions: ☒ No Change ☐ Revise as follows:

All other terms and conditions of the referenced Agreement and any previous Agreement amendment not revised herein shall remain unchanged and in full force and effect.

RECIPIENT SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
PHSKC SIGNATURE	PRINTED NAME AND TITLE Ngozi Oleru, Environmental Health Division Director	DATE SIGNED

**EXHIBIT A
SCOPE OF WORK
AMENDMENT #1**

**CITY OF DES MOINES
1/1/2015-12/31/2016**

Background

The Local Hazardous Waste Management Plan (hereafter referred to as the "Plan") as updated in 1997 and 2010, was adopted by the partner agencies (King County Solid Waste Division, Seattle Public Utilities, King County Water and Land Resources Division and the Seattle-King County Department of Public Health) and cities located in King County. The Washington State Department of Ecology in accordance with RCW 70.105.220 subsequently approved the Plan. The City is an active and valued partner in the regional Local Hazardous Waste Management Program (hereafter referred to as the "Program").

The purpose of this Exhibit is to define the relationship associated with the Program's funding of City activities performed under the auspices of the Plan and as approved by the Program's Management Coordination Committee (hereinafter referred to as the "MCC"). This Agreement further defines the responsibilities of the City and Seattle-King County Department of Public Health with respect to the transfer of Program monies.

Scope of Work

The City of Des Moines will organize four citywide household hazardous waste collection and recycling events. At these events the following materials will be collected and recycled: motor oil, motor oil filters, petroleum based products, antifreeze, batteries, CFC appliances and other materials if determined to be cost effective.

Responsibilities of the Parties

The City

1. The City shall develop and submit project proposals and budget requests to the Program's Contract Administrator. Funds provided to the City by the Local Hazardous Waste Management Program pursuant to this Contract shall be used to implement hazardous waste programs and/or services as approved by the MCC.
2. For reimbursement the City shall submit the following to the Contract Administrator:
 - a) An invoice (see Exhibit C). Invoices should be sent to the Contract Administrator for approval and payment.
 - b) A brief description of activity accomplished and funds expended in accordance with the scope of work.
 - c) Copies of invoices for expenditures or a financial statement prepared by the City's finance department. The financial statements should include vendor

names, a description of services provided, date paid and a check or warrant number.

3. The City shall notify the Contract Administrator no later than December 15th regarding the amount of outstanding expenditures for which the City has not yet submitted a reimbursement request.
4. It is the responsibility of the City to comply with all applicable county, state and/or federal reporting requirements with respect to the collection and transfer of moderate risk wastes. The City shall report to the Contract Administrator the quantity, by type, of moderate risk waste collected using Program funds. The City shall also provide the Contract Administrator with copies of EPA's Non-Hazardous Waste Manifest or similar form, associated with the transport of moderate risk waste collected through Program-funded events.
5. The City is solely responsible for any and all spills, leaks or other emergencies arising at the facilities associated with the City's events or in any other way associated with activities conducted within the scope of this Contract. In the event of a spill or other emergency, the City is responsible for complying with all applicable laws and regulations.
6. The City agrees to appropriately acknowledge the Program in all media produced – in part or in whole – with Program funds. The intent of this provision is to further strengthen this regional partnership in the public's mind.
7. The City agrees to provide the Program with copies of all media material produced for local hazardous waste management events or activities that have been funded by the Program. The City also agrees to allow the Program to reproduce media materials created with Program money provided that the Program credits the City as the originator of that material.
8. This project shall be administered by Laura Techico at the City of Des Moines, 21630 11th Ave. S, Suite "D", Des Moines, at (206) 870-6595, (ltechico@desmoineswa.gov) or her designee.
9. Questions or concerns regarding any issue associated with this Exhibit that cannot be handled by the Contract Administrator should be referred to the LHWMP Program Director for resolution.

Seattle-King County Department of Public Health

1. Seattle-King County Department of Public Health shall administer, via the attached Contract, the transfer of Program funds to the City for hazardous waste management events and activities.
2. Within ten (10) working days of receiving a request for reimbursement from the City, the Contract Administrator shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The Contract Administrator will not authorize payment for activities and/or expenditures that are not included in the scope of work, unless the scope has been amended. The Contract Administrator retains the right to withhold all or partial payment if the City's invoices are incomplete (e.g. they do not include proper documentation of expenditures for which reimbursement is being requested) or are not consistent with the submitted scope of work.

Program Contacts

Lynda Ransley
LHWMP Program Director
150 Nickerson Street, Suite 204
Seattle, WA 98109
206-352-8163
lynda.ransley@kingcounty.gov

Paul Shallow
LHWMP Contract Administrator
401 Fifth Avenue, Suite 1100
Seattle, WA 98104
206-263-8487
paul.shallow@kingcounty.gov

EXHIBIT B**2015-2016 BUDGET****LOCAL HAZARDOUS WASTE MANAGEMENT PROGRAM**

City of Des Moines
 21630 11th Ave S, Suite "D"
 Des Moines, WA 98198

Component Description	2015 Budget	2016 Budget	Total
Household Hazardous Waste Education			
Household Hazardous Waste Collection	\$12,119.09	\$12,441.27	\$24,560.36
TOTAL	\$12,119.09	\$12,441.27	\$24,560.36

Footnote: The 2015 and 2016 budgets can be partly or totally spent in either 2015 and/or 2016 but cannot exceed the budget total in these two years.

INVOICE

Contract Number: EHS3673
 Exhibit: C
 Amendment #1
Remit to: City of Des Moines
 21630 11th Ave., S, Suite "D"
 Des Moines WA 98198
 Laura Techico
 206-870-6595
ltechico@desmoineswa.gov

Submit signed invoice to:
 Paul Shallow
 Public Health - Seattle & King County
 Local Hazardous Waste Management Program
 401 Fifth Ave., Suite 1100
 Seattle, WA 98104

206-263-8487
paul.shallow@kingcounty.gov

Invoice for services rendered under this contract for the period of: _____

King County Accounts Payable Information	
Purchase Order #	_____
Supplier Name	City of Des Moines
Supplier #	1270
Supplier Pay Site	City of Des Moines
Invoice Date	_____
Invoice #	_____
Amount to be Paid	_____
Note to AP	_____
Print on Remittance	_____
	Paul Shallow 206-263-8487
LHW Program name & phone	8487

Expenditure Item	Total 2015-2016 Budget	Current Expenditure	Previous Expenditure	Balance
HHW Education				
HHW Collection	24,560.36	6,059.54		\$18,500.82
TOTAL	24,560.36	\$6,059.54		\$18,500.82

I, the undersigned, do hereby certify under penalty of perjury, that this is a true and correct claim for reimbursement services rendered. I understand that any false claims, statements, documents, or concealment of material fact may be prosecuted under applicable Federal and State laws. This certification includes any attachments which serve as supporting documentation to this reimbursement request.

Signed _____ Date _____ Contract Administrator Approval _____ Date _____

Print Name _____

**AGREEMENT BETWEEN THE CITY OF DES MOINES
AND OLYMPIC ENVIRONMENTAL RESOURCES FOR THE
2016-2017 DES MOINES RECYCLING PROGRAM**

THIS AGREEMENT, entered into as of this ____ day of _____, 2016, is by and between the CITY OF DES MOINES, a Washington municipal corporation, hereinafter referred to as the "City", and OLYMPIC ENVIRONMENTAL RESOURCES, hereinafter referred to as the "Contractor".

In consideration of the covenants and conditions set forth below, the parties agree as follows:

1. Purpose. The purpose of this Agreement is to retain the Contractor to provide professional services for the 2016-2017 Recycling Program for the residents/businesses of the City as set forth below.

2. Scope of Work. Contractor agrees to furnish all materials, labor and other incidentals and to perform all services and work as described in this Agreement and the Contract Documents, which consist of this Agreement and the following Attachment A, which is by this reference incorporated herein:

Exhibit A: Scope of Work – 2016/17 Recycling Collection Events and Purchase of Products made from Recycled Materials

The following provisions modify and/or supersede any contrary language found in Attachment A, which shall remain in full force and effect except as expressly modified below:

- The City may call upon the Contractor for additional services that will be negotiated at that time; and,
- The Contractor will ensure compliance with applicable State Prevailing Wage Rates, which are set by the Washington Department of Labor and Industries.

3. Project Schedule. Contractor agrees to hold the Residential Recycling Collection Events in the parking area of the Des Moines Marina or another suitable location during March and October/November 2016 and 2017 and the Business Collection and Recycling Events at the Washington Criminal Justice Training Center in Burien in July or August of 2016 and 2017. In addition, the contractor shall provide assistance as needed as the City purchases products made from recycled materials.

4. Payment. As full and adequate consideration for all work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work, the Contractor shall be paid a maximum amount of \$88,396.00 (eighty-eight thousand, three hundred, ninety-six dollars even) including tax, pending receipt of additional 2017 Local Hazardous Waste Management Plan, King County Waste Reduction and Recycling, and WA State Department of Ecology grant funds. This amount will be reduced by any billing from the City for staff oversight of the Recycling Program or if City staff is involved

in purchasing recycled content products directly. At the completion of any task described in the Scope of Work, the Contractor will submit an invoice to the City's designated representative. The invoice must include documentation of all work performed, vendor's billings, and receipts of purchase. Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

5. City Administrative Costs. The Contractor agrees to reduce the total contract amount by up ten percent to account for City staff involvement in overseeing recycling activities and programs. However, this reduction will not apply to the task of purchasing recycled content products unless City staff is directly involved in placing an order.

6. Insurance. By the date of execution of this Contract, the Contractor and its Subcontractors, if authorized, shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Contractor, its agents, representative, employees, and/or subcontractors. The Contractor or subcontractor shall pay the cost of such insurance. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintains greater limits and/or broader coverage. Coverage should also include Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal Law. Any deductibles or self-insured retention must be declared to, and approved by, the City. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the City and shall be the sole responsibility of the Contractor.

The Contractor and its Subcontractors shall secure and maintain in force throughout the duration of this Agreement, insurance coverage sufficient to satisfy the following minimums:

Comprehensive Commercial General Liability:

\$1,000,000 combined single limit per occurrence.
 \$2,000,000 aggregate.

The Contractor's Subcontractors shall secure and maintain in force throughout the duration of this Agreement, insurance coverage sufficient to satisfy the following minimums:

Commercial Automobile Liability:

\$1,000,000 combined single limit per accident for bodily injury and property damage.

The Contractor's Subcontractor(s) that accept batteries and petroleum-based products shall name the City of Des Moines and its officials, officers, agents, and employees as an additional named insured and shall provide a certificate of insurance and policy endorsements to the City. The

Contractor's Subcontractor(s) are required to carry the following insurance coverage sufficient to satisfy the following minimums:

Pollution Legal Liability Insurance:

\$1,000,000 per occurrence.

\$2,000,000 aggregate.

The Contractor's general liability policies shall name the City of Des Moines and its officials, officers, agents and employees as an additional named insured. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete certified copies of all required insurance policies at any time. A thirty (30) days advance written notice to the City is required in the event the insurer for the Contractor or the insurer for any subcontractor to the Contractor cancels or modifies the policy. Certificates of coverage, as set forth in this section shall be delivered to the City within fifteen (15) days of execution of this Agreement.

7. Performance Standards. Contractor's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance, and consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. Modification. No change, alteration, modification, or addition to this Agreement will be effective unless it is in writing and properly signed by both parties.

9. Independent Contractor Status. The Contractor is considered an independent Contractor who shall at all times perform its duties and responsibilities and carry out all services as an independent Contractor and shall never represent or construe its status to be that of an agent or employee of the City, nor shall the Contractor be eligible for any employee benefits.

The Contractor acknowledges that all mandatory deductions, charges and taxes imposed by any and all federal, state, and local laws and regulations shall be the sole responsibility of the Contractor. The Contractor represents and warrants that all such deductions, charges and taxes imposed by law and/or regulations upon the Contractor are, and will remain, current. If the City is assessed, liable or responsible in any manner for those deductions, charges or taxes, the Contractor agrees to indemnify and hold the City harmless from those costs, including attorney's fees.

The Contractor shall provide, at its sole expense, all materials, manpower, equipment and utility services, and other necessities to perform fully and timely its duties and services under this Agreement, unless otherwise specified in writing.

The Contractor, at its sole expense, shall obtain and keep in force any and all necessary licenses, permits, and tax certificates. The Contractor shall maintain all necessary insurance as

specified in Section 6 to protect Contractor from losses and claims which may arise out of or result from performance of duties related to this Agreement, including Worker's Compensation and general liability, and others as may be required in writing.

The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations, and shall assist the City in complying with all conditions concerning grants and other federal assistance under the laws of the City of Des Moines, King County, the State of Washington, and the United States of America. Contractor shall obtain a business license under Des Moines Municipal Code § 5.04.020 and shall pay business and occupation taxes as required by Des Moines Municipal Code § 3.84.060.

10. Business Licenses. The Contractor shall obtain, at its own expense, all permits and licenses required by the City or any other governmental authority and maintain the same in full force and effect during the terms of this Agreement.

13. Assignment. The Contractor shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Agreement or for any of the compensation due it hereunder, in whole or in part, except as authorized in writing by the City.

12. Indemnification. The Contractor and its Subcontractors shall defend, indemnify and hold the City, King County, City of Seattle or the State of Washington (when any funds for this Contract are provided by King County, City of Seattle or the State of Washington) its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

The Contractor shall protect, indemnify and save harmless the City and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to the Contractor of work, services, materials, and/or supplies by Contractor employees or other suppliers in connection with or in support of the performance of this Contract.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

13. Amendments and Termination. Amendments to this agreement must be in writing and be signed by authorized representatives of each party hereto. Either party may terminate this agreement with thirty (30) days' written notice provided to the individuals set forth in Section 21 below. Upon receipt of the notice of termination, no additional services shall be performed beyond the fifth day following the notice unless the parties agree in writing to a later stop work

date. The City shall only be responsible for the payment of services as provided under the terms of this Contract.

14. Alternative Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding breach, termination or invalidity thereof, shall be resolved by arbitration in Seattle, Washington in accordance with the American Arbitration Association, or Judicial Dispute Resolution which rules are deemed to be incorporated by reference into this clause. The maximum number of arbitrators shall be three in any claim, suit, action or other proceeding relating in any way to this agreement or any claims arising out of this agreement, except as otherwise ordered. All arbitration fees shall be borne equally by the parties and the parties shall pay their own attorneys' fees and costs.

15. Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method is arbitration as set forth above, in the event any claim, dispute or action arising from or relating to this agreement cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. The prevailing party in any such action before the courts shall be entitled to recover its costs of suit and reasonable attorneys' fees.

16 Unenforceable Clauses: If one or more of the clauses of this Agreement is found to be unenforceable, illegal or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

17. Severability. Should any term, provision, condition or other portion of this Agreement or its application be held to be inoperative, invalid or unenforceable, and the remainder of this Agreement still fulfills its purposes, the balance of this Agreement or its application or other circumstances shall not be affected thereby and shall continue in full force and effect.

18. Waiver. The waiver by either party of any breach of any terms, conditions, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

19. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

20. Time of Essence. The Contractor acknowledges the importance to the City of the City's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule as attached hereto. The City understands, however, that the Contractor's performance must be governed by sound professional practices.

21. Notices. Any Notice required or permitted to be given under this Agreement shall be deemed sufficient if given in writing and deposited into any post office as first-class, postage prepaid, certified mail, return receipt requested, and addressed to:

City of Des Moines:

Technical Matters

Laura Techico, Senior Planner
 21630 13th Ave. S., Suite D
 Des Moines, WA 98198
 Phone: 206-870-6595
 Fax: 206-870-6540
 Email: ltechico@desmoineswa.gov

Company:

Contractual Matters

Paul Devine
 4715 SW Walker St
 Seattle, WA 98116
 Phone: 206-938-8262
 Email: pauldevine@msn.com

Technical Matters

Paul Devine, same

22. Concurrent Originals. This Agreement may be signed in counterpart originals.

23. Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

24. Entire Agreement: This Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may be modified only by a writing signed by both parties. Each party hereby acknowledges receipt of a copy of this Agreement executed by both parties.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

CITY OF DES MOINES

CONTRACTOR

By _____
 Anthony A. Piasecki
 City Manager
 City of Des Moines

By _____
 Paul M. Devine
 General Manager
 Olympic Environmental Resources

Dated _____

Dated _____

Agreement Between the City of Des Moines and Olympic Environmental Resources
2016-2017 Des Moines Recycling Program
Page 7

APPROVED AS TO FORM:

Pat Bosmans
City Attorney

Dated _____

Attachment A

Des Moines-OER 2016-17 Contract

TASK ONE – Residential Recycling Collection Events

In 2016 and 2017, Olympic Environmental Resources (OER) will implement one spring and one fall Residential Recycling Collection Event. A total of four events will be implemented. Event hours will be 9:00 a.m. to 3:00 p.m. The parking lot at the Des Moines Marina or other suitable location will be the site of the events. Materials collected at the events will be bulky wood; CFC appliances*; ferrous and non-ferrous metals*; reusable clothing; reusable household goods; tires*; petroleum-based products and oil filters; antifreeze; lead acid batteries; porcelain toilets and sinks*; concrete, asphalt, rock, and brick; cardboard; Styrofoam; mattresses*; propane tanks*; cellular phones; electronic and computer equipment*; and TV sets*. Computer monitors and TV sets will be collected at the direction of the City.

Schedule – 2016 and 2017 – Spring Event – March, April, or May; Fall Event – October, November.

Personnel/Subcontractors – Olympic Environmental Resources staff, A-Plus Removal and Recycle, Ingenium, Inc., All Battery Sales and Service, Tire Disposal and Recycling, Northwest Center, Seattle Goodwill, Styro Recycle, Total Reclaim, Inc., Ecolights Northwest, and other vendors as well as flyer production and supply and rental vendors.

Cost: \$72,849.22 (with estimated 2 year DOE CPG and KC Health Department funding)

Estimated Costs	2016	2017	TOTAL
Management/Staffing/Admin/Graphics	\$15,336.61	\$15,336.61	\$30,673.22
Event Staff Costs	\$5,738.00	\$5,738.00	\$11,476.00
Collection/Hauling Costs			
Wood Waste	\$800.00	\$800.00	\$1,600.00
Scrap Metal, Appliances, etc.	\$3,000.00	\$3,000.00	\$6,000.00
Concrete	\$1,000.00	\$1,000.00	\$2,000.00
Tires**	\$0.00	\$0.00	\$0.00
Used Oil/Antifreeze	\$2,200.00	\$2,200.00	\$4,400.00
Batteries	\$800.00	\$800.00	\$1,600.00
Styrofoam	\$700.00	\$700.00	\$1,400.00
Printing/Mailing*	\$4,900.00	\$4,900.00	\$9,800.00
Event Supplies	\$700.00	\$700.00	\$1,400.00
Other Expenses - rentals, etc	\$1,250.00	\$1,250.00	\$2,500.00
TOTALS	\$36,424.61	\$36,424.61	\$72,849.22

*Event flyers will be sent to all Des Moines single-family households.

**Tire fees will be billed to the Department of Ecology (DOE) Tire Amnesty Fund. If DOE funds are not available, King County Solid Waste Division funds will be used.

TASK TWO – Business Recycling Collection Events

In 2016 and 2017 (depending on funding), OER will implement one summer Business Recycling Collection Event. A total of two events will be implemented in conjunction with the cities of Burien and City of Normandy Park. Event hours will be 10:00 a.m. to 2:00 p.m. The parking lot at the WA Criminal Justice Training Center will be the location of the events. Materials collected at the event will be clean scrap wood/pallets; electronic/computer equipment; computer monitors*; office recyclables/cardboard; toner cartridges; cellular phones; plastics; and TV sets*.

Schedule – 2016 event – July/August 2016. 2017 event – July/August 2017.

Personnel/Subcontractors – Olympic Environmental Resources staff, A-Plus Removal and Recycle, Total Reclaim, Inc., as well as flyer production and supply and rental vendors.

Cost: \$8,000.00

Estimated Costs	2016	2017	Total
Administration and Supplies	\$150.00	\$150.00	\$300.00
Consultant and Contractor Services	\$3,600.00	\$3,600.00	\$7,200.00
Flyer - Printing and Distribution Costs	\$250.00	\$250.00	\$500.00
Total	\$4,000.00	\$4,000.00	\$8,000.00

*The consultant/subcontractors will charge a user fee to offset the cost of collecting and recycling these items.

TASK THREE – Purchase Products Made From Recycled Materials

In order to support the recycling industry and close the recycling loop, OER will assist the City with the purchase products made from recycled materials. Doing so will support recycling collection programs and help ensure the success of the recycling industry. The City will support recycling programs by purchasing items such as recycle content rain barrels for distribution and recycled benches for City parks and open space areas. The City may install the recycled content benches in highly visible areas with a notice that the benches are made from recycled content. The City may also distribute rain barrels or compost bins at City Recycling Collection Events. OER will assist the City with City purchases as needed, rain barrel/compost bin sale/s, and grant reimbursement of project costs.

Schedule – 2016 and 2017.

Cost: \$7,546.78

Estimated Costs	2016	2017	Total
Administration and Supplies	\$150.00	\$150.00	\$300.00
Consultant and Contractor Services	\$400.00	\$400.00	\$800.00
Purchase Recycled Products	\$3,223.39	\$3,223.39	\$6,446.78
TOTAL	\$3,773.39	\$3,773.39	\$7,546.78

Total Cost: \$88,396.00

2016/17 Des Moines Recycling Grants

NOTE: The City of Des Moines Administration cost is included in the grant totals.

2016 King County Solid Waste Division WRR Grant	\$21,037.00
2017 King County Solid Waste Division WRR Grant - estimate	\$22,000.00
Subtotal	\$43,037.00
2016 King County Health Department Grant	\$11,730.30
2017 King County Health Department Grant - estimate	\$11,900.00
Subtotal	\$23,630.30
2016/17 WA State Dept of Ecology CPG Grant – through 6/30/17	\$42,632.00
2017 WA State Dept of Ecology CPG Grant – 7/1/17-12/31/17 - estimate	\$14,500.00
Subtotal	\$57,132.00
Total*	\$123,799.30

* The project budget is estimated based on grant funds both available and expected. In the event that expected grant funds don't come available, the project budget will be reduced accordingly.

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Draft

City of Des Moines

Communications

Plan

2016

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Introduction

This Communications Plan is in response to the Council's 2015 and 2016 Vision and Mission Statements specific goal to improve and enhance community communications. The overall purpose of the Plan is to improve relationships with the general community through more effective communication and education on community issues. The plan focuses on the development of goals and strategies to more effectively engage the community and bridge the communications gap between citizens and government.

In an effort to move forward in the development of a communications strategy for the Council, the City Manager appointed a staff committee to develop and implement a written, measurable communications plan. The committee identified goals and strategies to effectively communicate with constituencies and community members, help set priorities, provide focus and direction to those involved in day-to-day operations, and improve the overall effectiveness of the City in meeting the needs of its citizens. The Plan encompasses written, spoken and electronic interactions with the community and provides effective tools for communication.

The components of this Plan include:

1. Determining Goals
2. Identifying Audiences
3. Developing Messages
4. Selecting Communication Channels
5. Strategies
6. Create an evaluation/feedback process to determine the Plan's effectiveness

Goals:

Based on City Council's discussions at planning retreats and the first presentation of this plan, the following goals/outcomes were developed for the Communication Plan:

- Establish methods for Proactive Communications
- Establish methods for Reactive Communications
- Establish an Interactive Process for the Public to communicate with the City
- Increased community understanding and knowledge of the City, its services and fiscal situation
- Increased support for City government and services as a result of positive community interactions with the City
- Increased trust from the community as a result of positive relationships and effective communications

Audiences:

The Committee identified the following key audiences in the community (in alphabetical

order):

- Citizens at large
- City commissions and committees
- City staff
- Community organizations
- Critics of City government
- Developers
- Environmental groups
- Future/potential business owners
- Future employees
- Media (print, radio and television, internet)
- Other governmental agencies (local, county, state)
- Potential funders
- Property owners (residential and business)
- Renters
- Seniors
- Tourists
- Users of City services

Messages and Communications Channels:

The Committee conducted an internal assessment of current communications activities in each department to determine which communications channels were being used and what messages/information were being conveyed and identified the following:

CITY CLERK

- City web page
- Meeting information (Council agendas, packets, minutes)
- Posting of Ordinances
- Posting of Resolutions
- DMMC Code updates
- Public notices (published in the Seattle Times and posted at Des Moines/Woodmont Library, City Hall, Marina and Redondo)
- Direct communication (phone, in person, in community)
- City Facebook page
- Council meetings

COURT/PROBATION

- TV Screen in Lobby

- Contact Info
- Daily Hearings
- Payment Information
- Printed Resources
 - Treatment Provider Information
 - Community Resource Guides
 - Bus Schedules
 - 3rd Party Correctional Service Providers
 - Payment Information
- Outreach to local schools
 - St. Philomena
 - Field Trips
 - Mt. Rainier High School (in the works)
 - Working on mock court/teen court
- Community Involvement
 - Donating time and resources to organizations that impact the community
 - Genesis Project
 - Aids prostitution survivors
 - OPS
 - Aids prostitution survivors and johns
- Bulletin boards (in the works)
 - Information for DV Survivors
 - Health Care
 - Criminal Justice Education

ENGINEERING

- Project web pages.
- Regulatory noticing of activities and projects (Environmental permitting etc.).
- Stakeholder updates (Grant agencies, funding partners, oversight bodies etc).
- Public open houses, surveys, City Council briefings.
- 'Fix It' Forms for public service requests.
- Direct communication (phone, email etc).
- City capital strategic planning documents (CIP, TIP etc).

FINANCE

- Post the following documents to the city website:
 - City's annual Operating & capital budget
 - audited Financial Statements from the Washington State Auditor's Office
 - Accountability Audit Report from the Washington State Auditor's Office

- Answer questions re: (mostly) B & O tax; senior discounts for cable, solid waste, & SWM fees

PARKS, RECREATION AND SENIOR SERVICES

The divisions within the department are as follows: Facilities (F), Recreation (R), Senior Center (S), Administration (A), and Arts Commission (AC)

Social Media

- Facebook (F) (AC) (R) (S)
 - <https://www.facebook.com/BPEventcenter>
 - <https://www.facebook.com/desmoinesartscommission>
 - <https://www.facebook.com/desmoinesparksandrecreation>
 - <https://www.facebook.com/desmoineslegacyfoundation>
- Pinterest(F)
 - www.pintrist/beachparkeventcenter.com
- Twitter (F) (R)
 - <https://www.pintrist.com/dmbeachpark.com>
 - <https://twitter.com/desmoinesparks1>
- Instagram (F)
 - Follow DesMoinesBeachPark
- News releases in print and online (AC) (S) (A)
- BeachParkEventCenter.com (F)
- DesMoinesFoodTruckPOD.com(Under Construction)
- DesMoinesMarina.com (F)
- Eventective.com (F)
- theknot.com (F)
- SouthSoundWeddings.com (F)
- BridesClub.com (F)
- SeattleSouthSide.com (F) (AC)
- DesMoinesArtsCommission.com (AC) (A)
- Banquetandevents.com (F)
- 360.com (F)
- cvent.com (F)
- 4Culture.org (AC)
- SoCoCulture.org (AC)
- E-Mail (F) (R) (S) (A)
- Waterland Blog (AC) (R) (S) (A)
- mywedding.com (F)
- Tothebeachwa.com
- City Website (S) (R) (A)
- Brown Paper Tickets (AC) (A)
- Normandy Park website (S)
- Public surveys (S) (AC) (A) (R)

- Rec & Roll Constant Contact (F) (AC) (R) (S) (A)
- Direct emails (R) (S) (A)
- Peach Jar (R) (A)
- Association of Washington Cities (A)
- Senior Services web page: www.seniorservices.org (S)
- Catholic Community Services web page: www.ccsww.org (S)
- Des Moines Legacy Foundation web page: desmoineslegacy.org (S) (R) (AC)

Print Media/Advertising

- Rec'n Roll magazine (F) (AC) (R) (S) (A)
- Meeting agendas and minutes (AC) (S) (A)
- Senior Services Newsletter (AC) (S)
- News releases in print and online (AC) (R) (S) (A)
- NP City Scene Magazine (AC) (S)
- Public surveys (AC) (R) (S) (A)
- Banquet and Events Guide (F)
- South Sound Wedding Magazine (F)
- Sales Packets (F)
- Senior Services quarterly newsletter (S)
- Auction Pamphlets (AC) (S)
- Thunderword (AC) (F) (S)
- Community Event Calendars (R) (S)
- Craigslist (R) (S) (A)
- Indeed.com (R) (A)
- Collegestudents4hire.com (R)
- Camp KHAOS Weekly Newsletter (R)

Events

- Farmers Market (AC) (R) (S)
- School events (R)
- Summer Concerts (AC) (F) (S)
- Brides Club Trade Show - 3 per year (F)
- Seattle Wedding Show (F)
- B&E Show (F)
- MyWeddingMyWay Show (F)
- Seattle Boat Show (F)
- Wine Festival (F)
- Brews and Blues (F) (AC)
- Waterland Festival (AC) (R)
- National Night Out (AC) (R)
- Coaches/volunteer meetings (R)
- Retirement Community Fairs (S)
- Community College Fairs (S) (R)
- Places of Worship Health Fairs (S)

Signs

- Yard signs (AC) (R) (A)
- Reader board announcements (AC) (F) (R) (S) (A)
- Plaques in parks, buildings, businesses (S) (A)
- Flyers (AC) (R) (S)
- Program and Event Posters (AC) (R)
- Banners (AC) (R) (S) (A)

Tools

- Walkie Talkies (F) (R)
- Cell Calls
- Business cards - (F) (AC) (R) (A)
- Brochure Racks
- Volunteers/distribution of flyers around community s(A) (R) (S)
- Public Service Announcements (PSA's)

Other

- Word of Mouth – Face to Face (A) (R)

Agencies we are in Communication with

- Arts Commission
- Des Moines Legacy Foundation
- Destination Des Moines
- Lodging Tax Advisory Committee
- Human Services Advisory Committee
- Senior Services Advisory Committee
- Seattle Southside Visitors Services
- MPI - Meeting Planners International
- NACE - National Association of Catering Executives
- SGMP - Society of Government Meeting Planners
- WRPA - Washington Recreation and Parks
- WSASC- Washington State Association of Senior Centers
- Highline School District
- Des Moines Waterfront Farmers Market
- Federal Way School District
- Highline College
- Highline Special Needs Parent Teacher Association
- Des Moines Food Bank
- Senior Services
- Des Moines Pool
- Event Center

PLANNING

- Website
- City Currents
- Public Meetings/Open Houses
- Farmers' Market
- Public Notices/Seattle Times
- Public Assistance Memos

POLICE DEPARTMENT

Twitter Accounts

Main PD Account

PIO Account

Chief Delgado Account

Facebook Accounts

Main PD Facebook Page

Animal Control and Care Page

Main PD Facebook Profile

MACO Magnuson Facebook Profile

CSO Seaberry Facebook Profile (To interact with independently run Neighborhood

CSO Batterman Facebook Profile

Facebook Business Watch Group

Programs

Business Watch

Block Watch

Block Watch Quarterly Newsletters

Coffee with A Cop

National Night Out

National Walk to School Day

Tip a Cop

Shop with a Cop

Chief for a Day

Teddy Bear Patrol

Shred it Events

Drug Take Back Events

Take me Home

Doggy Walker Watch

Sex Offender Notifications

Farmer's Market Booth
Camp Khaos Officer Visits

Documents

Admin

Annual Report
Monthly City Manager's Report Contribution
Monthly Department Statistical Report
Christmas Toys Drive for HCSATS Flyer
Alarm Registration Form
Alarm Brochure
Alarm Response Door Tag
Alarm Renewal Letters
Landlord Tenant Laws
Citizen Complaint Form
How to vacate or seal a record
Watch Brochure (WSP Background Checks)
Domestic Violence Resource Guide
Crime Victims Compensation Brochure
Identity Theft Brochure
DOL Intermittent License Brochure
Emergency Preparedness Brochure
Boaters Education Booklet
Des Moines Community Services Directory
Car Seat/Booster Seat Booklet
Firearm Safety Pamphlet
Taking Charge Identity Theft Book
Pet License Renewal Letters
Public Disclosure Request Form
Civilian Ride Along Application
Concealed Pistol License Application
Police Department Volunteer Application

SRO

Teen Link Booklet
Adolescents Substance Use Treatment Flyer
NAVOS Flyer
Consejo Flyer
Changes Parent Support Network Flyer
Youth at Risk Petition and Orientation Worksheet
Get Smart About Drugs Teen Prescription Abuse

Animal Control

Animal License Form
Animal Control Complaint Form

Barking Dog Complaint Packet
Animal Control Laws Brochure

External Websites

Crime Reports Online (Interactive Crime Map)

Cop Logic (Online Crime Reporting)

Strategies:

The following strategies are being recommended by the committee to meet the goals of the Communications Plan, while taking into consideration the current organizational structure of the City and are designed to be implemented within the constraints of the City's budget and financial resources.

1. Establish an internal staff Communications Committee with representation from each department, to implement the Communication Plan including:
 - a. Establish internal policies, including a social media policy
 - b. Ensure that all communications from the City are relevant, accurate and timely
 - c. Coordinate department efforts
 - d. Coordinate website enhancements
 - e. Monitor and evaluate the effectiveness of the Communications Plan
2. Create a survey asking the public how they want to interact/communicate with the City. Provide as many options as possible for the public to complete it, including publishing it in the next "City Currents", posting it on our website and Facebook pages, bringing it to community meetings, distributing it to local businesses for them to provide to their customers, etc.
3. Establish effective working partnerships with news media and key community organizations to ensure their assistance in the implementation of the Communications Plan and strategies.
 - a. Media:
 - i. Waterland Blog
 - ii. Des Moines News/Highline Times
 - iii. TV outlets: KING 5, KOMO 4, KIRO 7, and FOX 13
 - iv. Seattle Times
 - b. Community Organizations:
 - i. Destination Des Moines
 - ii. Marina Association
 - iii. Homeowners Associations
 - iv. Block Watches
 - v. Local faith-based organizations

4. Publish a column in each edition of "City Currents" highlighting current and future projects, upcoming issues, status reports, department activities.
5. Create consistent public contact messages to be incorporated by all departments in phone, voicemail and over the counter communications.
6. Celebrate positive aspects of City operations with employee, commission, and committee service recognition by expanding on the quarterly employee recognition program and the City Council's "The Spirit of Des Moines Awards Program."
7. Update/redesign the City's website in order to make it more intuitive to use and easier for users to find the information they are seeking. In particular add, modify, or enhance the following features:
 - a. An interactive map of the City that provides information by neighborhood:
 - i. Development/building activities
 - ii. Road/utility projects
 - iii. Special events
 - iv. Crime statistics
 - v. Garbage collection schedules and routes
 - vi. Snow plowing routes
 - b. Public records requests
 - c. Reporting of items/issues that need to be addressed ("Fix It")
 - d. Links to other governmental websites that provide information relevant to Des Moines, for example the County Assessor, South King Fire and Rescues, and the utility districts that serve Des Moines
 - e. On-line permitting, business licenses, and animal licensing
8. Create an informational/alert system that allows people to choose to be sent text messages, tweets, emails, and/or voice mails that provide information or alerts on issues or subjects about which they want to be informed.
9. Develop a series of educational presentations designed to provide information about the local government in the state of Washington in general and the City of Des Moines in particular. These presentations will be video recorded, made available on the City's website, and periodically broadcast on Channel 21.
10. Establish a Citizen's Advisory Council designed to provide residents and business owners an opportunity to learn more about the activities, issues, and operations of the City and to offer input to the City Council with regards to these activities, issues and operations.
11. Hold community meetings at least quarterly at which the City provides an opportunity for the public to interact with Councilmembers and staff. Potential meeting structure includes:

- a. The City provides a short presentation on one or two subjects followed by a question and answer period.
 - b. An “open mike” style meeting where the public is given an opportunity to bring questions and comments to the City and have a dialogue with Councilmembers and staff on these questions and comments.
 - c. Each department sets up a table/booth and provides written material regarding departmental operations and projects. Utility districts, South King Fire and Rescue, Recology, etc, would be invited to attend and provide information as well.
 - d. A combination of the above.
12. Make more use of social media, focusing on Facebook and Twitter. Devise policies that govern who posts/tweets on behalf of the City and what is post and tweeted. The use of social media should be carefully constructed in order to not create an expectation on the part of the public that these accounts are monitored 24 hours a day, 7 days a week and that comments and tweets by the public will be responded to or followed up on immediately.
 13. Regularly be present at scheduled public events, such as the Farmers Market, to provide an opportunity for the public to interact with Councilmembers and City staff.
 14. Make more use of Channel 21. Broadcast the educational videos periodically. Create video content on City operations/issues, obtain relevant government-related content to broadcast, and consider allowing (for a fee or for free) commercial content to be broadcast.
 15. Create an internal newsletter to keep employees informed of City activities, events, initiatives, projects. Publish the newsletter at least quarterly.
 16. Create an annual “State of City” address/letter/column for presentation at a Council meeting and distribution to the entire City.

Conclusion:

This communications plan was developed to provide structure and strategies to achieve the communications goals adopted by the City Council including:

- Increased community understanding and knowledge of the City, its services and fiscal situation
- Increased support for City government and services as a result of positive community interactions with the City
- Increased trust from the community as a result of positive relationships and effective communications

The Communication Plan is based on the following guiding principles for all internal and external communications efforts conducted by the City in its day-to-day operations and its focus on providing transparency and consistent community information, outreach and engagement.

- Provide relevant, accurate and timely information to citizens, businesses and organizations
- Increase community knowledge of City operations
- Ensure that information is available to all citizens by utilizing a variety of communication channels and methods

Its implementation requires a dedicated, concerted effort on the part of the City Council and all the employees of the City to ensure that these efforts result in informed, knowledgeable citizens who are engaged and participating in the community.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Government 101 – The Council –
Manager Form of Government

ATTACHMENTS:

1. Government 101 – The Council – Manager form of Government
2. Des Moines City Council Rules of Procedure – Legal Authority
3. New Attorney General Opinion on Binding Future Local Government Legislative Bodies

FOR AGENDA OF: 1/7/2015

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: 12/31/2015

CLEARANCES:

- [X] Legal PB
 [] Finance N/A
 [] Marina N/A
 [] Parks, Recreation & Senior Services N/A
 [] Planning, Building & Public Works N/A
 [] Police N/A
 [] Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation

The purpose of this Agenda Item is to provide Council and the public an introduction to the nature of the Council – Manager form of Government and what and where we find the authority to act.

The Powerpoint and the *Des Moines City Council Rules of Procedure – Legal Authority* are intended as a resource for Council and the public.

Our intent is to follow this discussion with a similar discussion on Public Records and the Open Public Meetings Act. If there are there are other issues the Council would like more information on please ask and we will address them at the Public Records and the Open Public Meetings Act next week.

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GOVERNMENT 101

The Council-Manager

Form of Government

Presented by Pat Bosmans

City Attorney

1

The Des Moines Municipal Code

- Generally cities look to four sources of law for guidance. The Revised Code of Washington (RCW) is the state law and the intent of statutes are often expressed in the Washington Administrative Code (WAC).
- The Des Moines Municipal Code (DMMC) is the laws for the our City and those ordinances have the same effect as state statutes – with some exception.
- The third area is the Council's own Rules of Procedure (Rules)
- The fourth area “case law” – the interpretation of law as pronounced by the courts of appeal and the state or U.S. Supreme Court.

Form of Government

- DMMC 1.12.010
- There is adopted for the city the classification of non-chartered code city, governed by the provisions of chapters [35A.02](#) and [35A.13](#) RCW.

Powers of the City Council

- **RCW 35A.11.010**
- **Rights, powers, and privileges.**
 - Each city governed under this optional municipal code, whether charter or noncharter, shall be entitled "City of " (naming it), and by such name shall have perpetual succession; may sue and be sued in all courts and proceedings; use a corporate seal approved by its legislative body; and, by and through its legislative body, such municipality may contract and be contracted with; may purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease, control, convey or otherwise dispose of it for the common benefit.

RCW 35A.11.020

Powers vested in legislative bodies of noncharter and charter code cities.

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people...

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

RCW 35A.11.020 (continued).

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter [41.56](#) RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

RCW 35A.11.020 (continued).

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.

City Manager

- DMMC 2.04.010 – Duties
- The powers and duties of the city manager, appointed by the city council during such period that the council-manager plan of government is in effect in the city, shall be coextensive with those powers and duties prescribed by the laws of the state now in force or as may be subsequently amended.

City Manager

- RULE 11. The City Manager, as the chief executive officer and head of the administrative branch of City government or his/her designee, shall attend all meetings of the City Council, unless excused by the Presiding Officer or Council. The City Manager shall be responsible to the Council for the proper administration of all affairs of the City. The City Manager shall recommend for adoption by the Council such measures as he/she may deem necessary or expedient; prepare and submit to the Council such reports as may be required by that body or as the City Manager deems it advisable to submit; keep the Council fully advised as to the business of the City; and shall take part in the Council's discussion on all matters concerning the welfare of the City. In the event that both the City Manager and Assistant City Manager are unable to attend a Council meeting, the City Manager or Assistant City Manager shall appoint a key staff member to attend the meeting as the representative of City Administration. ⁹

Chapter 2.08 DMMC

- DMMC 2.08.010 – Statutory Offices.
- Pursuant to chapter [35A.13](#) RCW the statutory appointive offices of chief of police, city attorney, and city clerk are established.
- DMMC 2.08.050 – Departments, divisions, offices, employment:
 - The city manager is authorized to establish such departments, divisions, offices, and employments as the city manager may find necessary or advisable to properly manage the business and affairs of the city, subject to such direction as the city council may wish to exercise through the budgetary process.

City Manager – Powers and duties

RCW 35A.13.080

The powers and duties of the city manager shall be:

- (1) To have general supervision over the administrative affairs of the code city;
- (2) To appoint and remove at any time all department heads, officers, and employees of the code city, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of a city planning commission, and other advisory citizens' committees, commissions, and boards advisory to the city council: PROVIDED FURTHER, That if the municipal judge of the code city is appointed, such appointment shall be made by the city manager subject to confirmation by the council, for a four year term. The council may cause an audit to be made of any department or office of the code city government and may select the persons to make it, without the advice or consent of the city manager;
- (3) To attend all meetings of the council at which his or her attendance may be required by that body;
- (4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;
- (5) To recommend for adoption by the council such measures as he or she may deem necessary or expedient;
- (6) To prepare and submit to the council such reports as may be required by that body or as he or she may deem it advisable to submit;
- (7) To keep the council fully advised of the financial condition of the code city and its future needs;
- (8) To prepare and submit to the council a proposed budget for the fiscal year, as required by chapter [35A.33](#) RCW, and to be responsible for its administration upon adoption;
- (9) To perform such other duties as the council may determine by ordinance or resolution.

City manager—Interference by Councilmembers.

- RCW 35A.13.120

- City manager—Interference by councilmembers.

- Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his or her removal from, office by the city manager or any of his or her subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately.

The provisions of this section do not prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs.

- See also Council Rule 17

Council meetings.

• RCW 35A.12.110 [See also RCW 35A.13.170, 42.30.070, DMMC 4.04.010 and Council Rules 1-3, and 8]

• Council meetings.

• The city council and mayor shall meet regularly, at least once a month, at a place and at such times as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. *Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting.* All actions that have heretofore been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. *All council meetings shall be open to the public except as permitted by chapter 42.30 RCW.* No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW 42.30.080 as now or hereafter amended. *Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected by a majority of the councilmembers at such meeting.* Appointment of a councilmember to preside over the meeting shall not in any way abridge his or her right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record.

Council—Quorum—Rules— Voting.

- RCW 35A.12.120: [See also RCW 35A.13.170 and Council Rule 6]
- At all meetings of the council a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. *The council shall determine its own rules and order of business, and may establish rules for the conduct of council meetings and the maintenance of order. At the desire of any member, any question shall be voted upon by roll call and the ayes and nays shall be recorded in the journal.*
- *The passage of any ordinance, grant or revocation of franchise or license, and any resolution for the payment of money shall require the affirmative vote of at least a majority of the whole membership of the council.*
- (See also DM City Council Rules of Procedure 6)

Voting

- RULE 22. The votes during all meetings of the Council shall be transacted as follows:
- (a) Unless otherwise provided for by statute, ordinance, or resolution, all votes shall be taken by voice, except that *at the request of any Councilmember, a roll call vote shall be taken by the Clerk. The order of the roll call vote shall be determined by the Presiding Officer.*
- (b) In case of a tie in votes on any proposal, *the proposal shall be considered lost.*
- (c) Every member who was in the Council chambers when the question was put, shall give their vote unless the Councilmember excuses himself or herself in accordance with Rule 15. *If any unexcused Councilmember refuses to vote "aye" or "nay", their vote shall be counted as a "nay" vote.*
- (d) *The passage of any ordinance, grant or revocation of franchise or license, any resolution for the payment of money, any approval of warrants, and any resolution for the removal of the City Manager shall require the affirmative vote of at least a majority of the whole membership of the Council.*
- (e) The passage of any public emergency ordinance (an ordinance that takes effect immediately), expenditures for any calamity or violence of nature or riot or insurrection or war, and provisions for a lesser emergency such as a budget amendment shall require the affirmative vote of at least a majority plus one of the whole membership of the Council.
- (f) The passage of any motion or resolution not subject to the provisions of RCW, DMMC, or this Resolution as amended, shall require the affirmative vote of at least a majority of the membership of the Council who are present and eligible to vote.

Code of Ethics

- State law, codified at RCW 42.23.070, *provides a code of ethics for county, city, and special purpose district officials. The code of ethics has four provisions, as follows:*
- 1. No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself or others;
- 2. No municipal officer may, directly or indirectly, give or receive any compensation, gift, gratuity, or reward from any source, except the employing municipality, for a matter connected with or related to the officer's services unless otherwise provided by law;

Code of Ethics, continued

- 3. No municipal officer may accept employment or engage in business that the officer might reasonably expect would require him or her to disclose confidential information acquired by reason of his or her official position;
- 4. No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer use such information for his or her personal gain.

• This last provision is particularly significant because it potentially applies to disclosure of information learned by reason of attendance at an executive session. Clearly, executive sessions are meant to be confidential, but the Open Public Meetings Act does not address this issue. Arguably, *RCW 42.23.070(4) is applicable to information received in an executive session. See the section of this booklet on Open Public Meetings*

Q & A

- Question: Does the statute prohibit a local official from accepting gifts of minimal intrinsic value from someone who does or may seek to do business with his or her office?
- Answer: *Many officials, either because of the broad language of that statute or on principle, refuse to accept even a business lunch under those circumstances. Others regard items of only token or trivial value to be de minimus; i.e., of insufficient amount to cause legal concern.*

Q & A cont'd

- Question: May a city accept a valuable gift from a foreign dignitary in connection with a visit?
- Answer: *A common policy is to allow the acceptance of such a gift on behalf of the jurisdiction, but not for personal use. Arguably, under the wording of RCW 42.23.070(2), a jurisdiction may adopt a formal policy by local "law" governing such occasions, allowing exceptions in appropriate cases involving essentially personal items, subject to disclosure and other procedures to guard against abuse.*

More Q & A

- Question: May a local official permit an individual or company to pay his or her expenses for travel to view a site or plant in connection with business related to the official's office?
- Answer: *The statute can be construed to prevent an official from being "compensated" in that manner. On the other hand, payment of expenses for a business trip arguably does not constitute compensation. Prudence suggests that if the trip is determined to be meritorious (and assuming that there is no potential violation of the appearance of fairness doctrine, described in a later chapter), the city, county, or district itself should pay the expenses and any payment or reimbursement from a private source should be made to the jurisdiction.*

Appearance of Fairness in Quasi-judicial Hearings

- The Appearance of Fairness Doctrine requires that for justice. When the Council is acting in its quasi-judicial capacity the Doctrine applies. These hearings must not only be fair, they must also be free from even the appearance of unfairness. The cases usually involve land use matters, but the Doctrine has been applied to civil service and other hearings as well.
- See also Council Rule 15 for a more extensive discussion.

Do you want something on an Agenda?

- RULE 9. This rule specifies the method of preparation of a Council meeting agenda for meetings other than study sessions. The Presiding Officer, three (3) Councilmembers, or the City Manager may introduce a new item to the preliminary agenda. The Presiding Officer shall have the option of deleting any item, other than those items introduced by three (3) Councilmembers, from the preliminary agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda for a subsequent Council meeting. The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare a preliminary agenda for the Council. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Regular Council Meeting, except in case of an emergency.

Motions – Rule 19

- All items of business placed before the Council that require the expenditure of Council and/or administration resources, shall be in the form of an affirmative motion.
- (a) Rule 19(a) – Speaking to Motion. No member of the Council shall speak more than twice on the same motion except by consent of the majority of the Council Members present at the time the motion is before the Council. After the motion is put and before the next item is read, a member shall be able to speak briefly to the previous motion. Questions and answers by members of the Council are not considered as speaking to the motion.
- (b) Rule 19(b) – Time Limit. Each member of the Council shall speak for no more than ten (10) minutes unless granted an exemption by the majority of the Council.
- (c) Rule 19(c) – Donation of Time. No member of Council may give his allotted time to another member unless there is approval of the majority of the Council.
- *The City Attorney's Office will prepare motions for any item on a Council Agenda that you request.*

Ordinances

- **RULE 26.** The procedure for ordinances is as follows:
- (a) All ordinances shall have two separate readings. At each reading the title of an ordinance shall in all cases be read prior to its passage; provided that should a Councilmember request that the entire ordinance or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.
- (b) The provision requiring two separate readings of an ordinance may be temporarily suspended at any meeting of the Council by a majority vote of all members present.
- (c) If a Motion to pass an ordinance to a second reading fails, the ordinance shall be considered lost.

Codified or Not

- Adding to, amending or repealing ordinances that are in the DMMC or seek to be in the DMMC are codified; i.e., they are put in the DMMC by Code Publishing.
- Those ordinances that require an ordinance format, such as the annual budget are not “codified” and would not be found in the DMMC but will appear as ordinances of the City duly passed.

Resolutions

- Rule 25.
- A resolution may be put to its final passage on the same day on which it was introduced. The title of each resolution shall in all cases be read prior to its passage; provided, should a Councilmember request that the entire resolution or certain of its sections be read, such requests shall be granted Printed copies shall be made available upon request to any person attending a Council meeting.

Ordinances, Resolutions and Motions

- An ordinance is more permanent in nature and has the force and effect of law.
- A resolution is more transitory; a resolution to grant authority to sign a contract, appoint citizens to committees, etc.
- Motions are even more transitory, usually made from the floor and could amend ordinances or resolutions or stand alone.
- Generally, any action taken by motion can be taken as a resolution, any action taken by resolution but not all actions taken by resolution can be taken by ordinance.

Questions or Comments

- Any additional questions or comments that are not addressed at this meeting can be directed to:
- Pat Bosmans
- (206) 870-6526
- PatBosmans@desmoineswa.gov

Thank you

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DES MOINES CITY COUNCIL RULES OF PROCEDURE

LEGAL AUTHORITY

SECTION I
COUNCIL MEETINGS

RULE 1. COUNCIL MEETING - LOCATION

- Rule required by RCW 35A.13.170; RCW 35A.12.110; RCW 42.30.070; and DMMC 4.04.010.

RULE 2. COUNCIL MEETING – TIME

- Rule required by RCW 35A.13.170; RCW 35A.12.110; RCW 42.30.070; and DMMC 4.04.020.

RULE 3. COUNCIL MEETINGS - OPEN TO THE PUBLIC

- Rule required by RCW 42.30.030.

RULE 4. ELECTION OF OFFICERS

- Rule required by RCW 35A.13.030 and RCW 35A.13.035.

RULE 5. PRESIDING OFFICER

- Rule required by RCW 35A.13.030.

RULE 6. QUORUM

- Rule required by RCW 35A.13.170 and RCW 35A.12.120.

RULE 7. ATTENDANCE, EXCUSED ABSENCES

- Rule required by RCW 35A.13.020 and RCW 35A.12.060.

RULE 8. SPECIAL COUNCIL MEETINGS

- Rule required by RCW 42.30.080.

RULE 9. COUNCIL MEETING AGENDA

- Rule required by RCW 35A.12.160; and DMMC 4.04.030.

RULE 10. STUDY SESSIONS

- Apparently only local rule.

RULE 11. CITY MANAGER

- Rule required by RCW 35A.13.080 and Chapter 2.04 DMMC.

RULE 12. CLERK

- Rule required by RCW 35A.13.080; RCW 35A.13.090; RCW 35.23.121 and DMMC 2.08.040.

DES MOINES CITY COUNCIL RULES OF PROCEDURE (CONTINUED)

SECTION II DUTIES AND PRIVILEGES OF MEMBERS

RULE 13. FORMS OF ADDRESS

- **Apparently only local rule.**

RULE 14. SEATING ARRANGEMENT

- **Apparently only local rule.**

RULE 15. APPEARANCE OF FAIRNESS DOCTRINE

- **Required by Chapter 42.36. RCW**

RULE 16. DISSENTS AND PROTESTS

- **Apparently only local rule.**

RULE 17. ADMINISTRATIVE INTERFERENCE BY COUNCILMEMBERS

- **Rule required by Chapter 42.36 RCW RCW 35A.13.120.**

SECTION III COUNCIL PROCEDURES

RULE 18. RULES OF ORDER

- **Apparently only local rule.**

RULE 19. MOTIONS

- **Per Roberts' Rules of Order.**

RULE 20. ORDER OF BUSINESS

- **Generally per Roberts' Rule of Order Section, and local practice.**

RULE 21. ACTIONS FOR A PUBLIC HEARING

- **Required by Chapter 42.36 RCW; caselaw concerning land use; and local practice.**

RULE 22. VOTING

- **Rule required by RCW 35A.13.170; RCW 35A.13.190; RCW 35A.12.120; and RCW 35A.33.120.**

RULE 23. COMMITTEES

- **Apparently only local rule.**

RULE 24. ENACTED ORDINANCES, RESOLUTIONS AND MOTIONS

- **Local definition consistent with RCW 42.30.020(3).**

RULE 25. RESOLUTIONS

- **Apparently only local rule.**

RULE 26. ORDINANCES

- **Apparently only local rule.**

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**DES MOINES CITY COUNCIL RULES OF PROCEDURE
(CONTINUED)**

RULE 27. PERMISSION REQUIRED TO ADDRESS THE COUNCIL

- **Apparently only local rule.**

RULE 28. RECONSIDERATION

- **Per Roberts' Rule of Order Section 36.**

**RULE 29. LEGISLATIVE PROCESS, PREPARATION, INTRODUCTION AND
FLOW OF ORDINANCES AND RESOLUTIONS AND MOTIONS**

- **Apparently only local rule.**

**RULE 30. COUNCIL RELATIONS WITH BOARDS, COMMISSIONS AND
COUNCIL CITIZEN ADVISORY BODIES**

- **Apparently only local rule; consistent with DMMC Chapter 4.24.**

RULE 31. COMPLAINTS AND SUGGESTIONS TO COUNCIL

- **Apparently only local rule.**

**RULE 32. ADMINISTRATIVE COMPLAINTS MADE DIRECTLY TO
INDIVIDUAL COUNCIL MEMBERS**

- **Local implementation of rule required by RCW 35A.13.120.**

RULE 33. FILLING COUNCIL VACANCIES

- **Rule required by RCW 35A.13.020; RCW 35A.12.030 – RCW 35A.12.065.**

**RULE 34. PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE --
PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION**

- **As permitted by First Amendment, Chapter 42.30 RCW; and 1998 Attorney General Opinion No. 15.**

RULE 35. AUDIO RECORDINGS OF MEETINGS

- **Local rule only.**

**RULE 36. VIDEO RECORDING AND BROADCAST OF REGULAR
MEETINGS**

- **As permitted by First Amendment, Chapter 42.30 RCW; and 1998 Attorney General Opinion No. 15.**

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New Attorney General Opinion on Binding Future Local Government Legislative Bodies

May 30, 2012 by Pam James

In a formal opinion issued on May 15, 2012, the office of the attorney general addressed an issue that MRSC attorneys have been asked about, and have wrestled with, for many years - when may a current local government legislative body contractually bind future members of the body for some period after the end of the terms of the current members of the body? Or, in other words, to what extent may a current legislative body impair the authority of future bodies? Although specifically addressing a county legislative authority, this opinion, AGO 2012 No. 4, can be applied generally to any elected local government legislative body such as a city council or special district governing board.

This formal opinion concludes that a county legislative authority is generally prohibited from entering into contracts that bind the future *legislative* actions of the county. The application of this principle depends upon a distinction between *actions that are legislative in nature* and those that are merely *administrative* or *proprietary*. As stated in this opinion, an important difference exists between these types of actions:

The hallmark of the first category is the authority of a legislative body to exercise continuing discretion in the setting of legal standards to govern behavior within the jurisdiction. If a contract impairs this "core" legislative discretion, eliminating or substantially reducing the discretion future bodies might exercise, the courts are likely to find that the contract has improperly impaired the legislative authority of future commissioners. By contrast, counties have, and greatly need, authority to enter into contracts and make administrative decisions concerning the management of public property and the day-to-day conduct of government business. A contract that facilitates public administration, and which places no significant constraint on future policy-making is likely to be upheld.

So, the conclusion of this opinion, applied to local elected legislative bodies in general, is that such a body may not contract away the legislative discretion of that body in the future to establish laws or create public policy relating to governmental functions, such as matters dealing with licensing, levying taxes, and land use and other police power regulations. However, a local government should be bound by a contract made by its previous governing bodies when the subject of the contract involves a proprietary or administrative activity.

This issue comes up most often after an election and before the newly-elected members of a local legislative body take office. Sometimes during this period, the departing members of a local legislative body want to leave a legacy well beyond their tenure. This AGO provides some needed guidance as to the legacy that may be left.

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**Neighborhood Meeting Regarding
Des Moines Marina Development Plans
Wednesday, January 27, 2016, 6:30 – 8:30pm
Location: Des Moines Yacht Club**



The Des Moines Marina Association (DMMA), in conjunction with the Des Moines Yacht Club, is hosting a community and marina stakeholder meeting for January 27, 2016. The groups invited include: DMMA (and all marina tenants), Des Moines Yacht Club, Three Tree Point Yacht Club, Poverty Bay Power Squadron, Marina District Neighborhood (condo association and residents) and other neighbors wishing to attend.

Speaker: Michael Matthias, Assistant City Manager and Economic Development Director

Michael will be updating us and answering questions regarding the City's plans for development of the marina floor.

Objectives for this meeting:

- Create an informed public regarding the City's efforts and plans to develop the marina floor area.
- Provide opportunity for public recommendations/feedback to the City's planning and economic development efforts.
- Establish and participate in a communication process to help ensure development efforts best serve our City, marina, and residents.

Please add this to your schedules and come join in the dialog!

Des Moines Yacht Club is located at the south end of the marina. Entrance behind Des Moines Drug, on west side. There is also a doorway at the south end of Anthony's lot.

(DMMA contact is Bill Linscott. 206-445-2099 or billlinscott@yahoo.com)

Testimony to the Des Moines City Council, Vic Bishop, Chair-elect, Eastside Transportation Association, Tuesday, Jan. 7, 2016

Mayor Kaplan and City Council Members,

My name is Vic Bishop. I live in Bellevue at 2114 W. Lake Sammamish Pkwy SE, Bellevue, WA 98008. I am here speaking on behalf of the Eastside Transportation Association, as its Chair-Elect and Board Member.

On Dec. 7, 2015 Sound Transit sent a letter to the City of Kirkland, and presumably to all Cities in the Sound Transit Taxing District, thanking you for your input to date and asking you for a letter to:

“...acknowledge the scope elements included in candidate project reports of interest to you and note if there are scope elements that have been overlooked or included unnecessarily.”

Sound Transit asks for an acknowledgement of the scope and feedback by January 21, 2016.

Therefore, you and the other Cities had 45 days to review and respond over the holidays when you and most councils are shut down part of the time, staff is on vacation, and new Councils and Mayors are being seated as you did tonight. This process took 36 months for ST 2. Is that FAIR?

To stay in conformance with ST's expectations, the Council needs to react in some fashion. Please consider the following questions in formulating your response:

- A. The **Subarea Equity** promised in Sound Move and ST 2 is critical to Des Moines. No plan works without Subarea Equity principles explicitly stated in the Ballot issue. Are the Subarea Equity Principles included in the ST 3 Proposal satisfactory to Des Moines?

COST TO CONSTITUENTS VS TRANSPORTATION BENEFITS

- B. What would be the tax cost per household in Des Moines? (Kurt Triplett says “ST taxes will double in Kirkland”; Bellevue Councilmember Kevin Wallace says: “The total ST taxes will be \$1000 per average household per year in the region”, if ST 3 is approved.
- C. Ask Sound Transit to “Show me” how much tax revenue Des Moines residents have;
 - a. Contributed to Sound Move and ST 2 since 1996?
 - b. What has Des Moines received?
- D. Ask Sound Transit to “Show me” how much Des Moines residents will:
 - a. Contribute in taxes to Sound Move, ST 2 and ST 3 over the next 30 years?, and
 - b. What will Des Moines receive under the proposed ballot issue?
- E. What will be the outcome for Des Moines in terms of;
 - a. Congestion relief (average person trip delay reduction)
 - b. Transit ridership (Des Moines' ridership change and travel time reductions)

These are some questions the Council needs to be asking Sound Transit about and getting answers prior to acknowledging the scope of and support for ST 3 in a letter from the City. Are you willing to accept the accelerated process to get the proposal on the ballot in 2016 as being ‘fair’ to the City of Des Moines?



COUNCIL - FJ
Copy: Dan
King
Wendon

December 7, 2015

The Honorable Dave Kaplan
Mayor of Des Moines
21630 11th Ave. S., Suite A
Des Moines, WA 98198

Dear Mayor Kaplan,

On behalf of the Sound Transit Board, I want to thank you for your input and continued engagement on the development of Sound Transit 3 (ST3), the next set of regional high-capacity transit investments that we plan to present to voters next November. To reach that goal, we expect to have a draft system plan out for public comment and review next spring, with final adoption by the Board at our meeting in June. Input from jurisdictions, the citizens we serve, our partners, and stakeholders across the region will continue to inform and shape our work in the months ahead.

The purpose of my letter is to ask for feedback as we begin to evaluate the ST3 candidate projects and start to identify projects and services for the next system plan. At the December 4 Board workshop, staff presented technical reports for each candidate project, along with corridor summary information, for the list of candidate projects approved by the Board last August. The candidate project reports can be found at www.SoundTransit3.org. With this letter, I am asking for your acknowledgement and feedback on the scope of the candidate project(s) in which your jurisdiction is interested.

Through the implementation of Sound Move and Sound Transit 2 capital programs, the agency has come to value the need for common understanding and clarity about the scope and initial assumptions of proposed voter-approved projects. At this stage in the planning process, the scope of these candidate projects inform the cost estimates, which in turn inform the financial plan needed to support the system plan. To ground the system plan in solid analysis and to ensure success over the long run, it is paramount that we continue to advance our planning work with accuracy and transparency. Sound Transit asks you to acknowledge the scope elements included in candidate project reports of interest to you and note if there are scope elements that have been overlooked or included unnecessarily. To keep our work on schedule, we would like to have your acknowledgement on the scope of candidate projects of interest to you, along with any other feedback, by Thursday, January 21, 2016.

Over the next several months, the Board intends to develop a system of capital projects and services that, in combination with state and local transportation services and infrastructure, keep our regional economy and people moving. Using the technical work presented at the December 4 workshop and on-going feedback from citizens, cities, and partners, the Board will utilize our regular meetings to discuss priorities, leading to the adoption of a draft plan in the spring.

CHAIR

Dow Constantine
King County Executive

VICE CHAIRS

Paul Roberts
Everett Councilmember

Marilyn Strickland
Tacoma Mayor

BOARD MEMBERS

Claudia Balducci
Bellevue Mayor

Fred Butler
Issaquah Mayor

Dave Earling
Edmonds Mayor

Dave Enslow
Sumner Mayor

John Lovick
Snohomish County Executive

John Marchione
Redmond Mayor

Pat McCarthy
Pierce County Executive

Joe McDermott
King County Council Vice Chair

Mary Moss
Lakewood Councilmember

Ed Murray
Seattle Mayor

Mike O'Brien
Seattle Councilmember

Lynn Peterson
Washington State Secretary of Transportation

Larry Phillips
King County Council Chair

Dave Upthegrove
King County Councilmember

Peter von Reichbauer
King County Councilmember

CHIEF EXECUTIVE OFFICER

Joni Earl

Thank you for your continued engagement and feedback on the ST3 planning work. An integrated and robust transportation system is key to maintaining our economic competitiveness and the quality of life we enjoy in the Puget Sound region. My colleagues on the Board and I look forward to working with you in the weeks and months ahead on an ST3 plan that delivers on this vision.

Sincerely,

A handwritten signature in black ink that reads "Dow Constantine". The signature is fluid and cursive, with a prominent "D" and a long, sweeping underline.

Dow Constantine
Chair, Sound Transit Board

c: Sound Transit Boardmembers
Mike Harbour, Acting Chief Executive Officer
Ric Ilgenfritz, Planning, Environment & Project Development
Ann Snell McNeil, Government & Community Relations

City of Des Moines Letterhead

Sound Transit Board
Attn: Sound Transit 3
401 S. Jackson St
Seattle, WA 98104-2826

The City of Des Moines is writing to provide requested input on the scope of the candidate ST3 projects of interest to our City. We understand that this input will help further refine ST's draft system plan for public comment and review this coming spring.

We remain fully supportive of first completing the voter-approved but deferred ST2 project extending light rail from the Kent/Des Moines station opening in 2023 to Star Lake (272nd) (S-01) as the Board's top deferred project, preferably out of existing tax levels and FTA funds, as quickly as funds can be made available.

Then we'd advocate that the light rail spine should be completed to Federal Way Transit Center (S-02) as quickly as possible along the FWLE alignment expected to be approved by the Sound Transit Board and Federal Transit Administration (FTA) in 2016. This is especially important to residents of the City of Des Moines, other FWLE corridor cities and Highline College, and other South King County residents because it improves access to jobs in the urban and job centers at Sea-Tac International Airport, Seattle, and University of Washington, but equally important, to job centers in Federal Way and further south to Tacoma and Pierce County. It will also help accelerate transit oriented development near the new light rail stations in South King County.

During the City's participation in FWLE planning, two of the potential regional ST3 projects have become especially important to supplement existing project funding. R-05: System Access Program providing enhanced funding for pedestrian and bicycle access, bicycle parking and transit service, and R-07: Transit-Oriented Development providing TOD support beyond the project planning phase. If the full potential of ST's substantial capital investments in light rail are to be fully realized, much more attention must be given to non-auto access to light rail stations and TOD around those stations, especially in South King County where robust local east-west transit service does not exist, and where economic development is lagging behind other parts of the County.

Extending the system south as fast as possible by using lower costing alignments and station locations (S-03) should be relatively high on the Board's priority project list because of its service benefits to moderate and low-income residents, many of which are minority. This should be a higher priority than system expansion north or east or more slowly developing an enhanced system with more stations because of the demographic populations served. Such an approach would also be better supported by voters looking to make the most cost effective use

of their tax dollars. Planning and environmental analysis of alternative alignments and station locations should be completed to extend South Corridor light rail to the Tacoma Dome Station and then further south to Tacoma Mall so that system extension south of Federal Way would be environmentally and FTA approved thereby enabling construction as soon as funds became available and allowing cities along the corridor to do supportive land use planning.

Sounder station service, train platform, parking and access enhancements in Kent and Auburn are strongly supported (S-06, S-07, S-08, S-09 and S-10). Kent Sounder Station improvements would be of most benefit to the City of Des Moines.

The City recommends the following potential High Capacity Transit Planning studies receive high priority:

1. P-05: Light Rail Extending from West Seattle to Burien and SeaTac Airport Station.
2. P-06: Light Rail Directly Linking Burien to Tukwila and Renton

Once link light rail is connected to Tacoma, infill light rail stations along the FWLE alignment and other enhancements supporting the existing system should be studied.

We again stress the need for supporting system expansion to support the ST HCT system as it expands, and request that we be fully included in the planning for support system facilities because of their potential impacts on our land uses. Early decisions reserving land for these uses will be important for the cities expected to host these facilities. The Board should also consider how potential host cities already support or are impacted by regional airports and other HCT facilities.

The City of Des Moines and its elected leaders remain fully committed to continue to work with Sound Transit staff and the Board to refine a Sound Transit 3 proposal that meets the needs of all affected agencies and the public we serve and one which voters will approve in November 2016.

Very truly yours,

Mayor
City of Des Moines

Cc: Des Moines City Council \\
Tony Piasecki, City Manager

Tony Piasecki

From: Patrice Thorell
Sent: Thursday, January 07, 2016 3:39 PM
To: Tony Piasecki
Subject: Reach Out Des Moines Overview

Reach Out Des Moines, is a coalition that wants Des Moines youth and families to have more access to support and programs, both in school and in the community. The coalition formed as a group of schools focused on bringing more community support into their buildings. The scope broadened in 2015 to bring more opportunities to youth both in school and out in the community. The coalition now made up of organizations with the desire to impact youth in Des Moines, holds monthly meetings facilitated by CHI Franciscan Health's Violence Prevention Coordinator and hosted by the Des Moines Police Department.

Last summer the collation accomplished its short term goals of expanding supports for Pacific Middle School youth and expanding summer opportunities for youth in the Pacific Ridge neighborhood by providing a free summer lunch program with recreation activities at Midway Park sponsored by the Des Moines Parks, Recreation and Senior Services and Des Moines Area Food Bank and a Neighborhood National Night Out event sponsored by the Des Moines Police Department.

Reach Out Des Moines is now working on establishing long term goals by developing a Strategic Plan and an Action Plan.

The plan is intended to be proactive; to place more attention on Middle School aged kids and those youth transitioning into and out of Middle School; to create opportunities and connections that capitalize on and build on what is already in place:

- o After School Opportunities- to provide safe places for kids between 3pm and 6pm
- o Leadership Building- to provide training opportunities to empower and build capacity
- o Volunteerism and Mentoring- to provide peer to peer support and community engagement
- o More activities that interest teens such as dances, open gyms, basketball, book club and literacy
- o Strengthening Communication and Connections between schools, civic organizations, business, government and others

Reach Out Des Moines partners include: CHI Franciscan Health, Highline School District, Pacific Middle School, Des Moines Police Department, Des Moines Parks, Recreation and Senior Services, Midway Covenant Church, Des Moines Area Food Bank, King County Library System, King County Public Health, Highline College, Highline Medical Center, Mt Rainier Pool, Valley Cities, US Department of Justice and more.

Groups interested in joining Reach Out Des Moines can contact Doug Baxter Violence Prevention Coordinator CHI Franciscan Health at 253-426-6730 or DouglasBaxter@FHShealth.org

MOTION CHART

PRIVILEGED MOTIONS	
Fix time to which to adj.	S-AMR
Adjourn	S—M-
Recess	S-AM-
Raise a question of privilege	-----
Call for orders of the day	-----I
SUBSIDIARY MOTIONS	
Lay on the table	S—M-
Previous question	S—2/3R
Limit debate	S-A2/3R
Postpone to a certain time	SDAMR
Refer to committee	SDAMR
Amend	SDAMR
Postpone indefinitely	SD-MR
MAIN MOTION & Resolutions	SDAMR
RESTORATIVE MOTIONS	
Take from the table	S—M-
Reconsider	SD-M-
Rescind	SDA2/3Rno
Ratify	SDAMR
INCIDENTAL MOTIONS	
Point of order	----- I
Appeal decision of chair	SD-MnoR
Suspend Rules	S—2/3-
Division of question	S-AM-
Division of assembly	----- I
Close nominations	S-A2/3-
Object to consider. of question	----2/3noRno
Object to reading paper	S*--Mno-
Grant withdrawal of motion	S*--MRno
Point of information	----- I
Vote by written ballot	S-AMR

Key:

- S econd
- D ebateable
- A mendment
- M – Vote (majority, special majority)
- R econsideration

S D A M R

The background features abstract, overlapping green geometric shapes in various shades of green, creating a modern, layered effect. The shapes are primarily triangular and polygonal, with some having a fine grid texture.

City of Des Moines

Communications Plan

Staff Steering Committee

- ▶ Andrew Merges
- ▶ Autumn Lingle
- ▶ Bonnie Wilkins
- ▶ Cecilia Pollock
- ▶ Dale Southwick
- ▶ Ellie Hooman
- ▶ Katie Bevegni
- ▶ Laura Techico
- ▶ Louise Darcy
- ▶ Matt Hutchins
- ▶ Melissa Patrick
- ▶ Michael Matthias
- ▶ Patrice Thorell

Components

- ▶ Goals
- ▶ Audiences
- ▶ Messages
- ▶ Communications Channels
- ▶ Strategies
- ▶ Evaluation / feedback



Goals

- ▶ Proactive Communications
- ▶ Reactive Communications
- ▶ Interactive Process for Public
- ▶ Increase community understanding and knowledge of the City
- ▶ Increase support for City government
- ▶ Increase trust from the community

Audiences

- ▶ Businesses/business owners
- ▶ Citizens
- ▶ City commissions/committees
- ▶ City staff
- ▶ Community organizations
- ▶ Critics of government
- ▶ Developers
- ▶ Environmental organizations
- ▶ Future/potential business owners
- ▶ Future employees
- ▶ Media
- ▶ Other governmental agencies
- ▶ Potential funders
- ▶ Property owners
- ▶ Renters
- ▶ Seniors
- ▶ Tourists
- ▶ Users of City services

Messages

- ▶ Assess current communication activities – done
 - ▶ Current messages
 - ▶ Current methods – newsletters, email blasts, Facebook, Twitter, Website, newspapers, blogs, Channel 21
- ▶ Council input – July 23, 2015 City Council meeting and one-on-one discussions
- ▶ Researched efforts of other public agencies – see strategies

Communications Channels

- ▶ Direct public contact
- ▶ Traditional media
- ▶ Channel 21
- ▶ Governmental facilities
- ▶ Destination Des Moines
- ▶ Farmer's Market
- ▶ Community/neighborhood meetings
- ▶ Community organizations
- ▶ Facebook
- ▶ Printed materials (City Currents, brochures, etc.)
- ▶ Reader board
- ▶ Robo calls
- ▶ Community events
- ▶ City department open houses
- ▶ Email blasts
- ▶ Surveys
- ▶ Tours/ride-a-longs
- ▶ Informal contacts
- ▶ Twitter
- ▶ FAQ's "Myth Busters"
- ▶ Speakers Bureau
- ▶ Kiosks

Strategies



1. Staff Steering Committee

- ▶ Done
- ▶ Establish internal policies
- ▶ Relevant, accurate, and timely communications
- ▶ Coordinate efforts
- ▶ Coordinate website enhancements
- ▶ Monitor and evaluate

2. Survey

- ▶ How does the public communicate/interact with the City?
- ▶ How does the public want to communicate/interact with the City?
- ▶ What does the public want to know?
- ▶ Options
 - ▶ City Currents
 - ▶ Website
 - ▶ Facebook
 - ▶ Hard copy
 - ▶ Farmers Market
 - ▶ Community meetings
 - ▶ Businesses

3. Relationships with Media and Community Organizations

- ▶ Waterland Blog
- ▶ Des Moines News/Highline Times
- ▶ TV outlets: KING5, KOMO4, KIRO7, and FOX13
- ▶ Seattle Times
- ▶ Destination Des Moines
- ▶ Marina Association
- ▶ Homeowners Associations
- ▶ Block Watches
- ▶ Faith-based organizations



4. “City Currents” Column

- ▶ Current and future development projects
- ▶ Information about upcoming issues
- ▶ Status reports on programs and activities of city-wide interest
- ▶ Department activities



5. Messages

- ▶ Consistent
- ▶ Used by all departments



6. Recognition

- ▶ Celebrate positive aspects of City operations
- ▶ Expand:
 - ▶ Quarterly employee recognition program
 - ▶ Appointed committees and commissions
 - ▶ “The Spirit of Des Moines Awards Program”



7. Update/redesign the City's website

- ▶ More intuitive/easier to use
- ▶ New/modified features
 - ▶ Interactive map
 - ▶ Public records
 - ▶ “Fix It” reporting
 - ▶ Expand links
 - ▶ On-line permitting, business licenses, animal licensing
 - ▶ Job board



8. “Opt-in” information program

- ▶ Informational alert system
- ▶ Residents and users must chose to receive information
 - ▶ Text messages
 - ▶ Tweets
 - ▶ Emails
 - ▶ Phone calls/voice messages
- ▶ Can chose what information to receive

9. “Government 101”

- ▶ Series of educational presentations
- ▶ How does your local government work?
 - ▶ Form of government
 - ▶ Public Records and Open Public Meetings
 - ▶ Economic Development
 - ▶ Finance
 - ▶ Public Safety/Courts
 - ▶ Public Works/Construction Project
 - ▶ Parks, Recreation, Senior Services
 - ▶ Marina
- ▶ Record
- ▶ On website and broadcast on Channel 21

10. Citizen's Advisory Council

- ▶ Appointed by Mayor, confirmed by City Council
- ▶ Opportunity for residents and businesses to:
 - ▶ Learn about City operations and issues in depth
 - ▶ Offer input to the City Council



11. Community Meetings

- ▶ Hold at least quarterly
- ▶ At various locations – indoor and outdoor
- ▶ Opportunity for City Council, staff and the public to interact on a scheduled basis outside of Council meetings and Council chambers
- ▶ Potential Structure:
 - ▶ Single subject
 - ▶ Presentation
 - ▶ Q&A
 - ▶ Open mike
 - ▶ All departments represented, other agencies/partners invited

12. Social Media

- ▶ Focus on Facebook and Twitter
- ▶ Policies
- ▶ Public expectations
 - ▶ Accounts not monitored 24/7
 - ▶ Responses to posts and tweets

13. Public and community events

- ▶ Farmers Market
- ▶ Waterland Festival
- ▶ 4th of July Fireworks
- ▶ Blues and Brews and Wine Festival
- ▶ Annual church festivals



14. Channel 21

- ▶ Broadcast Government 101 educational videos
- ▶ Create other content for broadcast
- ▶ Commercial content/advertising
- ▶ Job board



15. Internal Newsletter

- ▶ Keep employees informed of
 - ▶ City activities
 - ▶ Events
 - ▶ Council initiatives
 - ▶ Projects
 - ▶ Development

16. “State of the City”

- ▶ Presentation at the first Council meeting of each year
- ▶ Distributed to the entire community
 - ▶ In “City Current”
 - ▶ Posted on Website
 - ▶ Direct mail to each address in Des Moines

Next Steps

- ▶ Council input and direction
- ▶ Prioritize
- ▶ Create and implement an action plan for each strategy
- ▶ Steering Committee to create evaluation/feedback system