

**AGENDA**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11<sup>th</sup> Avenue S, Des Moines, Washington**

**September 5, 2019 – 7:00 p.m.**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CORRESPONDENCE**

**PRESIDING OFFICER'S REPORT**

Item 1: CITY MANAGER AWARD OF EXCELLENCE

**ADMINISTRATION REPORT**

Item 1: SR3 PRESENTATION

Item 2: SCORE PRESENTATION

Item 3: REDONDO PIER UPDATE

Item 4: MARINA REDEVELOPMENT

Item 5: KING COUNTY VETERANS, SENIOR AND HUMAN SERVICES  
LEVY GRANT

**COMMENTS FROM THE PUBLIC – 20 minutes**

***Please Note:*** Public comment will be limited to 20 minutes. If time allows, we will resume public comment at the end of our meeting after all official business has been conducted.

**BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS – 30 minutes**

**CONSENT CALENDAR**

|                                             |                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
|---------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------|----------------|--------------------------------------|--|---------|---------------------------|-------------|----------------|----------------|---------------|-------------|------------------------|----------------|---------------|----------------|---------------|-------------|------------------------|----------------|---------------|---------------------------------------------|--|----------------|
| Page 5                                      | Item 1:        | <p><b>APPROVAL OF VOUCHERS</b></p> <p><u>Motion</u> is to approve for payment vouchers and payroll transfers through August 29, 2019 included in the attached list and further described as follows:</p> <table> <tr> <td>Total A/P Checks/Vouchers</td><td>#158361-158679</td><td>\$1,778,677.75</td></tr> <tr> <td>Void Checks from Previous Check Runs</td><td></td><td>\$ 0.00</td></tr> <tr> <td>Electronic Wire Transfers</td><td># 1289-1305</td><td>\$1,470,100.29</td></tr> <tr> <td>Payroll Checks</td><td># 19236-19247</td><td>\$ 7,752.42</td></tr> <tr> <td>Payroll Direct Deposit</td><td>#310001-310193</td><td>\$ 395,731.30</td></tr> <tr> <td>Payroll Checks</td><td># 19248-19255</td><td>\$ 6,689.43</td></tr> <tr> <td>Payroll Direct Deposit</td><td>#340001-340189</td><td>\$ 400,238.25</td></tr> <tr> <td>Total Checks and Wires for A/P and Payroll:</td><td></td><td>\$4,059,189.44</td></tr> </table> | Total A/P Checks/Vouchers | #158361-158679 | \$1,778,677.75 | Void Checks from Previous Check Runs |  | \$ 0.00 | Electronic Wire Transfers | # 1289-1305 | \$1,470,100.29 | Payroll Checks | # 19236-19247 | \$ 7,752.42 | Payroll Direct Deposit | #310001-310193 | \$ 395,731.30 | Payroll Checks | # 19248-19255 | \$ 6,689.43 | Payroll Direct Deposit | #340001-340189 | \$ 400,238.25 | Total Checks and Wires for A/P and Payroll: |  | \$4,059,189.44 |
| Total A/P Checks/Vouchers                   | #158361-158679 | \$1,778,677.75                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Void Checks from Previous Check Runs        |                | \$ 0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Electronic Wire Transfers                   | # 1289-1305    | \$1,470,100.29                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Payroll Checks                              | # 19236-19247  | \$ 7,752.42                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Payroll Direct Deposit                      | #310001-310193 | \$ 395,731.30                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Payroll Checks                              | # 19248-19255  | \$ 6,689.43                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Payroll Direct Deposit                      | #340001-340189 | \$ 400,238.25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Total Checks and Wires for A/P and Payroll: |                | \$4,059,189.44                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Page 7                                      | Item 2:        | <p><b>2019 COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN</b></p> <p><u>Motion</u> is to adopt Draft Resolution No. 19-086 approving the 2019 Comprehensive Solid Waste Management Plan for the King County Solid Waste System.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Page 47                                     | Item 3:        | <p><b>DRAFT RESOLUTION NO. 19-085: DECLARING THE INTENT TO ADOPT LEGISLATION TO AUTHORIZE A SALES AND USE TAX FOR AFFORDABLE AND SUPPORTIVE HOUSING</b></p> <p><u>Motion</u> is to enact Draft Resolution No. 19-085, declaring the intent of the City Council to adopt legislation to authorize a sales and use tax for affordable and supportive housing in accordance with Substitute House Bill 1406.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Page 63                                     | Item 4:        | <p><b>KING COUNTY YOUTH AND AMATEUR SPORTS GRANT – BEACH PARK AUDITORIUM ATHLETIC FLOOR</b></p> <p><u>Motion</u> is to accept the King County Youth and Amateur Sports Grant for the Beach Park Auditorium Floor, and authorize the City Manager to sign the Agreement substantially in the form as submitted.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Page 77                                     | Item 5:        | <p><b>CHILDHOOD CANCER AWARENESS MONTH</b></p> <p><u>Motion</u> is to approve the Proclamation supporting September as Childhood Cancer Awareness Month.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Page 81                                     | Item 6:        | <p><b>NATIONAL RECOVERY MONTH</b></p> <p><u>Motion</u> is to approve the Proclamation supporting September 2019 as National Recovery Month.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |
| Page 85                                     | Item 7:        | <p><b>DRAFT ORDINANCE 18-107 SMALL CELL FACILITIES FRANCHISE AGREEMENT WITH EXTENET SYSTEMS, INC., SECOND READING</b></p> <p><u>Motion</u> is to pass the Draft Ordinance No. 18-107 approving non-exclusive small cell franchise agreement with Extenet, Inc.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                           |                |                |                                      |  |         |                           |             |                |                |               |             |                        |                |               |                |               |             |                        |                |               |                                             |  |                |



Page 141      Item 8:      DRAFT RESOLUTION 19-064 SETTING A PUBLIC HEARING DATE FOR VACATION OF PUBLIC RIGHTS-OF-WAY FOR SOUTH 236<sup>TH</sup> STREET  
Motion is to adopt Draft Resolution No. 19-064 setting a public hearing on Oct 10, 2019 or soon thereafter as the matter may be heard, for a street vacation of South 236<sup>th</sup> Street within the City of Des Moines.

Page 147      Item 9:      2019-2021 RECYCLING PROGRAM FUNDING GRANT  
Motion is to authorize the City Manager to sign the 2019-2021 Local Solid Waste Financial Assistance Grant between the City of Des Moines and the Washington State Department of Ecology, substantially in the form as attached.

#### **NEW BUSINESS**

Page 171      Item 1:      PROPERTY ACQUISITION FOR MIDWAY PARK EXPANSION IN PACIFIC RIDGE (22104 28<sup>TH</sup> AVE. S.)  
 Staff Presentation:      Chief Strategic Officer Susan Cezar

Page 177      Item 2:      DRAFT VISION 2050 PLAN  
 Staff Presentation:      Planning & Development Service Manager  
                                  Denise Lathrop

#### **EXECUTIVE SESSION**

#### **NEXT MEETING DATE**

September 26, 2019 City Council Regular Meeting

#### **ADJOURNMENT**

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**CITY OF DES MOINES**  
**Voucher Certification Approval**

**September 5, 2019**

**Auditing Officer Certification**

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of **September 5, 2019** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through August 29, 2019 and payroll transfers through August 20, 2019 included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer:

  
 Beth Anne Wroe, Finance Director

|                                                     | # From | # To     | Amounts             |
|-----------------------------------------------------|--------|----------|---------------------|
| <b>Claims Vouchers:</b>                             |        |          |                     |
| Total A/P Checks/Vouchers                           | 158361 | - 158679 | 1,778,677.75        |
| Void Checks from Previous Check Runs                |        |          | 0.00                |
| Electronic Wire Transfers                           | 1289   | 1305     | 1,470,100.29        |
| <b>Total claims paid</b>                            |        |          | <b>3,248,778.04</b> |
| <b>Payroll Vouchers</b>                             |        |          |                     |
| Payroll Checks                                      | 19236  | 19247    | 7,752.42            |
| Direct Deposit                                      | 310001 | 310193   | 395,731.30          |
| Payroll Checks                                      | 19248  | 19255    | 6,689.43            |
| Direct Deposit                                      | 340001 | 340189   | 400,238.25          |
| <b>Total Paychecks/Direct Deposits paid</b>         |        |          | <b>810,411.40</b>   |
| <b>Total checks and wires for A/P &amp; Payroll</b> |        |          | <b>4,059,189.44</b> |

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# AGENDA ITEM

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2019 Comprehensive Solid Waste Management Plan

FOR AGENDA OF: September 5, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: August 29, 2019

### ATTACHMENTS:

1. Draft Resolution 19-086
2. Amended and Restated Solid Waste Interlocal Agreement

### CLEARANCES:

- [X] Community Development *SMC*  
 [ ] Marina \_\_\_\_\_  
 [ ] Parks, Recreation & Senior Services \_\_\_\_\_  
 [X] Public Works *Am*

A copy of the full plan is available on King County's website at:

<https://your.kingcounty.gov/dnrp/library/solid-waste/about/planning/2019-comp-plan.pdf>

CHIEF OPERATIONS OFFICER: *DSS*

- [X] Legal *TS*  
 [ ] Finance \_\_\_\_\_  
 [ ] Courts \_\_\_\_\_  
 [ ] Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: *[Signature]*

### Purpose and Recommendation

The purpose of this agenda item is for City Council to adopt the 2019 Comprehensive Solid Waste Management Plan for the King County Solid Waste System (See Draft Resolution 19-086, Attachment 1). A copy of the full plan is available on King County's website at:  
<https://your.kingcounty.gov/dnrp/library/solid-waste/about/planning/2019-comp-plan.pdf>

### Suggested Motion

**Motion 1:** "I move to adopt Draft Resolution No. 19-086 approving the 2019 Comprehensive Solid Waste Management Plan for the King County Solid Waste System".

## **Background**

### **State Requirements**

RCW 70.95.080 requires each county and city to prepare a coordinated, comprehensive solid waste management plan to consider and plan for the handling methods and services for recyclables, organics and nonrecyclable wastes. Cities may prepare their own plans or enter into an agreement with the county in which the city participates in preparing a joint city-county plan for solid waste management.

### **King County Des Moines Interlocal Agreement**

King County entered into interlocal agreements with Des Moines and 36 other King County cities to cooperatively manage solid waste and to work collaboratively to periodically update the comprehensive plan adopted pursuant to chapter 70.95 RCW. The Amended and Restated Solid Waste Interlocal Agreement was approved by motion of the City Council on January 24, 2013 (Attachment 2). Per the ILA, the plan is considered “adopted” by all ILA cities within the meaning of the agreement when it is approved by three-quarters of the population of the incorporated jurisdictions taking formal action within a 120 day review timeline.

### **Metropolitan Solid Waste Management Advisory Committee**

The ILA creates an advisory committee comprised of representatives from cities known as the Metropolitan Solid Waste Management Advisory Committee (MSWMAC). Cities may designate a representative and alternate(s). MSWMAC advises the King County Council, King County Executive, Solid Waste Advisory Committee and other jurisdictions on all policy aspects of solid waste management and planning, including assisting in the development of the Comprehensive Plan.

### **2019 Comprehensive Solid Waste Management Plan**

Over the last few years, MSWMAC, SWAC (interdisciplinary advisory committee that includes industry and public participants) and King County have been coordinating on development of the Comprehensive Plan.

## **Discussion**

On April 24, 2019 Metropolitan King County Council passed Ordinance 18893, adopting the Comprehensive Plan.

On May 20, 2019, King County Solid Waste Division transmitted the Comprehensive Plan to the 37 ILA cities, marking the beginning of the 120-day action period, which ends on September 16, 2019. Upon approval, the plan will be sent to the Washington State Department of Ecology, which has a 45 day approval period. Final approval is expected in November 2019.

The Comprehensive Plan and adoption process were discussed with the City Council Environment Committee on July 11, 2019. The committee recommended that staff bring a resolution forward to the City Council so that the Council could take positive formal action on the plan rather than adoption of the plan by the majority per the ILA.

## **Alternatives**

1. The City may adopt the Comprehensive Plan by the end of the 120-day action period.
2. If the City does not take formal action, per the ILA, the plan is considered “adopted” by all ILA cities within the meaning of the agreement when it is approved by three-quarters of the population of the incorporated jurisdictions taking formal action within the 120 day timeline.

**Financial Impact**

There is no direct fiscal impact to the City to approve the Comprehensive Plan.

**Recommendation**

A draft resolution was provided by King County (Attachment 1). Staff recommends adoption of the plan to demonstrate Des Moines' support of the plan and development process and compliance with RCW 70.95.080.

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**CITY ATTORNEY FIRST DRAFT, 08/08/2019****DRAFT RESOLUTION NO. 19-086**

**A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON** approving the 2019 Comprehensive Solid Waste Management Plan for the King County Solid Waste System.

**WHEREAS**, the purpose of the 2019 Comprehensive Solid Waste Management Plan (2019 Plan) is to plan for solid waste and materials reduction, collection, and handling and management services and programs in the geographic area for which King County has comprehensive planning authority for solid waste management by law or by interlocal agreement, or both, and

**WHEREAS**, the 2019 Plan was prepared in accordance with RCW 70.95.080, which requires that each county within the state, in cooperation with the various cities located within such county, prepare and periodically update a coordinated, comprehensive solid waste management plan, and

**WHEREAS**, King County and all cities in King County except Seattle and Milton have executed the 2013 Amended and Restated Interlocal Agreement ("the interlocal agreement"). Under the interlocal agreement, King County serves as the planning authority for solid waste, and

**WHEREAS**, King County worked with the city representatives serving on the Metropolitan Solid Waste Management Advisory Committee to develop the 2019 Plan, and

**WHEREAS**, the 2019 Plan updates and replaces the 2001 Comprehensive Solid Waste Management Plan approved by City Ordinance No. 1301 adopted on February 28, 2002, and

**WHEREAS**, on April 17, 2019 the King County Regional Policy Committee, acting as the Metropolitan King County Council Solid Waste Interlocal Forum, recommended adoption of Ordinance 18893 for approval of the 2019 Plan; and

**WHEREAS**, on April 24, 2019 the Metropolitan King County Council adopted Ordinance 18893, which approved the 2019 Plan, and

**WHEREAS**, the interlocal agreement sets a 120-day period for cities to take action on the 2019 Plan. The 2019 Plan cannot receive final approval unless cities representing at least 75 percent of the incorporated population of the cities that take

Resolution No. 19-086  
Page 2 of 2

action in the 120-day period approve the Plan. The 120-day period runs from receipt by a city of the Plan recommended by the Regional Policy Committee and approved by the Metropolitan King County Council, and

**WHEREAS,** after city approval the 2019 Plan is further subject to final approval by the Washington State Department of Ecology; now, therefore

**THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:**

**Sec. 1.** The 2019 Comprehensive Solid Waste Management Plan, Attachment A to this resolution, is hereby approved.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2019 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

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

Attachment A: 2019 Comprehensive Solid Waste Management Plan  
updated April 17, 2019

**King County****Solid Waste Division**

Department of Natural Resources and Parks

King Street Center

201 South Jackson Street, Suite 701

Seattle, WA 98104-3855

**206-296-6542** Fax 206-296-0197

TTY Relay: 711

RECEIVED

NOV 07 2013

CITY OF DES MOINES  
CITY CLERK

November 6, 2013

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

Dear City Clerk,

Enclosed for your records is the City's signed solid waste interlocal agreement. If you have any questions about the agreement, please contact me at 206-477-5212 or [Diane.yates@kingcounty.gov](mailto:Diane.yates@kingcounty.gov).

Sincerely,

Diane Yates  
Intergovernmental Relations Liaison  
King County Solid Waste Division

Encl.

# AMENDED AND RESTATED SOLID WASTE INTERLOCAL AGREEMENT

This Amended and Restated Solid Waste Interlocal Agreement ("Agreement") is entered into between King County, a political subdivision of the State of Washington and the City of Des Moines, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively. Collectively, the County and the City are referred to as the "Parties." This Agreement has been authorized by the legislative body of each jurisdiction pursuant to formal action as designated below:

King County: Ordinance No. 17617

City: Motion of the City Council on January 24, 2013

## PREAMBLE

- A. This Agreement is entered into pursuant to chapter 39.34 RCW for the purpose of extending, restating and amending the Solid Waste Interlocal Agreement between the Parties originally entered into in 1988 (the "Original Agreement"). The Original Agreement provided for the cooperative management of Solid Waste in King County for a term of forty (40) years, through June 30, 2028. The Original Agreement is superseded by this Amended and Restated Agreement, as of the effective date of this Agreement. This Amended and Restated Agreement is effective for an additional twelve (12) years through December 31, 2040.
- B. The Parties intend to continue to cooperatively manage Solid Waste and to work collaboratively to maintain and periodically update the existing King County

Comprehensive Solid Waste Management Plan (Comprehensive Plan) adopted pursuant to chapter 70.95 RCW.

- C. The Parties continue to support the established goals of Waste Prevention and Recycling as incorporated in the Comprehensive Solid Waste Management Plan, and to meet or surpass applicable environmental standards with regard to the Solid Waste System.
- D. The County and the Cities agree that System-related costs, including environmental liabilities, should be funded by System revenues which include but are not limited to insurance proceeds, grants and rates;
- E. The County, as the service provider, is in the best position to steward funds System revenues that the County and the Cities intend to be available to pay for environmental liabilities; and
- F. The County and the Cities recognize that at the time this Agreement goes into effect, it is impossible to know what the ultimate environmental liabilities could be; nevertheless, the County and the Cities wish to designate in this Agreement a protocol for the designation and distribution of funding for potential future environmental liabilities in order to protect the general funds of the County and the Cities.
- G. The County began renting the Cedar Hills Landfill from the State of Washington in 1960 and began using it for Disposal of Solid Waste in 1964. The County acquired ownership of the Cedar Hills Landfill from the State in 1992. The Cedar Hills Landfill remains an asset owned by the County.
- H. The Parties expect that the Cedar Hills Landfill will be at capacity and closed at some date during the term of this Agreement, after which time all Solid Waste under this Agreement will need to be disposed of through alternate means, as determined by the



Cities and the County through amendments to the Comprehensive Solid Waste Management Plan. The County currently estimates the useful life of the Cedar Hills Landfill will extend through 2025. It is possible that this useful life could be extended, or shortened, by System management decisions or factors beyond the control of the Parties.

- I. The County intends to charge rent for the use of the Cedar Hills Landfill for so long as the System uses this general fund asset and the Parties seek to clarify terms relative to the calculation of the associated rent.
- J. The County and Cities participating in the System have worked collaboratively for several years to develop a plan for the replacement or upgrading of a series of transfer stations. The Parties acknowledge that these transfer station improvements, as they may be modified from time-to-time, will benefit Cities that are part of the System and the County. The Parties have determined that the extension of the term of the Original Agreement by twelve (12) years as accomplished by this Agreement is appropriate in order to facilitate the long-term financing of transfer station improvements and to mitigate rate impacts of such financing.
- K. The Parties have further determined that in order to equitably allocate the benefit to all System Users from the transfer station improvements, different customer classes may be established by the County to ensure System Users do not pay a disproportionate share of the cost of these improvements as a result of a decision by a city not to extend the term of the Original Agreement.
- L. The Parties have further determined it is appropriate to strengthen and formalize the advisory role of the Cities regarding System operations.

The Parties agree as follows:

# I. DEFINITIONS

For purposes of this Agreement the following definitions shall apply:

“Cedar Hills Landfill” means the landfill owned and operated by the County located in southeast King County.

“Cities” refers to all Cities that have signed an Amended and Restated Solid Waste Interlocal Agreement in substantially identical form to this Agreement.

"Comprehensive Solid Waste Management Plan" or "Comprehensive Plan" means the Comprehensive Solid Waste Management Plan, as approved and amended from time to time, for the System, as required by chapter 70.95.080 RCW.

“County” means King County, a Charter County and political subdivision of the State of Washington.

"Disposal" means the final treatment, utilization, processing, deposition, or incineration of Solid Waste but shall not include Waste Prevention or Recycling as defined herein.

“Disposal Rates” means the fee charged by the County to System Users to cover all costs of the System consistent with this Agreement, all state, federal and local laws governing solid waste and the Solid Waste Comprehensive Plan.

"Divert" means to direct or permit the directing of Solid Waste to Disposal sites other than the Disposal site(s) designated by King County.

"Energy/Resource Recovery" means the recovery of energy in a usable form from mass burning or refuse-derived fuel incineration, pyrolysis or any other means of using the heat of combustion of Solid Waste that involves high temperature (above 1,200 degrees F) processing. (chapter 173.350.100 WAC).

"Landfill" means a Disposal facility or part of a facility at which Solid Waste is placed in or on land and which is not a land treatment facility.

“Metropolitan Solid Waste Advisory Committee” or “MSWAC” means the advisory committee composed of city representatives, established pursuant to Section IX of this Agreement.

"Moderate Risk Waste" means waste that is limited to conditionally exempt small quantity generator waste and household hazardous waste as those terms are defined in chapter 173-350 WAC, as amended.



“Original Agreement” means the Solid Waste Interlocal Agreement first entered into by and between the Parties, which is amended and restated by this Agreement. “Original Agreements” means collectively all such agreements between Cities and the County in substantially the same form as the Original Agreement.

“Parties” means collectively the County and the City or Cities.

"Recycling" as defined in chapter 70.95.030 RCW, as amended, means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill Disposal or incineration.

“Regional Policy Committee” means the Regional Policy Committee created pursuant to approval of the County voters in 1993, the composition and responsibilities of which are prescribed in King County Charter Section 270 and chapter 1.24 King County Code, as they now exist or hereafter may be amended.

"Solid Waste" means all putrescible and nonputrescible solid and semisolid wastes including but not limited to garbage, rubbish, ashes, industrial wastes, swill, commercial waste, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged materials, discarded commodities and recyclable materials, but shall not include dangerous, hazardous, or extremely hazardous waste as those terms are defined in chapter 173-303 WAC, as amended; and shall further not include those

wastes excluded from the regulations established in chapter 173-350 WAC, more specifically identified in Section 173-350-020 WAC.

"Solid Waste Advisory Committee" or "SWAC" means the inter-disciplinary advisory forum or its successor created by the King County Code pursuant to chapter 70.95.165 RCW.

"System" includes King County's Solid Waste facilities used to manage Solid Wastes which includes but is not limited to transfer stations, drop boxes, landfills, recycling systems and facilities, energy and resource recovery facilities and processing facilities as authorized by chapter 36.58.040 RCW and as established pursuant to the approved King County Comprehensive Solid Waste Management Plan.

"System User" or "System Users" means Cities and any person utilizing the County's System for Solid Waste handling, Recycling or Disposal.

"Waste Prevention" means reducing the amount or type of waste generated. Waste Prevention shall not include reduction of already-generated waste through energy recovery, incineration, or otherwise.

## II. PURPOSE

The purpose of this Agreement is to foster transparency and cooperation between the Parties and to establish the respective responsibilities of the Parties in a Solid Waste management System, including but not limited to, planning, Waste Prevention, Recycling, and Disposal. .

### III. DURATION

This Agreement shall become effective as of 11/6/13 and shall remain in effect through December 31, 2040.

### IV. APPROVAL

This Agreement will be approved and filed in accordance with chapter 39.34 RCW.

### V. RENEGOTIATION TO FURTHER EXTEND TERM OF AGREEMENT

5.1 The Parties recognize that System Users benefit from long-term Disposal arrangements, both in terms of predictability of System costs and operations, and the likelihood that more cost competitive rates can be achieved with longer-term Disposal contracts as compared to shorter-term contracts. To that end, at least seven (7) years before the date that the County projects that the Cedar Hills Landfill will close, or prior to the end of this Agreement, whichever is sooner, the County will engage with MSWAC and the Solid Waste Advisory Committee, among others, to seek their advice and input on the Disposal alternatives to be used after closure of the Cedar Hills Landfill, associated changes to the System, estimated costs associated with the recommended Disposal alternatives, and amendments to the Comprehensive Solid Waste Management Plan necessary to support these changes. Concurrently, the Parties will meet to negotiate an extension of the term of the Agreement for the purpose of facilitating the long-term Disposal of Solid Waste after closure of the Cedar Hills Landfill. Nothing in this Agreement shall require the Parties to reach agreement on an extension of the term of this Agreement. If the Parties fail to reach agreement on an extension, the Dispute Resolution provisions of Section XIII do not apply, and this Agreement shall remain unchanged.

5.2 Notwithstanding any other provision in this Agreement to the contrary, the Parties may, pursuant to mutual written agreement, modify or amend any provision of this Agreement at any time during the term of said Agreement.

## VI. GENERAL OBLIGATIONS OF PARTIES

### 6.1 King County

6.1.a Management. The County agrees to provide Solid Waste management services, as specified in this Section, for Solid Waste generated and collected within the City, except waste eliminated through Waste Prevention or waste recycling activities. The County agrees to dispose of or designate Disposal sites for all Solid Waste and Moderate Risk Waste generated and/or collected within the corporate limits of the City which is delivered to the System in accordance with all applicable Federal, State and local environmental health laws, rules, or regulations, as those laws are described in Subsection 8.5.a. The County shall maintain records as necessary to fulfill obligations under this Agreement.

6.1.b Planning. The County shall serve as the planning authority for Solid Waste and Moderate Risk Waste under this Agreement but shall not be responsible for planning for any other waste or have any other planning responsibility under this Agreement.

6.1.c Operation. King County shall be or shall designate or authorize the operating authority for transfer, processing and Disposal facilities, including public landfills and other facilities, consistent with the adopted Comprehensive Plan as well as closure and post-closure responsibilities for landfills which are or were operated by the County.

6.1.d Collection Service. The County shall not provide Solid Waste collection services within the corporate limits of the City, unless permitted by law and agreed to by both Parties.

6.1.e Support and Assistance. The County shall provide support and technical assistance to the City consistent with the Comprehensive Solid Waste Management Plan for a Waste Prevention and Recycling program. Such support may include the award of grants to support programs with System benefits. The County shall develop educational materials related to Waste Prevention and Recycling and strategies for maximizing the usefulness of the educational materials and will make these available to the City for its use. Although the County will not be required to provide a particular level of support or fund any City activities related to Waste Prevention and Recycling, the County intends to move forward aggressively to promote Waste Prevention and Recycling.

6.1.f Forecast. The County shall develop Solid Waste stream forecasts in connection with System operations as part of the comprehensive planning process in accordance with Article XI.

6.1.g Facilities and Services. The County shall provide facilities and services pursuant to the Comprehensive Solid Waste Management Plan and the Solid Waste Transfer and Waste Management plan as adopted and County Solid Waste stream forecasts.

6.1.h Financial Policies. The County will maintain financial policies to guide the System's operations and investments. The policies shall be consistent with this Agreement and shall address debt issuance, rate stabilization, cost containment, reserves, asset ownership and use, and other financial issues. The County shall primarily use long term bonds to finance transfer System improvements. The policies shall be developed and/or revised through



discussion with MSWAC, the Regional Policy Committee, the County Executive and the County Council. Such policies shall be codified at the same time as the Comprehensive Plan updates, but may be adopted from time to time as appropriate outside the Comprehensive Plan process.

## 6.2 City

6.2.a Collection. The City, an entity designated by the City or such other entity as is authorized by state law shall serve as operating authority for Solid Waste collection services provided within the City's corporate limits.

6.2.b Disposal. The City shall cause to be delivered to the County's System for Disposal all such Solid Waste and Moderate Risk Waste which is authorized to be delivered to the System in accordance with all applicable Federal, State and local environmental health laws, rules or regulations and is generated and/or collected within the corporate limits of the City and shall authorize the County to designate Disposal sites for the Disposal of all such Solid Waste and Moderate Risk Waste generated or collected within the corporate limits of the City, except for Solid Waste which is eliminated through Waste Prevention or waste Recycling activities consistent with the Comprehensive Solid Waste Management Plan. No Solid Waste generated or collected within the City may be Diverted from the designated Disposal sites without County approval.

## 6.3 JOINT RESPONSIBILITIES.

6.3.a Consistent with the Parties' overall commitment to ongoing communication and coordination, the Parties will endeavor to notify and coordinate with each other on the development of any City or County plan, facility, contract, dispute, or other Solid Waste issue that could have potential significant impacts on the County, the System, or the City or Cities.

6.3.b The Parties, together with other Cities, will coordinate on the development of emergency plans related to Solid Waste, including but not limited to debris management.

VII. COUNTY SHALL SET DISPOSAL RATES  
AND OPERATING RULES FOR DISPOSAL; USE OF SYSTEM REVENUES

7.1 In establishing Disposal Rates for System Users, the County shall consult with MSWAC consistent with Section IX. The County may adopt and amend by ordinance rates necessary to recover all costs of the System including but not limited to operations and maintenance, costs for handling, processing and Disposal of Solid Waste, siting, design and construction of facility upgrades or new facilities, Recycling, education and mitigation, planning, Waste Prevention, reserve funds, financing, defense and payment of claims, insurance, System liabilities including environmental releases, monitoring and closure of landfills which are or were operated by the County, property acquisition, grants to cities, and administrative functions necessary to support the System and Solid Waste handling services during emergencies as established by local, state and federal agencies or for any other lawful solid waste purpose, and in accordance with chapter 43.09.210 RCW. Revenues from Disposal rates shall be used only for such purposes. The County shall establish classes of customers for Solid Waste management services and by ordinance shall establish rates for classes of customers.

7.2. It is understood and agreed that System costs include payments to the County general fund for Disposal of Solid Waste at the Cedar Hills Landfill calculated in accordance with this Section 7.2, and that such rental payments shall be established based on use valuations provided to the County by an independent-third party Member, Appraisal Institute (MAI) certified appraiser selected by the County in consultation with MSWAC.



7.2.a A use valuation shall be prepared consistent with MAI accepted principles for the purpose of quantifying the value to the System of the use of Cedar Hills Landfill for Disposal of Solid Waste over a specified period of time (the valuation period). The County shall establish a schedule of annual use charges for the System's use of the Cedar Hills Landfill which shall not exceed the most recent use valuation. Prior to establishing the schedule of annual use charges, the County shall seek review and comment as to both the use valuation and the proposed payment schedule from MSWAC. Upon request, the County will share with and explain to MSWAC the information the appraiser requests for purposes of developing the appraiser's recommendation.

7.2.b Use valuations and the underlying schedule of use charges shall be updated if there are significant changes in Cedar Hills Landfill capacity as a result of opening new Disposal areas and as determined by revisions to the existing Cedar Hills Regional Landfill Site Development Plan; in that event, an updated appraisal will be performed in compliance with MAI accepted principles. Otherwise, a reappraisal will not occur. Assuming a revision in the schedule of use charges occurs based on a revised appraisal, the resulting use charges shall be applied beginning in the subsequent rate period.

7.2.c The County general fund shall not charge use fees or receive other consideration from the System for the System's use of any transfer station property in use as of the effective date of this Agreement. The County further agrees that the County general fund may not receive payments from the System for use of assets to the extent those assets are acquired with System revenues. As required by chapter 43.09.210 RCW, the System's use of assets acquired with the use of other separate County funds (e.g., the Roads Fund, or other funds)

will be subject to use charges; similarly, the System will charge other County funds for use of System property.

## VIII. LIABILITY

8.1 Non-Environmental Liability Arising Out-of-County Operations. Except as provided in this Section, Sections 8.5 and 8.6, the County shall indemnify and hold harmless the City and shall have the right and duty to defend the City through the County's attorneys against any and all claims arising out of the County's operations during the term of this Agreement and settle such claims, provided that all fees, costs, and expenses incurred by the County thereby are System costs which may be satisfied from Disposal Rates as provided in Section VII herein. In providing such defense of the City, the County shall exercise good faith in such defense or settlement so as to protect the City's interest. For purposes of this Section "claims arising out of the County's operations" shall mean claims arising out of the ownership, control, or maintenance of the System, but shall not include claims arising out of the City's operation of motor vehicles in connection with the System or other activities under the control of the City which may be incidental to the County's operation. The provisions of this Section shall not apply to claims arising out of the sole negligence or intentional acts of the City. The provisions of this Section shall survive for claims brought within three (3) years past the term of this Agreement established under Section III.

8.2 Cooperation. In the event the County acts to defend the City against a claim under Section 8.1, the City shall cooperate with the County.

8.3 Officers, Agents, and Employees. For purposes of this Section VIII, references to City or County shall be deemed to include the officers, employees and agents of either Party,

acting within the scope of their authority. Transporters or generators of waste who are not officers or employees of the City or County are not included as agents of the City or County for purposes of this Section.

8.4 Each Party by mutual negotiation hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

8.5 Unacceptable Waste

8.5.a All waste generated or collected from within the corporate limits of the City which is delivered to the System for Disposal shall be in compliance with the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (RCRA), chapters 70.95 and 70.105 RCW, King County Code Title 10, King County Board of Health Rules and Regulations, the Solid Waste Division operating rules, and all other Federal, State and local environmental health laws, rules or regulations that impose restrictions or requirements on the type of waste that may be delivered to the System, as they now exist or are hereafter adopted or amended.

8.5.b For purposes of this Agreement, the City shall be deemed to have complied with the requirements of Subsection 8.5.a if it has adopted an ordinance requiring waste delivered to the System for Disposal to meet the laws, rules, or regulations specified in Subsection 8.5.a. However, nothing in this Agreement is intended to relieve the City from any obligation or liability it may have under the laws mentioned in Subsection 8.5.a arising out of the City's actions other than adopting, enforcing, or requiring compliance with said ordinance, such as liability, if any exists, of the City as a transporter or generator for improper transport or Disposal of regulated dangerous waste. Any environmental liability the City may have for

releases of pollutants or hazardous or dangerous substances or wastes to the environment is dealt with under Sections 8.6 and 8.7.

8.5.c The City shall hold harmless, indemnify and defend the County for any property damages or personal injury caused solely by the City's failure to adopt an ordinance under Subsection 8.5.b. In the event the City acts to defend the County under this Subsection, the County shall cooperate with the City.

8.5.d The City shall make best efforts to include language in its contracts, franchise agreements, or licenses for the collection of Solid Waste within the City that allow for enforcement by the City against the collection contractor, franchisee or licensee for violations of the laws, rules, or regulations in Subsection 8.5.a. The requirements of this Subsection 8.5.d shall apply to the City's first collection contract, franchise, or license that becomes effective or is amended after the effective date of this Agreement.

8.5.d.i If waste is delivered to the System in violation of the laws, rules, or regulations in Subsection 8.5.a, before requiring the City to take any action under Subsection 8.5.d.ii, the County will make reasonable efforts to determine the parties' responsible for the violation and will work with those parties to correct the violation, consistent with applicable waste clearance and acceptance rules, permit obligations, and any other legal requirements.

8.5.d.ii If the violation is not corrected under Subsection 8.5.d.i and waste is determined by the County to have been generated or collected from within the corporate limits of the City, the County shall provide the City with written notice of the violation. Upon such notice, the City shall take immediate steps to remedy the violation and prevent similar future violations to the reasonable satisfaction of the County which may include but not be



limited to removing the waste and disposing of it in an approved facility; provided that nothing in this Subsection 8.5.d.ii shall obligate the City to handle regulated dangerous waste, as defined in WAC 173-351-200(1)(b)(i), and nothing in this Subsection shall relieve the City of any obligation it may have apart from this Agreement to handle regulated dangerous waste. If, in good faith, the City disagrees with the County regarding the violation, such dispute shall be resolved between the Parties using the Dispute Resolution process in Section XII or, if immediate action is required to avoid an imminent threat to public health, safety or the environment, in King County Superior Court. Each Party shall be responsible for its own attorneys' fees and costs. Failure of the City to take the steps requested by the County pending Superior Court resolution shall not be deemed a violation of this Agreement; provided, however, that this shall not release the City for damages or loss to the County arising out of the failure to take such steps if the Court finds a City violation of the requirements to comply with applicable laws set forth in Subsection 8.5.a.

#### 8.6 Environmental Liability.

8.6.a Neither the County nor the City holds harmless or indemnifies the other with regard to any liability arising under 42 U.S.C. § 9601-9675 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) or as hereafter amended or pursuant to chapter 70.105D RCW (MTCA) or as hereafter amended and any state legislation imposing liability for System-related cleanup of contaminated property from the release of pollutants or hazardous or dangerous substances and/or damages resulting from property contaminated from the release of pollutants or hazardous or dangerous substances (“Environmental Liabilities”).

8.6.b Nothing in this Agreement is intended to create new Environmental Liability nor release any third-party from Environmental Liability. Rather, the intent is to protect the general funds of the Parties to this Agreement by ensuring that, consistent with best business practices, an adequate portion of Disposal Rates being collected from the System Users are set aside and accessible in a fair and equitable manner to pay the respective County and City's Environmental Liabilities.

8.6.c The purpose of this Subsection is to establish a protocol for the setting aside, and subsequent distribution of, Disposal Rates intended to pay for Environmental Liabilities of the Parties, if and when such liabilities should arise, in order to safeguard the Parties' general funds. To do so, the County shall:

8.6.c.i Use Disposal Rates to obtain and maintain, to the extent commercially available under reasonable terms, insurance coverage for System-related Environmental Liability that names the City as an Additional Insured. The County shall establish the adequacy, amount and availability of such insurance in consultation with MSWAC. Any insurance policy in effect on the termination date of this Agreement with a term that extends past the termination date shall be maintained until the end of the policy term.

8.6.c.ii Use Disposal Rates to establish and maintain a reserve fund to help pay the Parties' Environmental Liabilities not already covered by System rates or insurance maintained under Subsection 8.6.c.i above ("Environmental Reserve Fund"). The County shall establish the adequacy of the Environmental Reserve Fund in consultation with MSWAC and consistent with the financial policies described in Article VI. The County shall retain the Environmental Reserve Fund for a minimum of 30 years following the closure of the Cedar Hills Landfill (the "Retention Period"). During the Retention Period, the Environmental Reserve Fund



shall be used solely for the purposes for which it was established under this Agreement. Unless otherwise required by law, at the end of the Retention Period, the County and Cities shall agree as to the disbursement of any amounts remaining in the Environmental Reserve Fund. If unable to agree, the County and City agree to submit disbursement to mediation and if unsuccessful to binding arbitration in a manner similar to Section 39.34.180 RCW to the extent permitted by law.

8.6.c.iii Pursue state or federal grant funds, such as grants from the Local Model Toxics Control Account under chapter 70.105D.070(3) RCW and chapter 173-322 WAC, or other state or federal funds as may be available and appropriate to pay for or remediate such Environmental Liabilities.

8.6.d If the funds available under Subsections 8.6.c.i-iii are not adequate to completely satisfy the Environmental Liabilities of the Parties to this Agreement then to the extent feasible and permitted by law, the County will establish a financial plan including a rate schedule to help pay for the County and City's remaining Environmental Liabilities in consultation with MSWAC.

8.6.e The County and the City shall act reasonably and quickly to utilize funds collected or set aside through the means specified in Subsections 8.6.c.i-iii and 8.6.d to conduct or finance response or clean-up activities in order to limit the County and City's exposure, or in order to comply with a consent decree, administrative or other legal order. The County shall notify the City within 30 days of any use of the reserve fund established in 8.6.c.iii.

8.6.f In any federal or state regulatory proceeding, and in any action for contribution, money expended by the County from the funds established in Subsections 8.6.c.i-iii and 8.6.d. to pay the costs of remedial investigation, cleanup, response or other action required

pursuant to a state or federal laws or regulations shall be considered by the Parties to have been expended on behalf and for the benefit of the County and the Cities.

8.6.g In the event that the funds established as specified in Subsections 8.6.c.i-iii and 8.6.d are insufficient to cover the entirety of the County and Cities' collective Environmental Liabilities, the funds described therein shall be equitably allocated between the County and Cities to satisfy their Environmental Liabilities. Factors to be considered in determining "equitably allocated" may include the size of each Party's System User base and the amount of rates paid by that System User base into the funds, and the amount of the Solid Waste generated by the Parties' respective System Users. Neither the County nor the Cities shall receive a benefit exceeding their Environmental Liabilities.

8.7 The County shall not charge or seek to recover from the City any costs or expenses for which the County indemnified the State of Washington in Exhibit A to the Quitclaim Deed from the State to the County for the Cedar Hills Landfill, dated February 24, 1993, to the extent such costs are not included in System costs.

## IX. CITY ADVISORY COMMITTEE

9.1 There is hereby created an advisory committee comprised of representatives from cities, which shall be known as the Metropolitan Solid Waste Advisory Committee ("MSWAC"). The City may designate a representative and alternate(s) to serve on MSWAC. MSWAC shall elect a chair and vice-chair and shall adopt bylaws to guide its deliberations. The members of MSWAC shall serve at the pleasure of their appointing bodies and shall receive no compensation from the County.

9.2 MSWAC is the forum through which the Parties together with other cities participating in the System intend to discuss and seek to resolve System issues and concerns.

MSWAC shall assume the following advisory responsibilities:

9.2.a Advise the King County Council, the King County Executive, Solid Waste Advisory Committee, and other jurisdictions as appropriate, on all policy aspects of Solid Waste management and planning;

9.2.b Consult with and advise the County on technical issues related to Solid Waste management and planning;

9.2.c Assist in the development of alternatives and recommendations for the Comprehensive Solid Waste Management Plan and other plans governing the future of the System, and facilitate a review and/or approval of the Comprehensive Solid Waste Management Plan by each jurisdiction;

9.2.d Assist in the development of proposed interlocal Agreements between King County and cities for planning, Waste Prevention and Recycling, and waste stream control;

9.2.e Review and comment on Disposal Rate proposals and County financial policies;

9.2.f Review and comment on status reports on Waste Prevention, Recycling, energy/resources recovery, and System operations with inter-jurisdictional impact;

9.2.g Promote information exchange and interaction between waste generators, cities, recyclers, and the County with respect to its planned and operated Disposal Systems;

9.2.h Provide coordination opportunities among the Solid Waste Advisory Committee, the Regional Policy Committee, the County, cities, private waste haulers, and recyclers;

9.2.i Assist cities in recognizing municipal Solid Waste responsibilities, including collection and Recycling, and effectively carrying out those responsibilities; and

9.2.j Provide input on such disputes as MSWAC deems appropriate.

9.3 The County shall assume the following responsibilities with respect to MSWAC;

9.3.a The County shall provide staff support to MSWAC;

9.3.b In consultation with the chair of MSWAC, the County shall notify all cities and their designated MSWAC representatives and alternates of the MSWAC meeting times, locations and meeting agendas. Notification by electronic mail or regular mail shall meet the requirements of this Subsection;

9.3.c The County will consider and respond on a timely basis to questions and issues posed by MSWAC regarding the System, and will seek to resolve those issues in collaboration with the Cities. Such issues shall include but are not limited to development of efficient and accountable billing practices; and

9.3.d. The County shall provide all information and supporting documentation and analyses as reasonably requested by MSWAC for MSWAC to perform the duties and functions described in Section 9.2.

## X. FORUM INTERLOCAL AGREEMENT

10.1 As of the effective date of this Agreement, the *Forum Interlocal Agreement* and *Addendum to Solid Waste Interlocal Agreement and Forum Interlocal Agreement* by and between the City and County continue through June 30, 2028. After 2028 responsibilities assigned to the Forum shall be assigned to the Regional Policy Committee. The Parties agree that Solid Waste System policies and plans shall continue to be deemed regional countywide policies

and plans that shall be referred to the Regional Policy Committee for review consistent with King County Charter Section 270.30 and chapter 1.24 King County Code.

#### XI. COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN

11.1 King County is designated to prepare the Comprehensive Solid Waste Management Plan (Comprehensive Plan) and this plan shall include the City's Solid Waste Management Comprehensive Plan pursuant to chapter 70.95.080(3) RCW.

11.2 The Comprehensive Plan shall be reviewed and any necessary revisions proposed. The County shall consult with MSWAC to determine when revisions are necessary. King County shall provide services and build facilities in accordance with the adopted Comprehensive Plan.

11.3 The Comprehensive Plans will promote Waste Prevention and Recycling in accordance with Washington State Solid Waste management priorities pursuant to chapter 70.95 RCW, at a minimum.

11.4 The Comprehensive Plans will be prepared in accordance with chapter 70.95 RCW and Solid Waste planning guidelines developed by the Department of Ecology. The plan shall include, but not be limited to:

11.4.a Descriptions of and policies regarding management practices and facilities required for handling all waste types;

11.4.b Schedules and responsibilities for implementing policies;

11.4.c Policies concerning waste reduction, Recycling, Energy and Resource Recovery, collection, transfer, long-haul transport, Disposal, enforcement and administration; and



11.4.d Operational plan for the elements discussed in Item c above.

11.5 The cost of preparation by King County of the Comprehensive Plan will be considered a cost of the System and financed out of the rate base.

11.6 The Comprehensive Plans will be “adopted” within the meaning of this Agreement when the following has occurred:

11.6.a The Comprehensive Plan is approved by the King County Council; and

11.6.b The Comprehensive Plan is approved by cities representing three-quarters of the population of the incorporated population of jurisdictions that are parties to the Forum Interlocal Agreement. In calculating the three-quarters, the calculations shall consider only those incorporated jurisdictions taking formal action to approve or disapprove the Comprehensive Plan within 120 days of receipt of the Plan. The 120-day time period shall begin to run from receipt by an incorporated jurisdiction of the Forum's recommendation on the Comprehensive Plan, or, if the Forum is unable to make a recommendation, upon receipt of the Comprehensive Plan from the Forum without recommendation.

11.7 Should the Comprehensive Plan be approved by the King County Council, but not receive approval of three-quarters of the cities acting on the Comprehensive Plan, and should King County and the cities be unable to resolve their disagreement, then the Comprehensive Plan shall be referred to the State Department of Ecology and the State Department of Ecology will resolve any disputes regarding Comprehensive Plan adoption and adequacy by approving or disapproving the Comprehensive Plan or any part thereof.

11.8 King County shall determine which cities are affected by any proposed amendment to the Comprehensive Plan. If any City disagrees with such determination, then the City can request that the Forum determine whether or not the City is affected. Such



determination shall be made by a two-thirds majority vote of all representative members of the Forum.

11.9 Should King County and the affected jurisdictions be unable to agree on amendments to the Comprehensive Plan, then the proposed amendments shall be referred to the Department of Ecology to resolve any disputes regarding such amendments.

11.10 Should there be any impasse between the Parties regarding Comprehensive Plan adoption, adequacy, or consistency or inconsistency or whether any permits or programs adopted or proposed are consistent with the Comprehensive Plan, then the Department of Ecology shall resolve said disputes.

## XII. MITIGATION

12.1 The County will design, construct and operate Solid Waste facilities in a manner to mitigate their impact on host Cities and neighboring communities pursuant to applicable law and regulations.

12.2 The Parties recognize that Solid Waste facilities are regional facilities. The County further recognizes that host Cities and neighboring communities may sustain impacts which can include but are not limited to local infrastructure, odor, traffic into and out of Solid Waste facilities, noise and litter.

12.3 Collaboration in Environmental Review. In the event the County is the sole or co-Lead Agency, then prior to making a threshold determination under the State Environmental Policy Act (SEPA), the County will provide a copy of the SEPA environmental checklist, if any, and proposed SEPA threshold determination to any identifiable Host City (as defined below) and adjacent or neighboring city that is signatory to the Agreement and that may be affected by the

project ("Neighboring City") and seek their input. For any facility for which the County prepares an Environmental Impact Statement (EIS), the County will meet with any identified potential Host City (as defined below) and any Neighboring City to seek input on the scope of the EIS and appropriate methodologies and assumptions in preparing the analyses supporting the EIS. However, nothing in this Section shall limit or impair the County's ability to timely complete the environmental review process.

12.4 Collaboration in Project Permitting. If a new or reconstructed Solid Waste facility is proposed to be built within the boundaries of the City ("Host City") and the project requires one or more "project permits" as defined in chapter 36.70B.020(4) RCW from the Host City, before submitting its first application for any of the project permits, the County will meet with the Host City and any Neighboring City, to seek input. However, nothing in this Section shall limit or impair the County's ability to timely submit applications for or receive permits, nor waive any permit processing or appeal timelines.

12.5 Separately, the County and the City recognize that in accordance with 36.58.080 RCW, a city is authorized to charge the County to mitigate impacts directly attributable to a County-owned Solid Waste facility. The County acknowledges that such direct costs include wear and tear on infrastructure including roads. To the extent that the City establishes that such charges are reasonably necessary to mitigate such impacts, payments to cover such impacts may only be expended only to mitigate such impacts and are System costs. If the City believes that it is entitled to mitigation under this Agreement, the City may request that the County undertake a technical analysis regarding the extent of impacts authorized for mitigation. Upon receiving such a request, the County, in coordination with the City and any necessary technical consultants, will develop any analysis that is reasonable and appropriate to identify impacts. The cost for such

analysis is a System cost. The City and County will work cooperatively to determine the appropriate mitigation payments and will document any agreement in a Memorandum of Agreement. If the City and the County cannot agree on mitigation payments, the dispute resolution process under chapter 36.58.080 RCW will apply rather than the dispute resolution process under Section XII of the Agreement.

### XIII. DISPUTE RESOLUTION

13.1 Unless otherwise expressly stated, the terms of this Section XIII shall apply to disputes arising under this Agreement.

#### 13.2 Initial Meeting.

13.2.a Either Party shall give notice to the other in writing of a dispute involving this Agreement.

13.2.b Within ten (10) business days of receiving or issuing such notice, the County shall send an email notice to all Cities.

13.2.c Within ten (10) business days of receiving the County's notice under Subsection 13.2.b, a City shall notify the County in writing or email if it wishes to participate in the Dispute Resolution process.

13.2.d Within not less than twenty-one (21) days nor more than thirty (30) days of the date of the initial notice of dispute issued under Subsection 13.2.a, the County shall schedule a time for staff from the County and any City requesting to participate in the dispute resolution process ("Participating City") to meet (the "initial meeting"). The County shall endeavor to set such initial meeting a time and place convenient to all Participating Cities and to the County.

### 13.3 Executives' Meeting.

13.3.a If the dispute is not resolved within sixty (60) days of the initial meeting, then within seven (7) days of expiration of the sixty (60)-day period, the County shall send an email notice to all Participating Cities that the dispute was not resolved and that a meeting of the County Executive, or his/her designee and the chief executive officer(s) of each Participating City, or the designees of each Participating City (an “executives' meeting”) shall be scheduled to attempt to resolve the dispute. It is provided, however, that the County and the Participating Cities may mutually agree to extend the sixty (60)-day period for an additional fifteen (15) days if they believe further progress may be made in resolving the dispute, in which case, the County’s obligation to send its email notice to the Participating Cities under this Subsection that the dispute was not resolved shall be within seven (7) days of the end of the extension. Likewise, the County and the Participating Cities may mutually conclude prior to the expiration of the sixty (60)-day period that further progress is not likely in resolving the dispute at this level, in which case, the County shall send its email notice that the dispute was not resolved within seven (7) days of the date that the County and the Participating Cities mutually concluded that further progress is not likely in resolving the dispute.

13.3.b Within seven (7) days of receiving the County’s notice under Subsection 13.3.a each Participating City shall notify the County in writing or email if it wishes to participate in the executives' meeting.

13.3.c Within not less than twenty-one (21) days nor more than thirty (30) days of the date of the notice of the executives' meeting issued under Subsection 13.3.a, the County shall schedule a time for the executives' meeting. The County shall endeavor to set such

executives' meeting a time and place convenient to all Participating Cities that provided notice under Subsection 13.3.b and to the County.

13.4. Non-Binding Mediation.

13.4.a If the dispute is not resolved within thirty (30) days of the executives' meeting, then any Participating City that was Party to the executives' meeting or the County may refer the matter to non-binding mediation by sending written notice within thirty-five (35) days of the initial executives' meeting to all Parties to such meeting.

13.4.b Within seven (7) days of receiving or issuing notice that a matter will be referred to non-binding mediation, the County shall send an email notice to all Participating Cities that provided notice under Subsection 13.3.b informing them of the referral.

13.4.c Within seven (7) days of receiving the County's notice under Subsection 13.4.b, each Participating City shall notify the County in writing if it wishes to participate in the non-binding mediation.

13.4.d The mediator will be selected in the following manner: The City(ies) electing to participate in the mediation shall propose a mediator and the County shall propose a mediator; in the event the mediators are not the same person, the two mediators shall select a third mediator who shall mediate the dispute. Alternately, the City(ies) participating in the mediation and the County may agree to select a mediator through a mediation service mutually acceptable to the Parties. The Parties to the mediation shall share equally in the costs charged by the mediator or mediation service. For purposes of allocating costs of the mediator or mediation service, all Cities participating in the mediation will be considered one Party.

13.5 Superior Court. Any Party, after participating in the non-binding mediation, may commence an action in King County Superior Court after one hundred eighty (180) days from



the commencement of the mediation, in order to resolve an issue that has not by then been resolved through non-binding mediation, unless all Parties to the mediation agree to an earlier date for ending the mediation.

13.6 Unless this Section XIII does not apply to a dispute, then the Parties agree that they may not seek relief under this Agreement in a court of law or equity unless and until each of the procedural steps set forth in this Section XIII have been exhausted, provided, that if any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps in this Section XIII, a Party may file suit to preserve a cause of action while the Dispute Resolution process continues. The Parties agree that, if necessary and if allowed by the court, they will seek a stay of any such suit while the Dispute Resolution process is completed. If the dispute is resolved through the Dispute Resolution process, the Parties agree to dismiss the lawsuit, including all claims, counterclaims, and cross-claims, with prejudice and without costs to any Party.

#### XIV. FORCE MAJEURE

The Parties are not liable for failure to perform pursuant to the terms of this Agreement when failure to perform was due to an unforeseeable event beyond the control of either Party (“force majeure”). The term “force majeure” shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, or labor disputes, causing the inability to perform the requirements of this Agreement, if either Party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Agreement, upon giving notice and reasonably full particulars to

the other Party, such obligation or condition shall be suspended only for the time and to the extent practicable to restore normal operations.

#### XV. MERGER

This Agreement merges and supersedes all prior negotiations, representation and/or agreements between the Parties relating to the subject matter of this Agreement and constitutes the entire contract between the Parties [except with regard to the provisions of the Forum Interlocal Agreement]; provided that nothing in Section XV supersedes or amends any indemnification obligation that may be in effect pursuant to a contract between the Parties other than the Original Agreement; and further provided that nothing in this Agreement supersedes, amends or modifies in any way any permit or approval applicable to the System or the County's operation of the System within the jurisdiction of the City.

#### XVI. WAIVER

No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach whether of the same or a different provision of this Agreement.

#### XVII. THIRD PARTY BENEFICIARY

This Agreement is not entered into with the intent that it shall benefit any other entity or person except those expressly described herein, and no other such person or entity shall be entitled to be treated as a third-party beneficiary of this Agreement.

## XVIII. SURVIVABILITY

Except as provided in Section 8.1, 8.2, 8.3, Section 8.6.c, except 8.6.ciii and Section 8.6d, no obligations in this Agreement survive past the expiration date as established in Section III.

XIX. NOTICE

Except as otherwise provided in this Agreement, a notice required to be provided under the terms of this Agreement shall be delivered by certified mail, return receipt requested or by personal service to the following person:

For the City:

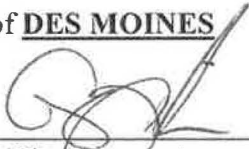
Anthony A. Piasecki, City Manager  
City of Des Moines  
21630 11<sup>th</sup> Avenue South, Suite A  
Des Moines, WA 98198

For the County:

Pat D. McLaughlin, Director  
 King County Solid Waste Division  
 201 South Jackson Street, Suite 701  
 Seattle, Washington 98104

IN WITNESS WHEREOF, this Agreement has been executed by each Party on the date set forth below:

CITY of DES MOINES

  
 (Mayor/City Manager)

Date

3/6/13

  
 Clerk-Attest

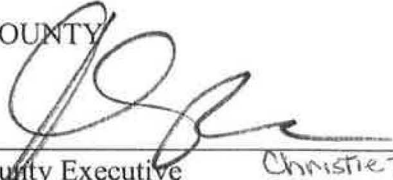
Approved as to form and legality

  
 City Attorney

Date

3/6/2013

KING COUNTY

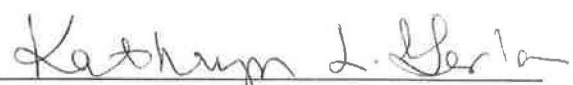
  
 King County Executive

Date

11/6/2013

  
 Clerk-Attest

Approved as to form and legality

  
 King County Deputy Prosecuting Attorney

Date

10-31-13

## A G E N D A   I T E M

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

**SUBJECT:** Draft Resolution No. 19-085:  
Declaring the intent to adopt  
legislation to authorize a sales and  
use tax for affordable and supportive  
housing

**ATTACHMENTS:**

1. Draft Resolution No. 19-085: Declaring the intent to adopt legislation to authorize a sales and use tax.
2. Substitute House Bill 1406
3. HB 1406 Implementation Options for the City of Des Moines

**FOR AGENDA OF:** September 5, 2019

**DEPT. OF ORIGIN:** Community Development

**DATE SUBMITTED:** August 29, 2019

**CLEARANCES:**

- ☒ Community Development *SJC*  
☐ Marina \_\_\_\_\_  
☐ Parks, Recreation & Senior Services \_\_\_\_\_  
☐ Public Works \_\_\_\_\_

**CHIEF OPERATIONS OFFICER:** *DSS*

- ☒ Legal *JG*  
☒ Finance *Blw*  
☐ Courts \_\_\_\_\_  
☐ Police \_\_\_\_\_

**APPROVED BY CITY MANAGER  
FOR SUBMITTAL:** *[Signature]*

**Purpose**

The purpose of this agenda item is for the City Council to consider the proposed Draft Resolution that declares the intent of the City to authorize the maximum capacity of a sales and use tax for the purpose of investing in affordable and supportive housing as authorized by the Legislature in 2019 through Substitute House Bill 1406. Approving this draft resolution will not result in increased taxes for residents of Des Moines.

**Suggested Motion[s]**

**Motion 1:** “I move to enact Draft Resolution No. 19-085, declaring the intent of the City Council to adopt legislation to authorize a sales and use tax for affordable and supportive housing in accordance with Substitute House Bill 1406.”



## **Background**

Starting in 2015, the South King Housing and Homelessness Partnership (SKHHP) brought together a network of South King County stakeholders on issues related to affordable housing and homelessness. This year, efforts have ramped up, and this coalition formed an interlocal agreement between the jurisdictions of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Normandy Park, Tukwila, and King County to work together and share resources in order to effectively address this issue. This collaborative model is based on similar approaches used in Snohomish County, East King County, and other areas. The purpose is to increase the available options for South King County residents to access to affordable housing and to preserve the existing affordable housing stock.

During the 2019 session, the State Legislature passed Substitute House Bill (SHB 1406), which was signed by the Governor on May 9. This bill identified a new funding source for cities and counties to support investment in efforts to acquire, rehabilitate, or construct affordable housing; fund the operations and maintenance costs of new units of affordable housing; and/or provide rental assistance to tenants. For cities choosing to participate in the program, a portion of the State's share of sales and use tax generated will be diverted to the cities for these purposes.

## **Discussion**

In order to take advantage of this funding opportunity in the first year, a city wishing to participate must pass a resolution, by January 28, 2020, that declares that city's intent to pass legislation authorizing the maximum capacity of the tax by July 28, 2020. To continue to receive the tax proceeds, the city must pass such legislation before that July 28, 2020 deadline. If the city fails to meet either requirement, the opportunity to receive those funds will be lost and the county where the city is located may receive the funds instead, or they may remain with the State. This revenue stream is available to cities for up to twenty years.

SHB 1406 explicitly provides that cities wishing to pool the funds received in a regional effort to address affordable housing may do so through an interlocal agreement with one or more cities, counties, or public housing authorities. A smaller city such as Des Moines could, if the City Council were to find it in the best interest of the City and of the coalition, pledge the future proceeds of the tax towards bonds issued by another party (or parties) to the interlocal agreement in support of a regional affordable housing project.

The Economic Development Committee was given a staff presentation regarding SHB 1406 and the need for timely action on a Draft Resolution on August 1, 2019. Staff received direction to prepare a Draft Resolution for presentation to the full City Council.

City staff continue to participate in SKHHP board meetings and staff planning meetings, and discussions continue between the nine South King County cities that comprise SKHHP. Staff's recommendation, based on direction from the Economic Development Committee is to approve the attached draft resolution, which is the first step in continued discussions for a regional strategy for use of the sales tax funds.

### **Alternatives**

The Council may:

1. Pass the proposed Draft Resolution as presented.
2. Pass the proposed Draft Resolution with amendments.
3. Decline to pass the proposed Draft Resolution.

### **Financial Impact**

If this proposed Draft Resolution is approved, the City will receive the proceeds of the sales and use tax equaling 0.0073% (seventy-three ten-thousands of one percent) of taxable retail sales in the City for the year ending July 28, 2020, per SHB 1406. Based on 2018 taxable sales, this amount is estimated to total approximately \$30,000.00 (thirty thousand dollars). These funds are deducted from the State's portion of the sales and use tax, and are not taken out of the City portion of sales and use tax or an additional tax. There will be no increase in taxes paid by implementing this at the local level, as the revenue is offset by a reduction in the state's portion and does not impact consumers.

Accessing future proceeds of this tax in the succeeding nineteen years will require that the City Council adopt a separate Ordinance authorizing the maximum capacity of the sales and use tax authorized by SHB 1406 by July 28, 2020.

### **Recommendation or Conclusion**

Staff recommends approval of the proposed Draft Resolution as presented.

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**CITY ATTORNEY'S FIRST DRAFT 08/29/2019****DRAFT RESOLUTION NO. 19-085**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON,** declaring the intent of the City Council to adopt legislation to authorize a sales and use tax for affordable and supportive housing in accordance with substitute house bill 1406 (chapter 338, laws of 2019), and other matters related thereto.

**WHEREAS,** in the 2019 Regular Session, the Washington State Legislature approved, and the Governor signed, Substitute House Bill 1406 (Chapter 338, Laws of 2019) ("SHB 1406"), and

**WHEREAS,** SHB 1406 authorizes the governing body of a city or county to impose a local sales and use tax for the acquisition, construction or rehabilitation of affordable housing or facilities providing supportive housing, for the operations and maintenance costs of affordable or supportive housing, or, if eligible, for providing rental assistance to tenants, and

**WHEREAS,** the tax will be credited against state sales taxes collected within the City and, therefore, will not result in higher sales and use taxes within the City and will represent an additional source of funding to address housing needs in the City, and

**WHEREAS,** the tax must be used to assist persons whose income is at or below sixty percent of the City median income, and

**WHEREAS,** the City has entered into the SKHHP interlocal agreement and has deemed the housing crisis to be something to approach collaboratively with South King County cities and has determined that imposing the sales and use tax to address this need will benefit its citizens, and

**WHEREAS,** in order for a city or county to impose the tax, within six months of the effective date of SHB 1406, or January 28, 2020, the governing body must adopt a resolution of intent to authorize the maximum capacity of the tax, and within twelve months of the effective date of SHB 1406, or July 28, 2020, must adopt legislation to authorize the maximum capacity of the tax, and

**WHEREAS,** this Resolution constitutes the resolution of intent required by SHB 1406, and

Draft Resolution No. 19-085  
Page 2 of 3

**WHEREAS**, the City Council now desires to declare its intent to impose a local sales and use tax as authorized by SHB 1406 as set forth herein; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:**

**Sec. 1. Resolution of Intent.** The City Council declares its intent to adopt legislation to authorize the maximum capacity of the sales and use tax authorized by SHB 1406 within one year of the effective date of SHB 1406, or by July 28, 2020.

**Sec. 2. Further Authority.** All City officials, their agents, and representatives are hereby authorized and directed to undertake all action necessary or desirable from time to time to carry out the terms of, and complete the actions contemplated by, this Resolution.

**Sec. 3. Ratification and confirmation.** Any acts consistent with the authority and prior to the effective date of this Resolution are hereby ratified and confirmed.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this 5th day of September, 2019, and signed in authentication thereof this 5th day of September 2019.

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M A Y O R

APPROVED AS TO FORM:

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City Attorney

ATTEST:

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Draft Resolution No. 19-085  
Page 3 of 3

City Clerk

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H-1301.2

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**SUBSTITUTE HOUSE BILL 1406**

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**State of Washington****66th Legislature****2019 Regular Session**

**By** House Housing, Community Development & Veterans (originally sponsored by Representatives Robinson, Macri, Chapman, Valdez, Senn, Peterson, Kloba, Tharinger, Gregerson, Stanford, Walen, Doglio, Frame, Jenkins, Riccelli, Slatter, Ormsby, and Santos)

READ FIRST TIME 02/08/19.

1 AN ACT Relating to encouraging investments in affordable and  
2 supportive housing; and adding a new section to chapter 82.14 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.14  
5 RCW to read as follows:

6 (1) The definitions in this subsection apply throughout this  
7 section unless the context clearly requires otherwise.

8 (a) "Nonparticipating city" is a city that does not impose a  
9 sales and use tax in accordance with the terms of this section.

10 (b) "Nonparticipating county" is a county that does not impose a  
11 sales and use tax in accordance with the terms of this section.

12 (c) "Participating city" is a city that imposes a sales and use  
13 tax in accordance with the terms of this section.

14 (d) "Participating county" is a county that imposes a sales and  
15 use tax in accordance with the terms of this section.

16 (e) "Qualifying local tax" means the following tax sources, if  
17 the tax source is instated no later than twelve months after the  
18 effective date of this section:

19 (i) The affordable housing levy authorized under RCW 84.52.105;

20 (ii) The sales and use tax for housing and related services  
21 authorized under RCW 82.14.530; and

1 (iii) The sales tax for chemical dependency and mental health  
2 treatment services or therapeutic courts authorized under RCW  
3 82.14.460.

4 (2)(a) A county or city legislative authority may authorize, fix,  
5 and impose a sales and use tax in accordance with the terms of this  
6 section.

7 (b) The tax under this section is assessed on the selling price  
8 in the case of a sales tax, or value of the article used, in the case  
9 of a use tax.

10 (c) The rate of the tax under this section for an individual  
11 participating city and an individual participating county may not  
12 exceed:

13 (i) Beginning on the effective date of this section until twelve  
14 months after the effective date of this section:

15 (A) One one-hundredth percent for a:

16 (I) Participating city, unless the participating city levies a  
17 qualifying local tax; and

18 (II) Participating county, within the limits of nonparticipating  
19 cities within the county;

20 (B) Two one-hundredths percent for a:

21 (I) Participating city that currently levies a qualifying local  
22 tax;

23 (II) Participating city if the county in which it is located  
24 declares they will not levy the sales and use tax authorized under  
25 this section; and

26 (III) Participating county within the unincorporated areas of the  
27 county and any city that declares they will not levy the sales and  
28 use tax authorized under this section;

29 (ii) Beginning twelve months after the effective date of this  
30 section:

31 (A) One one-hundredth percent for a:

32 (I) Participating city that is located within a participating  
33 county if the participating city is not levying a qualifying local  
34 tax; and

35 (II) Participating county, within the limits of a participating  
36 city if the participating city is not levying a qualifying local tax;

37 (B) Two one-hundredths percent within the limits of a:

38 (I) Participating city that is levying a qualifying local tax;  
39 and

1 (II) Participating county within the unincorporated area of the  
2 county and within the limits of any nonparticipating city that is  
3 located within the county.

4 (d) A county may not levy the tax authorized under this section  
5 within the limits of a participating city that levies a qualifying  
6 local tax.

7 (e)(i) In order for a county or city legislative authority to  
8 impose the tax under this section, the authority must adopt:

9 (A) A resolution of intent to adopt legislation to authorize the  
10 maximum capacity of the tax in this section within six months of the  
11 date in which this section takes effect; and

12 (B) Legislation to authorize the maximum capacity of the tax in  
13 this section within one year of the date on which this section takes  
14 effect.

15 (ii) Adoption of the resolution of intent and legislation  
16 requires simple majority approval of the enacting legislative  
17 authority.

18 (iii) If a county or city has not adopted a resolution of intent  
19 in accordance with the terms of this section, the county or city may  
20 not authorize, fix, and impose the tax.

21 (3) The tax imposed under this section must be deducted from the  
22 amount of tax otherwise required to be collected or paid to the  
23 department of revenue under chapter 82.08 or 82.12 RCW. The  
24 department must perform the collection of such taxes on behalf of the  
25 county or city at no cost to the county or city.

26 (4) By December 31, 2019, or within thirty days of a county or  
27 city authorizing the tax under this section, whichever is later, the  
28 department must calculate the maximum amount of tax distributions for  
29 each county and city authorizing the tax under this section as  
30 follows:

31 (a) The maximum amount for a participating county equals the  
32 taxable retail sales within the county in state fiscal year 2019  
33 multiplied by the tax rate imposed under this section. If a county  
34 imposes a tax authorized under this section after a city located in  
35 that county has imposed the tax, the taxable retail sales within the  
36 city in state fiscal year 2019 must be subtracted from the taxable  
37 retail sales within the county for the calculation of the maximum  
38 amount; and



1 (b) The maximum amount for a city equals the taxable retail sales  
2 within the city in state fiscal year 2019 multiplied by the tax rate  
3 imposed under subsection (1) of this section.

4 (5) The tax must cease to be distributed to a county or city for  
5 the remainder of any fiscal year in which the amount of tax exceeds  
6 the maximum amount in subsection (4) of this section. The department  
7 must remit any annual tax revenues above the maximum to the state  
8 treasurer for deposit in the general fund. Distributions to a county  
9 or city meeting the maximum amount must resume at the beginning of  
10 the next fiscal year.

11 (6)(a) If a county has a population greater than four hundred  
12 thousand or a city has a population greater than one hundred  
13 thousand, the moneys collected or bonds issued under this section may  
14 only be used for the following purposes:

15 (i) Acquiring, rehabilitating, or constructing affordable  
16 housing, which may include new units of affordable housing within an  
17 existing structure or facilities providing supportive housing  
18 services under RCW 71.24.385; or

19 (ii) Funding the operations and maintenance costs of new units of  
20 affordable or supportive housing.

21 (b) If a county has a population of four hundred thousand or less  
22 or a city has a population of one hundred thousand or less, the  
23 moneys collected under this section may only be used for the purposes  
24 provided in (a) of this subsection or for providing rental assistance  
25 to tenants.

26 (7) The housing and services provided pursuant to subsection (6)  
27 of this section may only be provided to persons whose income is at or  
28 below sixty percent of the median income of the county or city  
29 imposing the tax. If the median income of a city enacting the tax  
30 under this section is not available from the United States census  
31 bureau, the housing and services provided pursuant to subsection (6)  
32 of this section may only be provided to persons whose income is at or  
33 below sixty percent of the median income of the county in which the  
34 city is located.

35 (8) In determining the use of funds under subsection (6) of this  
36 section, a county or city must consider the income of the individuals  
37 and families to be served, the leveraging of the resources made  
38 available under this section, and the housing needs within the  
39 jurisdiction of the taxing authority.

1       (9) To carry out the purposes of this section including, but not  
2 limited to, financing loans or grants to nonprofit organizations or  
3 public housing authorities, the legislative authority of the county  
4 or city imposing the tax has the authority to issue general  
5 obligation or revenue bonds within the limitations now or hereafter  
6 prescribed by the laws of this state, and may use, and is authorized  
7 to pledge, the moneys collected under this section for repayment of  
8 such bonds.

9       (10) A county or city may enter into an interlocal agreement with  
10 one or more counties, cities, or public housing authorities in  
11 accordance with chapter 39.34 RCW. The agreement may include, but is  
12 not limited to, pooling the tax receipts received under this section,  
13 pledging those taxes to bonds issued by one or more parties to the  
14 agreement, and allocating the proceeds of the taxes levied or the  
15 bonds issued in accordance with such interlocal agreement and this  
16 section.

17       (11) Counties and cities imposing the tax under this section must  
18 report annually to the department of commerce on the collection and  
19 use of the revenue. The department of commerce must adopt rules  
20 prescribing content of such reports. By December 1, 2019, and  
21 annually thereafter, and in compliance with RCW 43.01.036, the  
22 department of commerce must submit a report annually to the  
23 appropriate legislative committees with regard to such uses.

24       (12) The tax imposed by a county or city under this section  
25 expires twenty years after the date on which the tax is first  
26 imposed.

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**HB 1406 Implementation Options for the City of Des Moines**

**Background**

HB 1406 provides a new funding tool for local jurisdictions to increase investment in affordable housing. It allows cities to retain a portion of the state's share of sales tax for investment in affordable or supportive housing production, preservation and/or operation and maintenance of units to assist persons whose income is at or below 60% of area median income. The revenue is offset by a reduction in the state's portion and does not result in an increased tax on consumers. The table below provides an outline of options for Des Moines that include; participation alternatives, timeline, projected revenue and implementation requirements.

|                                    | <b>Recommended Alternative</b>                                                                                                                                                                                                                                                                                     | <b>Alternative 1</b>                                                                           | <b>Alternative 2</b>                                                                                                                                                                                               | <b>No Action</b>                                                                |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| <b>Participation Alternatives</b>  | <b>Sub-regional Approach</b><br>Adopting a resolution declaring the city's intent to adopt the legislation through a sub-regional approach of pooling the revenue in partnership with other cities in the existing SKHHP Interlocal Agreement (ILA) to get the most impact of the revenue (*excluding King County) | <b>City acts on its own</b><br>Adopt a resolution of intent to adopt the legislation as a city | <b>City acts on its own and adopts a local qualifying tax</b><br>Adopt a resolution of intent and enact a qualifying local tax                                                                                     | <b>City opts to not take any action to implement HB1406</b>                     |
| <b>Action &amp; Timeline</b>       | Pass a resolution of intent by <b>January 28, 2020 (Deadline)</b> . If adopted earlier, funds can be accessed <b>by fall 2019</b><br><br>Department of Revenue requires <b>30-days'</b> notice of adoption of sales tax credits and the change must occur on a first day of the month                              | Pass a resolution of intent by <b>January 28, 2020 (Deadline)</b>                              | Pass a resolution of intent by <b>January 28, 2020 (Deadline)</b><br><br>The qualifying local tax must be enacted by the deadline of <b>July 30<sup>th</sup>, 2020 (i.e. housing levy or .1 percent sales tax)</b> | In the second year of the bill's effective date, the revenue goes to the County |
| <b>Implementation requirements</b> | Each SKHHP participating city must adopt their resolution of intent to pool the revenue through the ILA<br><br>The final legislation must be adopted by <b>July 30<sup>th</sup>, 2020</b>                                                                                                                          | Pass a resolution of intent                                                                    | Pass a resolution and work to enact a qualifying local tax approved by voters in the <b>general or special elections</b>                                                                                           | No requirements                                                                 |
| <b>Projected revenue</b>           | Des Moines's 0.0073 percent portion: <b>\$29,793</b><br><br>SKHHP cities ILA Partners Pool of 0.0073: <b>\$1,006,841</b> ;<br><br>Full Authority 0.0146: <b>\$2,013,683</b> (if all SKHHP cities adopted a qualifying tax)                                                                                         | Des Moines's 0.0073 percent portion: <b>\$29,793</b>                                           | Des Moines's 0.0073 percent portion: <b>\$29,793</b><br><br>Full Authority 0.0146 portion: <b>\$59,586</b>                                                                                                         | Des Moines's 0.0073 percent portion: <b>\$27,793</b> goes to the county         |

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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: Event Center Athletic Floor Grant

FOR AGENDA OF: September 5, 2019

ATTACHMENTS:

1. King County Youth and Amateur Sports Grant Agreement
2. CIP Budget Worksheet

DEPT. OF ORIGIN: Parks, Recreation & Senior Services

DATE SUBMITTED: September 5, 2019

CLEARANCES:

☐ Community Development \_\_\_\_\_

☐ Marina \_\_\_\_\_

☒ Parks, Recreation & Senior Services *SNC*

☒ Public Works *AM*

CHIEF OPERATIONS OFFICER: *DSS*

☒ Legal *SG*

☒ Finance *Baw*

☐ Courts \_\_\_\_\_

☐ Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: *[Signature]*

#### **Purpose and Recommendation**

The purpose of this agenda item is to request for City Council approval for acceptance of a King County Youth and Amateur Sports Grant (YASG) in the amount of \$50,000 for the Des Moines Beach Park Auditorium Athletic Floor.

#### **Suggested Motion**

**Motion 1:** "I move to accept the King County Youth and Amateur Sports Grant for the Beach Park Auditorium Floor, and authorize the City Manager to sign the Agreement substantially in the form as submitted."

### **Background**

The Des Moines Beach Park Auditorium is a historical building that was part of the Covenant Beach Camp before the property and surrounding facilities were sold to the City of Des Moines in 1984. The Auditorium was originally used as a tabernacle for Sunday worship. Originally the floor was wood however, during the remodel the floor was replaced with concrete. The current concrete floor is not suitable for dance and other athletic activities.

Due to the success of the Beach Park event center for rentals related to dance, the Parks Recreation and Senior Services Department has determined that a wood type floor that closely matches the existing pine wood arches that hold up the ceiling and walls would be more appealing to potential renters and would also allow use for City programs related to dance, martial arts and similar activities. The current concrete floor has no give and is not as suitable for these activities. Discussion with the Seattle Theater Group and King County resulted an opportunity, through the grant application, to obtain funds for installation of a floor better suited to the current uses and potential additional uses of the Auditorium.

### **Discussion**

The Des Moines Beach Park Auditorium is used as a venue for public events and as a rental facility for private events such as weddings and company meetings. Starting in 2019 the Seattle Theater Group has signed a five year agreement with the City of Des Moines renting the Beach Park facilities including the Auditorium for their annual Camp; Ailey Camp. This floor, as mentioned above, is utilized frequently and is in need of a remodel to make it more suitable for athletic and recreational activities.

### **Alternatives**

Not accept the King County YASG grant (not recommended).

### **Financial Impact**

Authorizing acceptance of the grant will enable the City to receive \$50,000 from King County for the Beach Park Auditorium Athletic Floor. The total cost of the floor is anticipated to be \$78,681 meaning that the residual amount of \$28,681 would need to come from local funding sources (REET, one-time sales tax, etc.). The proposed capital improvement project budget worksheet is included as Attachment 2 for reference.

### **Recommendation**

Staff recommends that Council approve the suggested motion as written.



## Youth and Amateur Sports Grant Agreement

### Get Active / Stay Active Project

Department/Division: Natural Resources and Parks / Parks and Recreation Division

Agency: City of Des Moines

Project: Event Center Athletic Floor

Amount: \$50,000.00 Project: 1136950 Contract:

Term Period: January 1, 2019 To December 31, 2020

THIS CONTRACT is entered into by KING COUNTY (the "County"), and City of Des Moines (the "Agency"), whose address is 21630 11th Avenue S., Suite A Des Moines, WA 98198

WHEREAS, the Agency is either a public agency or a non-profit organization that provides youth or amateur sports opportunities or are acts as a fiscal sponsor for such project;

WHEREAS, King County has selected the identified Agency to receive a Youth and Amateur Sports Fund ("YASF") Grant award to assist in projects that provide increased athletic opportunities for the citizens of King County, Washington;

WHEREAS, the Agency shall utilize the award to address an athletic need in King County; and

WHEREAS, King County is authorized to administer the YASF grant project and enter into agreements for the use of King County funds by public agencies or not-for-profit organizations to provide a service to the public under King County Ordinance 18409;

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

The Agency shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits, which are incorporated herein by reference:

|                                     |                   |                               |
|-------------------------------------|-------------------|-------------------------------|
| <input checked="" type="checkbox"/> | Scope of Services | Attached hereto as Exhibit I  |
| <input checked="" type="checkbox"/> | Budget            | Attached hereto as Exhibit II |

## 2. TERM OF CONTRACT

This Agreement shall commence on January 1, 2019, and shall expire on the December 31, 2020, unless extended or earlier terminated, pursuant to the terms and conditions of this Agreement.

3. PREMISES

This grant project is located at:  
22030D Cliff Ave S,

4. PARTIES

All communication, notices, coordination, and other tenets of this Agreement shall be managed by:

On behalf of County:

Butch Lovelace, YSFG Project Manager  
King County Parks and Recreation Division  
201 South Jackson Street, Suite 700  
Seattle, WA 98104-3855

Email: [butch.lovelace@kingcounty.gov](mailto:butch.lovelace@kingcounty.gov)  
Phone: 206.477.4577

On behalf of Agency:

Rick Scott, Recreation Manager  
1000 S 220th St  
Des Moines, WA 98198

Email: [rscott@desmoineswa.gov](mailto:rscott@desmoineswa.gov)  
Phone: 206-870-6586

5. COMPENSATION AND METHOD OF PAYMENT

- A. The County shall reimburse the Agency for satisfactory completion of the services and requirements specified in this Agreement after the Agency submits an invoice and all accompanying reports as specified in the attached exhibits. The County will initiate authorization for payment after approval of corrected invoices and reports. The County shall make payment to the Agency not more than thirty (30) days after a complete and accurate invoice is received.
- B. The Agency shall submit its final invoice and all outstanding reports within fifteen (15) days of the date this Agreement expires or is terminated. If the Agency's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Agency of the amounts set forth in said invoice or any subsequent invoice.



6. OPERATING BUDGET

When a budget is attached hereto as **Exhibit II**, the Agency shall apply the funds received from the County under this Agreement in accordance with said budget. If, at any time during the Term of this Agreement, the Agency expects that the cumulative amount of transfers among the budget categories, i.e. Project Tasks, may exceed ten percent (10%) of the Agreement amount, then the Agency shall notify County to request approval. Supporting documents necessary to explain fully the nature and purpose of the change(s) and an amended budget must accompany each request for such approval. County approval of any such amendment shall not be unreasonably withheld.

7. COMMUNICATION

The Agency shall recognize County as a fiscal sponsor for the grant project in the following manner:

- A. Events: The Agency shall invite and recognize “King County Parks” at all events promoting the project, and at the final project dedication.
- B. Community Relations: The Agency shall recognize “King County Parks” as a fiscal sponsor in all social media, websites, brochures, banners, posters, press releases, and other promotional material related to the Project.

8. PRIORITY OF USE; PUBLIC ACCESS; SCHEDULING

These funds are provided for the purpose of developing and/or project sports activities for, but not exclusively serving, persons under 21 years of age, and low and moderate income communities within King County. Fees for the project shall be no greater than those generally charged by public operators or project providers in King County.

9. INTERNAL CONTROL AND ACCOUNTING SYSTEM

The Agency shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted accounting principles, and governmental accounting and financial reporting standards in accordance with Revised Code of Washington (RCW) Chapter 40.14.

10. MAINTENANCE OF RECORDS

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and project records and other such records as may be deemed necessary by the County to ensure proper accounting for all Agreement funds and compliance with this Agreement.
- B. These records shall be maintained for a period of six (6) years after the expiration or earlier termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14.
- C. The Agency shall inform the County in writing of the location, if different from the Agency address listed on page one of this Agreement, of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten (10) working days of any such relocation.



#### 11. RIGHT TO INSPECT

King County reserves the right to review and approve the performance of Agency with regard to this Agreement, and, at its sole discretion, to inspect or audit the Agency's records regarding this Agreement and the Project upon reasonable notice during normal business hours.

#### 12. COMPLIANCE WITH ALL LAWS AND REGULATIONS

The Agency, in cooperation and agreement with the owners of the Premises, shall comply with all applicable laws, ordinances and regulations in using funds provided by the County, including, without limitation, those relating to providing a safe working environment to employees and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA); and, to the extent applicable, those related to “public works,” payment of prevailing wages, and competitive bidding of contracts. The Agency specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King County; and further agrees that King County, does not waive this Section by giving notice of demand for compliance in any instance. The Agency shall indemnify and defend the County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Agreement.

#### 13. CORRECTIVE ACTION

- A. If the County determines that a breach of contract has occurred or does not approve of the Agency's performance, it will give the Agency written notification of unacceptable performance. The Agency will then take corrective action within a reasonable period of time, as may be defined by King County in its sole discretion in its written notification to the Agency.
- B. The County may withhold any payment owed the Agency until the County is satisfied that corrective action has been taken or completed.

#### 14. TERMINATION

- A. The County may terminate this Agreement in whole or in part, with or without cause, at any time during the Term of this Agreement, by providing the Agency ten (10) days advance written notice of the termination.
- B. If the termination results from acts or omissions of the Agency, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Agency shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Agency by the County.
- C. Any King County obligations under this Agreement beyond the current appropriation year are conditioned upon the County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Agreement will terminate automatically at the close of the current appropriation year.

#### 15. FUTURE SUPPORT; UTILITIES AND SERVICE

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted for herein except as expressly set forth in this Agreement. The Agency understands, acknowledges, and agrees that the County shall

not be liable to pay for or to provide any utilities or services in connection with the Project contemplated herein.

#### 16. HOLD HARMLESS AND INDEMNIFICATION

The Agency agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to any use of or occurrence on the Project that is the subject of this Agreement, or the Agency's exercise of rights and privileges granted by this Agreement, except to the extent of the County's sole negligence. The Agency's obligations under this Section shall include:

- A. The duty to promptly accept tender of defense and provide defense to the County at the Agency's own expense;
- B. Indemnification of claims made by the Agency's employees or agents; and
- C. Waiver of the Agency's immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from the Agency.

In the event it is determined that RCW 4.24.115 applies to this Agreement, the Agency agrees to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from the Agency's officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance of failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended.

A hold harmless provision to protect King County similar to this provision shall be included in all Agreements or subcontractor Agreements entered into by Agency in conjunction with this Agreement. **The Agency's duties under this Section will survive the expiration or earlier termination of this Agreement.**

#### 17. INSURANCE

- A. Liability Insurance Requirements. Notwithstanding any other provision within this Agreement, the Agency and its subcontractors shall procure and maintain coverage and limits for no less than the following:
  - 1. Commercial General Liability. Insurance Service "occurrence" form CG 00 01 (current edition), to include Products-Completed Operations, insurance against claims for injuries to persons or damages to property that may arise from or in connection with activities under this Agreement. The insurance coverage shall be no less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate.



2. Automobile Liability. *If activities require vehicle usage.* Insurance Services form number CA 00 01 (current edition), covering BUSINESS AUTO COVERAGE, Symbol 1 “any auto”. If the grant includes the use of automobiles, the Limit of Liability shall be no less than One Million Dollars (\$1,000,000) per occurrence.
  3. Workers Compensation/Stop Gap. *If the recipient or its contractor(s) has/have employees.* Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than One Million Dollars (\$1,000,000) per occurrence.
  4. Professional Liability. *If the grant includes the use of Professional Services.* Professional Liability coverage shall be no less than One Million Dollars (\$1,000,000) per claim and in the aggregate.
- B. If the grant involves the construction of a capital project or involves the purchase of equipment greater than Five Thousand (\$5,000) in value, the Agency shall provide “All Risk” Builders Risk or Property coverage for the full replacement value of the project/property built/purchased. King County shall be listed as an additional Loss payee as our interests may appear.
- C. King County and its officers, officials, employees and agents shall be covered as additional insured on Agency’s and its contractor(s’) commercial general liability insurance and, if applicable, commercial auto liability insurance, with respect to liability arising out of activities performed by the Agency and its contractors. Additional Insured status shall include Products-Completed Operations.
- D. To the extent of the Agency's or its contractor’s negligence, their insurance respectively shall be primary insurance with respect to the County, its officers, employees and agents. Any insurance or self-insurance maintained by the County, and its officers, officials, employees or agents shall not be subjected to contribution in favor of the Agency or its contractors insurance, and shall not benefit either in any way.
- The Agency's and its contractors' insurance shall apply separately to each insured against whom a claim is made or a lawsuit is brought, subject to the limits of the insurer's liability.
- E. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days' prior written notice has been given to and change in coverage accepted by King County.
- F. The insurance provider must be licensed to do business in the State of Washington and maintain a Best’s rating of no less than A-VIII. Within five (5) business days of County’s request, Agency must provide a Certificate of Insurance and Additional Insured Endorsement(s) (CG 20 10 11/85 or its equivalent) to the County. The Agency shall be responsible for the maintenance of their contractors' insurance documentation.
- G. If the Agency is a municipal corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this Section.
- H. **The Agency's duties under this Section shall survive the expiration or earlier termination of this Agreement.** The Agency understands, acknowledges and agrees that for the relevant period of public use set forth in Section 8, the Agency shall maintain

insurance and name the County as an additional insured, all of which shall be consistent with the requirements of this Section.

18. ANTI-DISCRIMINATION

King County Code chapters 12.16, 12.17 through 12.18 apply to this Agreement and are incorporated by this reference as if fully set forth herein. In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age, race, color, creed, religion, national origin, sexual orientation, gender identity or expression, marital status or the presence of any sensory, mental, or physical disability unless based upon a bonafide occupational qualification, or age except by minimum age and retirement provisions, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off, or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, religion, sexual orientation, gender identity or expression, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part of this Agreement by King County and may result in ineligibility for further King County agreements. [Community Partner Name] shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.

19. CONFLICT OF INTEREST

KCC Chapter 3.04 (Employee Code of Ethics) is incorporated by reference as if fully set forth hence, and the Agency agrees to abide by all conditions of said chapter. Failure by the Agency to comply with any requirement of said KCC Chapter shall be a material breach of contract.

20. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

21. PROJECT MAINTENANCE; EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

- A. As between the County and the Agency, the Agency shall be responsible to operate and maintain the completed project at its own sole expense and risk. The Agency shall maintain the completed project in good working condition consistent with applicable standards and guidelines. The Agency understands, acknowledges, and agrees that the County is not responsible to operate or to maintain the project in any way.
- B. The Agency shall be responsible for all property purchased pursuant to this Agreement, including the proper care and maintenance of any equipment.
- C. The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment and materials purchased with Agreement funds. **The Agency's duties under this Section shall survive the expiration of this Agreement.**



22. NOTICES

Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing, and directed to the person specified in Section 4 of this Agreement. Any such notice shall be deemed to have been given on the date of delivery, if mailed, on the third (3rd) business day following the date of mailing; or, if sent by fax, on the first (1st) business day following the day of delivery thereof by fax. Notice sent solely by e-mail shall be deemed to have been given on the date of transmission. Either party may change its address, fax number, email address, or the name of the person indicated as the recipient by notice to the other in the manner aforesaid.

23. ASSIGNMENT

The Agency shall not assign any portion of rights and obligations under this Agreement or transfer or assign any claim arising pursuant to this Agreement without the written consent of the County. The Agency must seek such consent in writing not less than fifteen (15) days prior to the date of any proposed assignment.

24. CONTRACT AMENDMENTS

This Agreement together with the attached exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole Agreement between the Parties. Either party may request changes to this Agreement. No modifications or amendment of this Agreement shall be valid or effective unless evidenced by an Agreement in writing signed by the Parties.

25. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

26. TAXES

The Agency agrees to pay on a current basis all taxes or assessments levied on its activities and property, including, without limitation, any leasehold excise tax due under RCW Chapter 82.29A; PROVIDED, however, that nothing contained herein will modify the right of the Agency to contest any such tax, and the Agency will not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.



27. WASHINGTON LAW CONTROLLING; WHERE ACTIONS BROUGHT

This Agreement is made in and will be in accordance with the laws of the State of Washington, which will be controlling in any dispute that arises hereunder. Actions pertaining to this Agreement will be brought in King County Superior Court, King County, Washington.

28. PARAGRAPH HEADINGS

The paragraph headings contained herein are only for convenience and reference and are not intended to be a part of this Agreement or in any manner to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs to which they refer.

29. PUBLIC DOCUMENT

This Agreement will be considered a public document and will be available for inspection and copying by the public.

30. LEGAL RELATIONS

Nothing contained herein will make, or be deemed to make, the County and the Agency a partner of one another, and this Agreement will not be construed as creating a partnership or joint venture. Nothing in this Agreement will create, or be deemed to create, any right, duty or obligation in any person or entity not a party to it.

31. SINGULAR AND PLURAL

Wherever the context will so require, the singular will include the plural and plural will include the singular.

32. PERMITS AND LICENSES

The Agency shall design, develop and construct the Project in accordance with all applicable laws and regulatory requirements including environmental considerations, permitting determinations, and other legal requirements. All activities and improvements shall be performed by Agency at its sole expense and liability. The Agency shall, at its sole cost and expense, apply for, obtain and comply with all necessary permits, licenses and approvals required for the Project,

33. INTERPRETATION OF COUNTY RULES AND REGULATIONS

If there is any question regarding the interpretation of any County rule or regulation, the County decision will govern and will be binding upon the Agency.

34. POLICE POWERS OF THE COUNTY

Nothing contained in this Agreement will diminish, or be deemed to diminish, the governmental or police powers of the County.

35. ENTIRE AGREEMENT

This Agreement, including its attachments, constitutes the entire Agreement between the County and the Agency. It supersedes all other agreements and understandings between them, whether written, oral or otherwise.

KING COUNTY

City of Des Moines

FOR

King County Executive

Signature

Date

NAME (Please type or print), Title

Date

**CITY OF DES MOINES**  
**2020-2025 CAPITAL IMPROVEMENT PLAN - DRAFT**  
(Amount in Thousands)

**Dance Floor**

Project #

**310,000**

*Summary Project Description:*

Install dance floor in the Beach Park Auditorium.

CIP Category:

Building Facility Project

Managing Department:

Plan, Build & PW Admin

Justification/Benefits:

Install dance floor to enhance facility usage.

| PROJECT SCOPE             |                |                  |              |
|---------------------------|----------------|------------------|--------------|
| Expenditures              | Current Budget | Requested Change | Total Budget |
| Design                    | -              | -                | -            |
| Land & Right of Way       | -              | -                | -            |
| Construction              | -              | 79               | 79           |
| Contingency               | -              | -                | -            |
| <b>Total Expenditures</b> | -              | 79               | 79           |

| ANNUAL ALLOCATION           |                        |                   |                   |                   |                   |                   |                   |
|-----------------------------|------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Project to Date<br>12/31/18 | Scheduled Year<br>2019 | Plan Year<br>2020 | Plan Year<br>2021 | Plan Year<br>2022 | Plan Year<br>2023 | Plan Year<br>2024 | Plan Year<br>2025 |
| -                           | -                      | -                 | -                 | -                 | -                 | -                 | -                 |
| -                           | -                      | -                 | -                 | -                 | -                 | -                 | -                 |
| -                           | -                      | 79                | -                 | -                 | -                 | -                 | -                 |
| -                           | -                      | -                 | -                 | -                 | -                 | -                 | -                 |
| -                           | -                      | 79                | -                 | -                 | -                 | -                 | -                 |

| Funding Sources                                      | Current Budget | Requested Change | Total Budget |
|------------------------------------------------------|----------------|------------------|--------------|
| King County Youth and Amateur Sports Grant (Secured) | -              | 50               | 50           |
| General Fund Transfer                                | -              | 29               | 29           |
| <b>Total Funding</b>                                 | -              | 79               | 79           |

| Project to Date<br>12/31/18 | Scheduled Year<br>2019 | Plan Year<br>2020 | Plan Year<br>2021 | Plan Year<br>2022 | Plan Year<br>2023 | Plan Year<br>2024 | Plan Year<br>2025 |
|-----------------------------|------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| -                           | -                      | 50                | -                 | -                 | -                 | -                 | -                 |
| -                           | -                      | 29                | -                 | -                 | -                 | -                 | -                 |
| -                           | -                      | 79                | -                 | -                 | -                 | -                 | -                 |

| OPERATING IMPACT  |              |   |   |
|-------------------|--------------|---|---|
| Operating Impact  | 6 Year Total |   |   |
| Revenue           | -            | - | - |
| Expenses          | -            | - | - |
| <b>Net Impact</b> | -            | - | - |

| ANNUAL OPERATING IMPACT |      |      |      |      |      |      |      |
|-------------------------|------|------|------|------|------|------|------|
| 12/31/18                | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
| -                       | -    | -    | -    | -    | -    | -    | -    |
| -                       | -    | -    | -    | -    | -    | -    | -    |

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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: Childhood Cancer Awareness Month

FOR AGENDA OF: September 5, 2019

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

1. Proclamation

DATE SUBMITTED: August 12, 2019

CLEARANCES:

- ☐ Community Development
- ☐ Marina
- ☐ Parks, Recreation & Senior Services \_\_\_\_\_
- ☐ Public Works

CHIEF OPERATIONS OFFICER: \_\_\_\_\_

- ☒ Legal 
- ☐ Finance
- ☐ Courts
- ☐ Police

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: 

The purpose of this agenda item is to recommend City Council approval of the attached Proclamation supporting September as Childhood Cancer Awareness Month.

### Suggested Motion

**Motion:** "I move to approve the Proclamation supporting September as Childhood Cancer Awareness Month."

### Background

Each year in the United States more than 15,000 children, from birth to 19 years of age are diagnosed with cancer, equal to about 42 childhood cancer diagnoses each day. Worldwide, there are more than 300,000 new childhood cancer diagnoses, equal to about a child being diagnosed with cancer every 3 minutes.



**Discussion**

Council previously approved a Proclamation supporting September as Childhood Cancer Awareness Month in August, 2015 and September, 2018.

**Alternatives**

None provided.

**Financial Impact**

No financial impact.

**Recommendation/Concurrence**

Administration supports Council approving the Proclamation supporting September as Childhood Cancer Awareness Month.

# City of Des Moines



ADMINISTRATION  
21630 11<sup>th</sup> AVENUE S, SUITE A  
DES MOINES, WASHINGTON 98198-6398  
(206) 878-4595 T.D.D: (206) 824-6024 FAX: (206) 870-6540



## Proclamation

**WHEREAS**, each year in the United States more than 300,000 children and youth under the age of 19 are diagnosed with cancer worldwide; and

**WHEREAS**, childhood cancer is the #1 disease-related cause of death for children in the United States and many other countries; and

**WHEREAS**, although the five-year survival rate for childhood cancers has reached 80 percent, nearly 2,000 American children under the age of nineteen will die each year from cancer, making it the leading killer of children by disease; and

**WHEREAS**, those that do survive will face at least one chronic health condition later on in life; and

**WHEREAS**, the causes of childhood cancer are largely unknown and more studies are needed to understand which treatments work best for children; and

**WHEREAS**, cancer treatment for children often must differ from traditional adult treatments to take into account children's developmental needs and other factors; and

**WHEREAS**, children including Layla Beckstrand is just one of many hundreds of children who have been successfully treated for cancer at Seattle Children's Hospital, and her family now volunteers there to raise awareness about childhood cancers; and

**WHEREAS**, Des Moines is a caring community that supports children and families;

**NOW THEREFORE, THE DES MOINES COUNCIL HEREBY PROCLAIMS** the month of September as

### ***CHILDHOOD CANCER AWARENESS MONTH***

**SIGNED** this day 5<sup>th</sup> of September, 2019.

---

Matt Pina, Mayor

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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: National Recovery Month

FOR AGENDA OF: September 5, 2019

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

DATE SUBMITTED: August 12, 2019

1. Proclamation

CLEARANCES:

- ☐ Community Development
- ☐ Marina
- ☐ Parks, Recreation & Senior Services \_\_\_\_\_
- ☐ Public Works

CHIEF OPERATIONS OFFICER: \_\_\_\_\_

- ☒ Legal TS
- ☐ Finance
- ☐ Courts
- ☐ Police

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

**Purpose and Recommendation:**

The Mental Health, Chemical Abuse and Dependency Services Division of the King County Department of Community and Human Services has requested a proclamation from the Des Moines City Council declaring September, 2019 as National Recovery Month. The purpose of Recovery Month is to promote recovery, celebrate those in treatment, and continue to educate our community about how to overcome the barriers of stigma and discrimination associated with mental health issues and/or substance use disorders.

**Suggested Motion**

**MOTION:** “I move to approve the Proclamation supporting September 2019 as National Recovery Month”

**Background**

Recovery Month spreads the message that behavioral health is essential to health and overall wellness, and that prevention works, treatment is effective and people with substance use and mental health issues can and do recover. People in recovery lead healthier lifestyles and contribute in positive ways to their communities.

Throughout the years, hundreds of proclamations have been signed to support Recovery Month. Since 2001, the President of the United States has signed a proclamation declaring September as Recovery Month, further recognizing substance use disorders and mental disorders as conditions that need to be addressed, just like any other illness.

**Discussion**

Council previously approved a Proclamation supporting September as National Recovery Month in August, 2015 and September, 2017 and 2018.

**Alternatives**

None provided.

**Financial Impact**

No financial impact.

**Recommendation/Concurrence**

Administration supports Council approving the Proclamation supporting September as National Recovery Month.





# City of Des Moines

ADMINISTRATION  
21630 11TH AVENUE SOUTH, SUITE A  
DES MOINES, WASHINGTON 98198-6398  
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



## Proclamation

**WHEREAS**, behavioral health is an essential part of health and one's overall wellness;  
and

**WHEREAS**, prevention of mental and/or substance use disorders works, treatment is effective, and people recover in our area and around the nation; and

**WHEREAS**, preventing and overcoming mental and/or substance use disorders is essential to achieving healthy lifestyles, both physically and emotionally; and

**WHEREAS**, we must encourage relatives and friends of people with mental and/or substance use disorders to implement preventive measures, recognize the signs of a problem, and guide those in need to appropriate treatment and recovery support services;

**WHEREAS**, an estimated 400,000 people in King County are affected by these conditions;

**NOW THEREFORE**, to help more people achieve and sustain long-term recovery, the U.S. Department of Health and Human Services (HHS), the Substance Abuse and Mental Health Services Administration (SAMHSA), the White House Office of National Drug Control Policy (ONDCP), and the City of Des Moines invites all residents to participate and proclaim the month of September as

## ***NATIONAL RECOVERY MONTH***

**SIGNED** this 5<sup>th</sup> day of September, 2019.

---

Matt Pina, Mayor

*The Waterland City*

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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: Draft Ordinance 18-107 Small Cell  
Facilities Franchise Agreement with Extenet  
Systems, Inc., Second Reading

ATTACHMENTS:

1. Draft Ordinance No. 18-107
2. Map and plans for proposed facilities

FOR AGENDA OF: September 5, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: August 28, 2019

CLEARANCES:

- [X] Community Development SML  
 [ ] Marina \_\_\_\_\_  
 [ ] Parks, Recreation & Senior Services \_\_\_\_\_  
 [X] Public Works Am

CHIEF OPERATIONS OFFICER: DSB

- [X] Legal 56  
 [X] Finance 56w  
 [ ] Courts \_\_\_\_\_  
 [ ] Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

#### **Purpose and Recommendation**

The purpose of this agenda item is for the City Council to consider a small cell telecommunications Franchise Agreement with Extenet Systems, Inc. This is the second reading of this Ordinance, it was originally presented to the City Council on July 11, 2019. Passage of this Ordinance requires the affirmative vote of 5 Councilmembers.

#### **Suggested Motion**

**Motion 1: "I move to pass Draft Ordinance No. 18-107 approving a non-exclusive small cell franchise agreement with Extenet, Inc."**

#### **Background**

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the

city streets in a manner not generally available to the public as a common right. The legislature has granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

The City has been working with Extenet Systems Inc. since 2018 to prepare this draft franchise agreement to allow for the installation of small cell facilities in City right-of-way. If approved, this agreement would be the City's second for the installation of small-cell antennas. In 2018 the City Council updated Title 20 (Telecommunications Code) and included provisions for small cell facilities. These codes provide the framework for this agreement.

The use of data by wireless devices has grown exponentially in recent years and the wireless technology required to provide that data has continued to evolve. In order to serve customers' data needs, wireless providers have begun to deploy what are known as "small cell" facilities to supplement the coverage provided by the large macro cell facilities. These small cell facilities are significantly smaller than their macro counterparts, but they must be deployed in greater numbers and spaced much closer together. The companies seeking to deploy these small cells frequently seek to locate them on existing utility poles or to install them on new poles in public rights-of-way.

A small cell facility or antenna contains radios and antennas as well as requires power and fiber in order to transmit cellular phone and data signals. Typically, small cells are attached to utility poles or light/traffic poles within the rights-of-way. The purpose of the small cells is to augment capacity for data traffic in dense areas (primarily downtown cores and residential neighborhoods), and they are typically 25-45 feet in height, rather than tall macro towers that extend beyond 75 feet.

In 2017, the City contracted with the law firm Ogden Murphy Wallace to assist the City with updating the Telecommunications Code in Title 20 and preparing for small cell franchise applications. The Telecommunications Code updates were adopted in the third quarter of 2018 and contain the maximum degree of regulation that is allowed by law.

The City's consultant provided a model draft franchise that was used as the template for this agreement. This agreement contains terms consistent with the previous small cell franchise that was approved by the Council in early 2019.

### **Discussion**

There are a number of federal laws that apply to small cell facilities that contain provisions intended to spur the development of wireless infrastructure and impose limits on local authority over that infrastructure. The Telecommunications Act, for instance, makes it unlawful for local government to prohibit, or have the effect of prohibiting, the "provision of personal wireless service," prevents local government from "unreasonably discriminating among providers of functionally equivalent services," and requires that local government "act on any authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time." It also stipulates that local governments denying siting applications do so "in writing and supported by substantial evidence contained in a written record."

Although cities are limited in what they can regulate, this Agreement addresses the areas where regulation is possible in order to effectively protect the interests of the citizens as well as to provide the necessary data capacity to meet demand.

The key terms of the franchise agreements are detailed below.



1. **Franchise Term:** The term of the Franchise is for 10 years.
2. **Small Cell Facilities:** Extenet is currently proposing to install 2 small cell facilities on existing utility poles in the City. (See Attachment 2). Additional futures sites would require a separate application and approval in accordance with Title 20 of the Municipal Code (Telecommunications).
3. **Safety Issues:** Congress has preempted state and local regulation of radio frequency emissions and interference. The City's telecommunications code contains the maximum level of regulation over frequency emissions available to the City in the form of a requirement that an applicant certify compliance of small cells and other transmitting equipment with federal regulation. In the view of the FCC, the emissions from small cell facilities are well below acceptable limits for Maximum Permissible Exposure (MPE). Small cell facilities operate at a small fraction of regulated power. The FCC accordingly granted a categorical exclusion from environmental review for facilities meeting certain height and frequency requirements. See A Local Government Official's Guide to Transmitting Antennae RF Emission Safety: Rules, Procedures and Practical Guidance. FCC, June 2, 2000.
4. **Relocation Costs:** Extenet is solely responsible for relocation costs unless state law requires otherwise. RCW 35.99.060 applies specifically to telecommunications franchises and requires cities to share in some relocation costs for specific instances where a city requires relocation for a private party's benefit or if a city requires relocation twice within a 5 year period.
5. **Right of Way Management, Planning, and Operations:** The Franchise reflects current City practice. Extenet is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way.
6. **Indemnification and Insurance:** The Agreement provides that Extenet will indemnify the City for actions of the company or their agents. Extenet is required to maintain \$5,000,000 in automobile and general liability insurance coverage. This coverage is sufficient and likely exceeds any reasonably expected liability that could occur from this Agreement.
7. **Franchise Application Fee:** Extenet has paid the City a one-time franchise application fee of \$20,000. This flat fee is consistent with RCW 35.21.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations as well as consultant costs that have been incurred since the application was received.
8. **Taxes:** Under DMMC 3.68.060(3) the City imposes a 6% tax on telephone businesses. To the extent that increased revenue is received from Extenet's telephone business, the City will receive 6%. Internet service revenues are not taxed pursuant to federal law.
9. **Abandonment:** The Franchise requires that Extenet remove any facilities that have been discontinued or are no longer functioning within 60 days. Additionally, the City can order removal of a facility with 120 days' notice.



**10. Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City's interests are protected throughout these Agreements.

### **Alternatives**

1. Pass the Draft Ordinance as written.
2. Amend the Draft Ordinance with proposed amendments to be negotiated with Extenet.
3. Decline to pass the Draft Ordinance. A legal basis is required to not adopt the ordinance.

### **Financial Impact**

The City has received an initial \$20,000 to cover the City's costs of the negotiation of this Franchise Agreement. Additionally, the City will receive all permitting costs for work to be conducted and any additional staffing time that is spent administering this Agreement can be billed to Extenet.

Finally, the City will receive 6% utility tax on the telephone business conducted by Extenet. Increasing capabilities for customers of Extenet in the City may increase usage which would result over time in increased taxes.

### **Recommendation**

The Legal Department, Planning, Building, and Public Works, and Finance Department recommend passing the Draft Ordinance.

**CITY COUNCIL'S DRAFT, SECOND READING****DRAFT ORDINANCE NO. 18-107**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** granting to Extenet Systems, Inc. and its affiliates, successors and assigns, the right, privilege, authority and nonexclusive Franchise for ten years, to construct, maintain, operate, replace, and repair a telecommunications network, in, across, over, along, under, through and below certain designated public rights-of-way of the City of Des Moines, Washington.

**WHEREAS,** ExteNet Systems, Inc. (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise"), and

**WHEREAS,** the City Council has the authority to grant Franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040, and

**WHEREAS,** the City Council seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement of small cell facilities where appropriate, and

**WHEREAS,** the installation, expansion, and maintenance of small cell technology facilities and associated structures on or along the Right of Way and on private properties may have an impact upon: (1) the aesthetic values and character of the City; (2) safe use and passage on or along the Rights of Way by the public; and (3) properties and property values in the City in areas where such structures are placed, and therefore local regulation is appropriate, and

**WHEREAS,** the federal Telecommunications Act of 1996 and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact reasonable regulations for the placement, expansion, height, and maintenance of small cell technologies facilities and associated structures, and

**WHEREAS,** the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis, and

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**WHEREAS**, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans, and

**WHEREAS**, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways, and

**WHEREAS**, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way, and

**WHEREAS**, the City Council finds that the franchise terms and conditions contained in this Ordinance are in the public interest; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1. Franchise granted.**

(1) Pursuant to RCW 35A.47.040, the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 40 herein.

(2) This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Small Cell Facilities, as defined in Section 1.1, for its telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Way located in the City of Des Moines, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public "Rights-of-Way" means land acquired or dedicated for public roads and streets, but does not include: state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the right-of-way; federally granted trust lands or forest board trust lands; Lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of



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federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: (i) buildings, other City-owned physical facilities, parks, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City.

**Sec. 2. Authority Limited to Occupation of Public Rights-of-Way for Services.**

(1) The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Des Moines Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Des Moines Municipal Code (collectively the "Codes"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services (the "Services").

(2) As used herein, "Small Cell Facilities" or "Facilities" means a personal wireless services facility that meets both of the following qualifications: (i) each antenna is located inside an antenna enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and (ii) primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume (but remain included in the definition of Small Cell Facilities): Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch. Small Cell Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes

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or associated permit are excluded from "Small Cell Facilities." Services do not include those personal wireless services and associated facilities that fall outside of the definition of Small Cell Facilities (i.e. macro facilities).

(3) This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline broadband transmission services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

(4) No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement or license agreement with the City.

(5) Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;



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(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, franchise or other form of state wide approval.

**Sec. 3. Non-Exclusive Franchise Grant.** This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

**Sec. 4. Location of Telecommunications Network Facilities.**

(1) Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable Code requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

(2) To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

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(a) Any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) Any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) Without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

**Sec. 5. Relocation of Telecommunications Network Facilities.**

(1) Relocation Requirement. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, temporarily disconnect, relocate, remove, its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this Section 5.1 shall be considered a "Public Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be borne by Franchisee.

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(2) Relocation - Third Party Structures. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City, and at no cost to the City, subject to the procedure in Section 5.5. Franchisee acknowledges and agrees that the placement of Small Cell Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees, that to the extent Franchisee's Small Cell Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

(3) Relocation - Franchisee Owned Structures. The cost of relocation of any Franchisee owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Cell Facilities in order to provide consideration for the City's approval to site a Small Cell Facility on Franchisee owned structures or poles in a portion of the Right of Way designated or proposed for a Public Project. For this Section 5.3, designation of the Right of Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Cell Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

(4) Locate. Upon request of the City, or a third party performing work in the Right-of-Way, and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen



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(14) days' written notice prior to any excavation or exposure of Facilities.

(5) Notice and Relocation Process. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the following process shall apply:

(a) The City shall consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project, or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase evaluate and provide comments to the City related to any alternatives to possible relocations. The City agrees to give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) The City shall provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, but in no event less than one hundred twenty (120) days prior to the commencement of the construction of such Public Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City shall notify the Franchisee during the predesign meetings and the process mandated by the grant funding shall control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City. Such timeline may be extended by a mutual agreement.

(f) Franchisee shall complete relocation of its Facilities at no charge or expense to the City pursuant to

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the timeline provided by the City, or as otherwise modified by the City.

(g) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, which necessitates the relocation of Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.

(6) Alternative Arrangements. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

(7) Contractor Delay Claims. Franchisee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such out-of-pocket costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorneys' fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

(8) Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.



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(9) City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5 then upon at least ten (10) days written notice to Franchisee, the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4.

(10) Survival. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

#### **Sec. 6. Undergrounding of Facilities.**

(1) Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 15.3 and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of Small Cell Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Project as described in Section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

(2) Franchisee shall not be required to underground any portion of the Facility that must technically remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City. Franchisee shall be treated equally to other utilities in regards to undergrounding requirements.

(3) Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.3. Franchisee may remove any underground Facilities from the Right-of-Way that have been

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installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

(4) The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

#### **Sec. 7. Maps and Records.**

(1) Following any construction, excluding modifications that meets the same or substantially similar dimensions of the Small Cell Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Cell Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

(2) Within thirty (30) days of a written request from the City Engineer, the Franchisee shall furnish the City with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

(3) All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate



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safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

(4) Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

(5) Nothing in Section 7.3 or Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

(6) On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that tax or fee payments have been underpaid by three percent (3%) or more, Franchisee shall pay the total cost of the audit.

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**Sec. 8. Work in the Rights-of-Way.**

(1) During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights of Way.

(2) Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

(3) The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.

(4) If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee

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shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts.

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

(5) At the discretion of the City Engineer and depending on the impact to the usage of the Rights-of-Way, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

(6) Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and



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health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the City Engineer or his/her designee.

(7) Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

(8) Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

(9) Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone to meet the Public Works Engineering and Construction Standards. If

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Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

**Sec. 9. One Call Locator Service.** Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

**Sec. 10. Safety Requirements.**

(1) Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Way, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

(2) If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford

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Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

(3) Additional safety standards include:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

(4) Stop Work Order. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

(a) Be in writing;

(b) Be given to the person doing the work or posted on the work site;

(c) Be sent to Franchisee by overnight delivery;

(d) Indicate the nature of the alleged violation or unsafe condition; and



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(e) Establish conditions under which work may be resumed.

**Sec. 11. Work of Contractors and Subcontractors.**

Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

**Sec. 12. Restoration after Construction.**

(1) Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or within sixty (60) days after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee nor for reasonable wear and tear. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

(2) Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.



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(3) If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

(4) In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 20.

(5) The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

### **Sec. 13. Emergency Work/Dangerous Conditions.**

(1) In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or if Franchisee's Facilities is otherwise in such a condition as to immediately endanger the property, life, health or safety of any person, entity or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of any person, entity or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Des Moines City Hall is open for business. The City retains the right and privilege to cut, move or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

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(2) The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

(3) Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

#### **Sec. 14. Recovery of Costs, Taxes and Fees.**

(1) Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. No permits shall be issued for the installation of authorized Facilities until such time as the City has received payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this



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Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

(2) Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

(3) Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights of Way. Such costs and expenses shall include, but not be limited to, Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights of Way as the result of the presence of Franchisee's Facilities in the Rights of Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

(4) The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

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(5) Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

(6) Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Chapter 3.68 DMMC, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Des Moines Municipal Code Chapter 3.68 shall control. In that event, the City may not enforce remedies under Section 20 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Chapter 3.68 DMMC or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Chapter 3.68 DMMC as may be permitted by law.

#### **Sec. 15. Small Cell Facilities.**

(1) City Retains Approval Authority. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7) and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Cell Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual Small Cell Facility.



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(2) This Franchise is a City-wide franchise in that it encompasses all Rights of Way within the City, and an amendment to this Franchise shall not be required to authorize Small Cell Facilities at additional locations that have not been previously been identified.

(3) City Approvals and permits. Except as provided in the foregoing paragraph, the granting of this Franchise is not a substitute for any other City required approvals to construct Franchisee's Facilities in the rights-of-way ("City Approvals"). The parties agree that such City Approvals (except right-of-way use permits as described in section 8(2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the rights-of-way but rather grant Franchisee permission to build its specific Small Cell Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, state and federal laws governing wireless communication facility siting and shall be in addition to any permits required under section 8(2). This section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as right-of-way use permits and traffic control permits.

(4) Preference for Existing Infrastructure; Site Specific Agreements.

(a) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment and siting of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Cell Facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures which are over sixty (60) feet in the Rights-of-Way

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then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right of Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is at the discretion of each of the parties thereto.

(c) Replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than thirty (30) days after the installation of the replacement pole or structure.

(d) This Section 15 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

(5) Concealment. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes or in the applicable permit(s), in order to minimize the visual impact of such Facilities.

(6) Eligible Facilities Requests. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the Rights-of-Way for Small Cell Facilities. The designs approved by the City for the installation of Small Cell Facilities, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

(7) Inventory. Franchisee shall maintain a current inventory of Small Cell Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this Franchise and shall be updated within thirty (30) days of a reasonable request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Cell Facility installation and photographs taken before and after the installation of the Small



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Cell Facility and taken from the public street. Small Cell Facilities that are considered Deactivated Facilities, as described in Section 18.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities which were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

(8) Unauthorized Facilities. Any Small Cell Facilities installations in the City Right-of-Way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall have sixty (60) days thereafter in which to either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Failure to do either of the foregoing within such 60-day period (or longer than sixty (60) days if necessary upon the City's consent so long as Franchisee can demonstrate that it has submitted a complete small cell permit application to the City) will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand and 00/100 Dollars (\$1000.00) per Unauthorized Facility, per day starting on the sixty-first (61<sup>st</sup>) day, or the first day after the expiration of any extended period granted by the City, until such time as Franchisee has obtained approval for the Unauthorized Facilities or has otherwise removed such Facilities. If the City does not approve the application for such Unauthorized Facilities and Franchisee is unsuccessful in an appeal (if an appeal is requested), then Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. This Franchise remedy is in addition to any other remedy available to the City at law or equity.

(9) Graffiti Abatement. As soon as practical, but not later than fourteen (14) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Cell Facilities of which it is the owner of the pole

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or structure or on the Small Cells Facilities themselves attached to a third-party pole (i.e. graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

(10) Emissions Reports.

(a) Franchisee is obligated to comply with all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards, whether such RF or EMF presence or exposure results from the Small Cell Facility alone or from the cumulative effect of the Small Cell Facility added to all other sources operated by Franchisee or on behalf of Franchisee on or near the specific pole or structure.

(b) Franchisee must provide to the City the results of an emissions report (the "Emissions Report") from a licensed professional engineer analyzing whether RF and EMF emissions at the proposed Small Cell Facility locations would comply with FCC standards. Franchisee may provide one Emissions Report within the same batch of applications if Franchisee is using the same Small Cell Facility configuration for all installations within that batch, or may submit one Emissions Report for each subgroup installation identified in the batch.

(c) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities. The City may inspect any of Franchisee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such notification shall be made orally by calling 1-800-264-6620 and by written notice pursuant to Section 32. Franchisee is required to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of oral notice oral notice. If Franchisee's Facilities are found to exceed FCC standards, then Franchisee shall reimburse the City for any costs incurred



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by the City for testing the Facility and providing notice as described in Section 14.3 and Section 14.4.

(11) Interference with Public Facilities. Franchisee's Small Cell Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or the emergency communications operation or equipment. If the Small Cell Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Cell Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference, such Small Cell Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 15.8 or removal by the City consistent with Section 13.

(12) Interference with Other Facilities. Franchisee is solely responsible for determining whether its Small Cell Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Cell Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

#### **Sec. 16. Indemnification.**

(1) Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, volunteers and representatives from

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any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. Further, Franchisee shall indemnify, defend and hold harmless the City, its officers, employees, agents, volunteers and representatives from any and all claims, costs, judgments, awards or liability to any person arising from radio frequency emissions or radiation emitted from Franchisee's Facilities located in the Rights-of-Way, regardless of whether Franchisee's equipment complies with applicable federal statutes and/or FCC regulations related thereto. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

(2) Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16.

(3) The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees



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and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

(4) Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees or agents, the obligations of Franchisee under the indemnification provisions of this Section 16, and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

(5) Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Rights of Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or

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contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful misconduct on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

(6) The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

#### **Sec. 17. Insurance.**

(1) Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Public Ways, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and blanket additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of no less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits of no less than \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises;- operations; independent contractors; products and



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completed operations; and broad form property damage; explosion, collapse and underground (XCU)

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit and

(d) Excess Umbrella liability policy with limits of no less than \$5,000,000 per occurrence and in the aggregate.

(2) Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

(3) The insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance with respect to the Additional Insureds. Any insurance maintained by the Additional Insureds shall be in excess of Franchisee's insurance and shall not contribute with it.

(4) Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 17. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this

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Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 20 below. Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

(5) Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

(6) The City may review all insurance limits once every calendar year during the Term and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall then issue a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

(7) As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date. Franchisee shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's, or its parent company's, most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification Section of this Franchise.

**Sec. 18. Abandonment of Franchisee's Telecommunications Network.**

(1) Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 15.7. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.

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(2) If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within ninety (90) days of such notification from the landlord at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.

(3) Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

(4) Notwithstanding Section 18 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

(5) Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.



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(6) The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

### **Sec. 19. Bonds**

(1) Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 19.2. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.

(2) Maintenance Bond. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required by Section 19.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.2.



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(3) Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

**Sec. 20. Remedies to Enforce Compliance.**

(1) The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

(2) If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the

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breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchise Bond, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 20.1 above.

**Sec. 21. Forfeiture and Revocation.** If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the Des Moines City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Des Moines City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Des Moines City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Des Moines City Council does not grant any additional period, the Des Moines City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

**Sec. 22. Non-Waiver.** The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.



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**Sec. 23. City Ordinances and Regulations.** Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

**Sec. 24. Cost of Publication.** The cost of publication of this Franchise shall be borne by Franchisee.

**Sec. 25. Acceptance.** Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 17, any Performance Bond, if applicable, pursuant to Section 19.1 and the Franchise Bond required pursuant to Section 19.3. The administrative fee pursuant to Section 14.1 is due within thirty (30) days of receipt of the invoice from the City.

**Sec. 26. Survival.** All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 18, Section 26, Section 27.3 and Section 39.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

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**Sec. 27. Assignment.**

(1) This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 27.2 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 27, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

(2) Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Franchise, following



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the revocation procedure described in Section 21 above. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 14.3 and Section 14.4, and shall pay the applicable application fee.

(3) Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, proof of any such lease or agreement, to include the first and last page the lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 27.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

**Sec. 28. Extension.** If this Franchise expires without renewal, the City may, subject to applicable law:

(1) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(2) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

**Sec. 29. Entire Agreement.** This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or

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understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

**Sec. 30. Eminent Domain.** The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

**Sec. 31. Vacation.** If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

**Sec. 32. Notice.** Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF DES MOINES:

Attn: City Manager  
21630 11th Ave S, Suite A  
Des Moines, WA 98198

Franchisee:

Attn: CFO  
Address: 3030 Warrenville Road,  
Suite 340  
Lisle, Illinois 60532

With a copy to:

CITY OF DES MOINES  
Attn: City Clerk

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21630 11th Ave S, Suite A  
Des Moines, WA 98198

With a Copy to: General Counsel  
at same address

**Sec. 33. Severability.** If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

**Sec. 34. Compliance with All Applicable Laws.** Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes to address small cell deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right or right under state or federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

**Sec. 35. Amendment.** The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating



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to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Franchisee with ninety (90) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

**Sec. 36. Attorneys' Fees.** If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

**Sec. 37. Hazardous Substances.** Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, whether or not intentional.

**Sec. 38 Licenses, Fees and Taxes.** Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation



Ordinance No. \_\_\_\_\_

of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

**Sec. 39. Miscellaneous.**

(1) City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

(2) This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

(3) Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

(4) Where the context so requires, the singular shall include the plural and the plural includes the singular.

(5) Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee by any person or entity.

(6) This Franchise may be enforced at both law and equity.

(7) Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Ordinance No. \_\_\_\_\_

**Sec. 40. Ordinance Effective Date.** This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title ("Effective Date").

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_\_ day of \_\_\_\_\_, 2019 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

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

Published:

Ordinance No. \_\_\_\_\_

**LEGAL NOTICE**  
**SUMMARY OF ADOPTED ORDINANCE**  
**CITY OF DES MOINES**

ORDINANCE NO. \_\_\_\_\_, Adopted \_\_\_\_\_, 2019.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance grants to Extenet Systems, Inc. and its affiliates, successors and assigns, the right, privilege, authority and nonexclusive Franchise for ten (10) years, to construct, maintain, operate, replace, and repair a telecommunications network, in, across, over, along, under, through and below certain designated public rights-of-way of the City of Des Moines, Washington.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins, CMC  
City Clerk

Published: \_\_\_\_\_, 2019

Ordinance No. \_\_\_\_\_

## EXHIBIT A

## STATEMENT OF ACCEPTANCE

\_\_\_\_\_, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared, \_\_\_\_\_ of \_\_\_\_\_, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature \_\_\_\_\_

\_\_\_\_\_



Ordinance No. \_\_\_\_\_

NOTARY PUBLIC in and for the State of \_\_\_\_\_, residing  
at \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

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**NW-WA-WESTWA-51001L  
SE90XS157-L  
23616 16TH AVE S  
DES MOINES, WA 98198**

SITE TYPE: WOOD POLE IN PROW  
POLE REPLACEMENT: NO  
POWER: PUGET SOUND ENERGY  
CARRIER: SPRINT

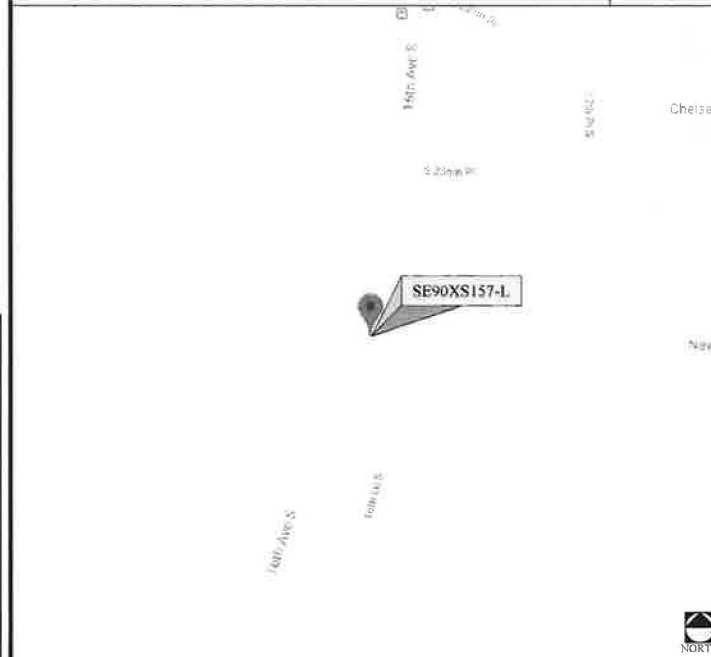
LOCAL MAP

NOT TO SCALE



VICINITY MAP

NOT TO SCALE



## CODE COMPLIANCE

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- 2015 INTERNATIONAL BUILDING CODE
- 2017 NATIONAL ELECTRICAL SAFETY CODE
- 2017 NATIONAL ELECTRICAL CODE, OR LATEST NEC VERSION AS ADOPTED BY THE JURISDICTION
- TIA/EIA-222-G-2 OR LATEST EDITION
- LOCAL BUILDING/PLANNING CODE

## PROJECT DESCRIPTION

THESE DRAWINGS DEPICT THE INSTALLATION OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE PUBLIC RIGHT OF WAY. HARDWARE AND ANCILLARY EQUIPMENT TO BE INSTALLED AS DESCRIBED HEREIN.

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- ALL FIELD MODIFICATIONS BEFORE, DURING OR AFTER CONSTRUCTION SHALL BE APPROVED IN WRITING BY AN EXTENET SYSTEMS REPRESENTATIVE.
- INSTALL ALL EQUIPMENT AND MATERIALS PER THE MANUFACTURER'S RECOMMENDATIONS, UNLESS INDICATED OTHERWISE.
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**extenet**  
SYSTEMS

EXTERNAL REVIEW  
CONTRACTOR SIGNATURE: DATE  
BY SIGNATURE: DATE  
REAL ESTATE SIGNATURE: DATE

**NEXIUS**  
SYSTEMS

THESE DRAWINGS ARE THE PROPERTY OF NEXIUS SOLUTIONS, INC. AND PRODUCED SOLELY FOR THE USE OF OUR CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED WITHIN SAID DRAWINGS IS PROHIBITED WITHOUT WRITTEN CONSENT BY NEXIUS SOLUTIONS, INC.

DESIGNED BY: DRAWN BY: CHECKED BY:  
51001L CH CD

DATE: 04/10/19 CDD FOR REVIEW

DATE: 04/10/19 CDD FOR REVIEW

DATE: 04/10/19 CDD FOR REVIEW

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## SHEET INDEX

ASSOCIATED FILES,  
DOCUMENTS & APPLICATIONS

| SHEET # | SHEET TITLE             | WINDLOAD FILE         | N/A                                    |
|---------|-------------------------|-----------------------|----------------------------------------|
| T-1     | TITLE SHEET             |                       |                                        |
| A-1     | SITE PLANS & SITE PHOTO | JPA APPLICATION       | N/A                                    |
| A-2     | POLE ELEVATIONS         | PCE APPLICATION       | N/A                                    |
| A-3     | POLE ELEVATIONS         | PGE SLA               | N/A                                    |
| RF-1    | RF DETAILS & BOM        | MUNICIPAL PERMIT      | N/A                                    |
| EQ-1    | EQUIPMENT DETAILS       | ELEC INSPECTION       | N/A                                    |
| EQ-2    | EQUIPMENT DETAILS       | EXTENET CONTACT (NOD) | 866-892-5327<br>noc@extenetsystems.com |
| E-1     | ELECTRICAL DETAILS      | CUSTOMER CONTACT      | N/A                                    |
| G-1     | GROUNDING DETAILS       | FIBER CONST PKG.      | N/A                                    |
| TC-1    | TRAFFIC CONTROL PLAN    |                       |                                        |

## PROJECT INFORMATION

## POLE OWNER

## ENGINEER

COMPANY: PUGET SOUND ENERGY

ENGINEER COMPANY: NEXIUS SOLUTIONS, INC.  
ADDRESS: 2595 NORTH DALLAS PARKWAY, SUITE 300  
FRISCO, TX 75034  
PHONE: (972) 581-9888

## CONTACTS

## PROJECT DATA

PROJECT MANAGER  
COMPANY: EXTENET SYSTEMS, LLC  
CONTACT: KEVIN SHUCARD  
ADDRESS: 3030 E WARRENVILLE RD, SUITE 340  
LISLE, IL 60532  
EMAIL: kshucard@extenetsystems.com

APPLICANT COMPANY: EXTENET SYSTEMS, LLC  
CONTACT: KEVIN SHUCARD  
ADDRESS: 3030 E WARRENVILLE RD, SUITE 340  
LISLE, IL 60532  
EMAIL: kshucard@extenetsystems.com

SITE ACQUISITION COMPANY  
COMPANY: NEXIUS SOLUTIONS, INC.  
ADDRESS: 2595 NORTH DALLAS PARKWAY, SUITE 300  
FRISCO, TX 75034

APPLICANT AGENT  
COMPANY: NEXIUS SOLUTIONS, INC.  
CONTACT: STEPHEN CLARK  
ADDRESS: 2595 NORTH DALLAS PARKWAY, SUITE 300  
FRISCO, TX 75034  
EMAIL: stephen.clark@nexus.com

LATITUDE: 47.389128°

LONGITUDE: -122.312124°

POLE #: 314551-163401

COUNTY: KING COUNTY COUNTY

ZONING JURISDICTION: CITY OF DES MOINES

ZONING DISTRICT: NOT FOUND

NEAREST APN: 1622049187

OCCUPANCY: U, UNMANNED

CONSTRUCTION TYPE: ATTACHMENTS TO A EXISTING WOOD POLE

TITLE 24 REQUIREMENTS: FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. THIS PROJECT IS EXEMPT



Call before you dig

Call before you dig

Call before you dig

Call before you dig

Call before you dig

Call before you dig

Call before you dig

Call before you dig

Call before you dig

IF USING 11"x17" PLOT, DRAWINGS WILL BE HALF SCALE

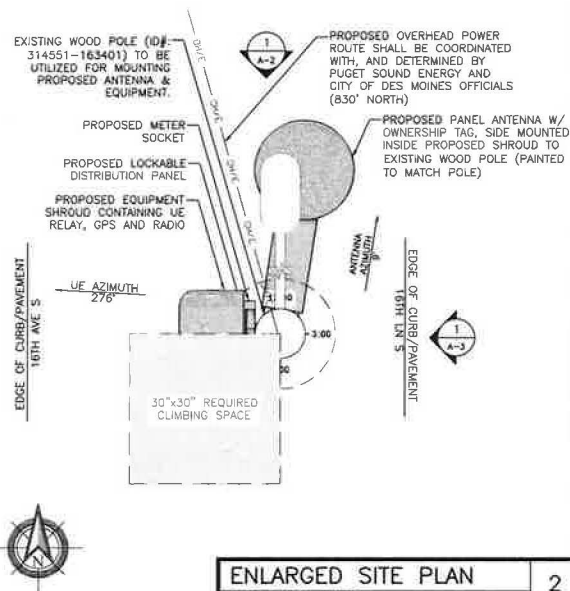
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SITE PHOTO

SCALE: N.T.S.

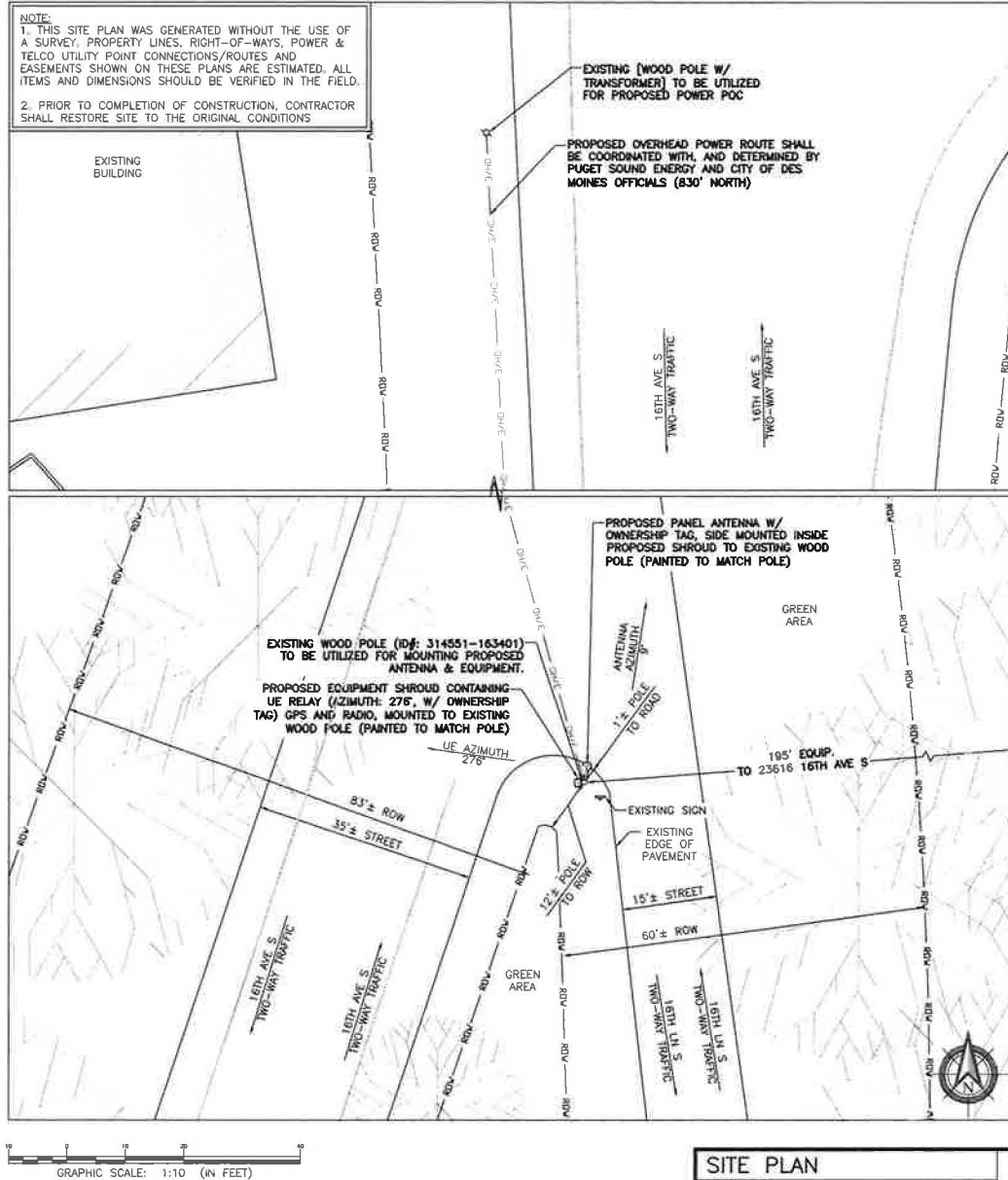
1



ENLARGED SITE PLAN

SCALE: 1/2" = 1'-0"

2



SITE PLAN

SCALE: 1:10

3

extenet  
SYSTEMS

## EXTERNAL REVIEW

|                    |      |
|--------------------|------|
| DESIGNED BY (DATE) | DAVE |
| BY (DATE)          | DAVE |
| REAL ESTATE (DATE) | DAVE |

NEXIUS

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| EXTENET ID | DRAWN BY | CHECKED BY |
|------------|----------|------------|
| S1001L     | CH       | CD         |

| REV | DATE     | DESCRIPTION     |
|-----|----------|-----------------|
| A   | 04/10/19 | CODE FOR REVIEW |

IT IS A VIOLATION OF THE LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

EXTENET SYSTEMS (CA) LLC  
2000 CROW CANYON PLACE  
SUITE 210  
SAN RAMON, CA 94583

SITE ADDRESS  
ADJACENT TO (IN PROW)  
23616 16TH AVE S  
DES MOINES, WA 98198

PROJECT TITLE  
OVERALL SITE PLAN

SHEET NUMBER  
A-1

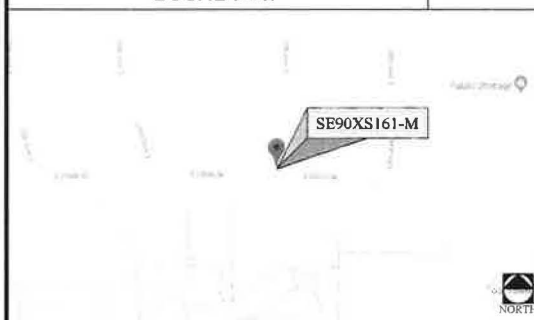


**NW-WA-WESTWA-51002  
SE90XS161-M  
23459 27TH AVE S  
(S 236TH ST FRONTAGE)  
DES MOINES, WA 98198**

SITE TYPE: WOOD POLE IN PROW  
POLE REPLACEMENT: NO  
POWER: PUGET SOUND ENERGY  
CARRIER: SPRINT

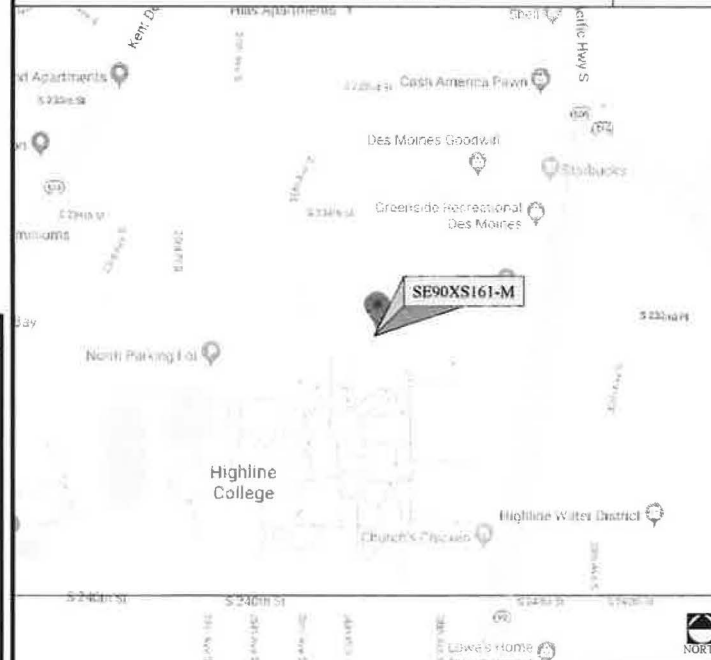
LOCAL MAP

NOT TO SCALE



VICINITY MAP

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| EXTERNAL REVIEW        | DATE |
|------------------------|------|
| CONSTRUCTION SIGNATURE | DATE |
| RF SIGNATURE           | DATE |
| REAL ESTATE SIGNATURE  | DATE |

**NEXIUS**

PAUL LUTHE  
2014-2015 WA  
WESTFORD, MA 01886  
978.272.5551/1882

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| REVISION | DRAWN BY | CHECKED BY |
|----------|----------|------------|
| 51002    | JK       | MD         |

| REV | DATE     | DESCRIPTION     |
|-----|----------|-----------------|
| A   | 04/10/19 | CORO FOR REVIEW |

| REV | DATE | DESCRIPTION |
|-----|------|-------------|
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SITE ADDRESS  
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DES MOINES, WA 98198

SHEET TITLE  
**TITLE SHEET**

SHEET NUMBER  
**T-1**

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|         |                         | EXTENET CONTACT (NOD) | 866-892-5327<br>noc@extenetsystems.com |
|         |                         | CUSTOMER CONTACT      | N/A                                    |
|         |                         | FIBER CONST PKG.      | N/A                                    |

## PROJECT INFORMATION

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## ENGINEER

COMPANY: PUGET SOUND ENERGY

ENGINEER COMPANY:  
NEXIUS SOLUTIONS, INC.,  
7A LIBERTY WAY  
WESTFORD, MA 01886  
PHONE: (972) 775-1882

## CONTACTS

## PROJECT DATA

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CONTACT: KEVIN SHUCARD  
ADDRESS: 3030 E WARRENVILLE RD, SUITE 340  
LISLE, IL 60532  
EMAIL: kshucard@extenetsystems.com

LATITUDE: 47.390219°  
LONGITUDE: -122.299017°  
POLE #: 314595-163726  
COUNTY: KING COUNTY  
ZONING JURISDICTION: CITY OF DES MOINES  
ZONING DISTRICT: RS-7,200 (RESIDENTIAL SINGLE FAMILY 7,200)  
NEAREST APN: 1953400510  
OCCUPANCY: U, UNMANNED

APPLICANT  
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CONTACT: KEVIN SHUCARD  
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STILL NUMBER  
A-1



## A G E N D A   I T E M

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

**SUBJECT:** Draft Resolution 19-064 Setting a Public Hearing date for Vacation of Public Rights-of-Way for South 236<sup>th</sup> Street

**ATTACHMENTS:**

1. Draft Resolution No. 19-064

**FOR AGENDA OF:** September 5, 2019

**DEPT. OF ORIGIN:** Public Works

**DATE SUBMITTED:** August 26, 2019

**CLEARANCES:**

- ☒ Community Development SMC
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Public Works AM

**CHIEF OPERATIONS OFFICER:** DSB

- ☒ Legal DS
- ☐ Finance N/A
- ☐ Courts N/A
- ☐ Police N/A

**APPROVED BY CITY MANAGER  
FOR SUBMITTAL** [Signature]

#### **Purpose and Recommendation**

The purpose of this agenda item is to set a public hearing date in compliance with DMMC 12.10.040 and RCW 35.79.010 to consider within the City of Des Moines a street vacation involving public rights-of-way known as a portion of South 236<sup>th</sup> Street. The following motion will appear on the consent calendar:

#### **Suggested Motion**

**Motion:** “I move to adopt Draft Resolution No. 19-064 setting a public hearing on October 10, 2019 or soon thereafter as the matter may be heard, for a street vacation of South 236<sup>th</sup> Street within the City of Des Moines.”

#### **Background**

In November 2008, central Puget Sound area voters approved Sound Transit 2 (ST2) including extension of the Link Light Rail (LLR) system from SeaTac to the cities of Kent and Des Moines. Unfortunately, due to reduced tax revenue during the Great Recession, all work was suspended south of Angle Lake Station in SeaTac. Then in November 2016, voters approved Sound Transit 3 (ST3) which

included the extension of the LLR system to the City of Federal Way, known as the Federal Way Link Extension (FWLE).

The City of Des Moines has negotiated multiple agreements with Sound Transit detailing various project requirements and permitting processes that would provide certainty and predictability for the FWLE Project within the City limits. These agreements referenced the completed Sound Transit Environmental Impact Statement and FTA mitigation requirements. The agreements established a consolidated permit process, amended and resolved technical code requirements that are impractical or infeasible, supported and accommodated the LLR system in land use plans and development regulations, and allowed for extended vesting or duration of land use approvals.

As part of the FWLE construction, Sound Transit is responsible for the construction of a cul-de-sac at the end of College Way, along with associated drainage improvements running through the Highline College Campus to an outfall located to the north. Additionally, Highline College has Master Plan improvements near the College Way street-end. As addressed in the Interlocal Agreement with Highline College, approved by the City Council on October 4, 2018, the College Way Connection Project will be part of Sound Transit's FWLE project. The College Way Connection Project generally consists of a cul-de-sac at the end of College Way within City rights-of-way, thus requiring a street vacation and property dedication. Improvements include pedestrian and bicycle facilities that connect the cul-de-sac street-end through the parking lot to existing pedestrian and bicycle facilities on the eastern edge of the Highline College campus. It also includes parking lot modifications to accommodate the cul-de-sac and pedestrian and bicycle facilities.

### **Discussion**

This Draft Resolution sets a public hearing date as required by law for the Council to consider the vacation of the South 236<sup>th</sup> Street right-of-way and associated easement.

The street proposed to be vacated, South 236<sup>th</sup> Street, is within the current Highline College parking lot, and currently serves no public use to the City. As a condition of the street vacation the City will reserve a 15 foot stormwater easement within the proposed South 236<sup>th</sup> Street right-of-way vacation. This stormwater easement is needed for future improvements associated with the FWLE College Way Connection Project.

### **Alternatives**

The City Council may:

1. Adopt the draft resolution as written.
2. Adopt the draft resolution with amendments.

### **Financial Impact**

No financial impact.

### **Recommendation or Conclusion**

It is recommended that the City Council approve the resolution setting a public hearing date.

### **Concurrence**

Community Development, Public Works, and Legal Departments concur.



**DRAFT RESOLUTION NO. 19-064**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON,** fixing a time for a public hearing to consider a street vacation of a portion of South 236<sup>th</sup> Street within the City of Des Moines.

**WHEREAS,** the City Council is considering vacation of a portion of public rights-of-way known as a portion of South 236<sup>th</sup> Street, located in the City of Des Moines as shown on Exhibit "A", attached hereto and incorporated by reference, by the petition method, and

**WHEREAS,** the street proposed to be vacated, South 236<sup>th</sup> Street, is within the current Highline College parking lot, and currently serves no public use to the City, and

**WHEREAS,** the proposed street vacation is necessary for the completion of planned improvements for the Federal Way Link Extension Project, and

**WHEREAS,** the provisions of RCW 35.79.010 authorize the City Council to fix a time for a public hearing in order to receive public comment regarding this proposal; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:**

The matter of the vacation of the following described portions of public rights-of-way in the City of Des Moines is set for a public hearing before the City Council on Thursday, October 10, 2019 at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue So., Suite B, Des Moines, Washington:

A portion of South 236<sup>th</sup> Street, located in the City of Des Moines as shown on Exhibit "A", attached hereto.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this 5th day of September, 2019 and signed in authentication thereof this 5th day of September, 2019.

Draft Resolution No. 19-064  
Page 2 of 2

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M A Y O R

APPROVED AS TO FORM:

---

City Attorney

ATTEST:

---

City Clerk

**EXHIBIT "A"**

R/W No. FL227.1  
PIN 1622049016  
STATE OF WASHINGTON – HIGHLINE COMMUNITY COLLEGE

**Area of South 236th Street Vacation:**

THAT PORTION OF RIGHT OF WAY GRANTED TO KING COUNTY PURSUANT TO RECORDING  
NUMBER 5678292 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE  
SOUTHEAST QUARTER, WHICH IS S01°18'30"W 173.89 FEET FROM THE NORTHEAST CORNER  
THEREOF, SAID POINT BEING A POINT ON A 41°43' CURVE TO THE RIGHT, THE TANGENT TO  
SAID CURVE AT SAID POINT BEARS N88°23'42"W, RUNNING THENCE ON SAID CURVE TO THE  
RIGHT, WITH A WIDTH OF 30.00 FEET ON EACH SIDE, A DISTANCE OF 220.26 FEET AND THENCE  
N01°17'40"E 33.18 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER OF  
THE SOUTHEAST QUARTER, WHICH IS N88°36'50"W 140.00 FEET FROM THE NORTHEAST  
CORNER THEREOF, HAVING AN AREA OF 0.35 ACRE.

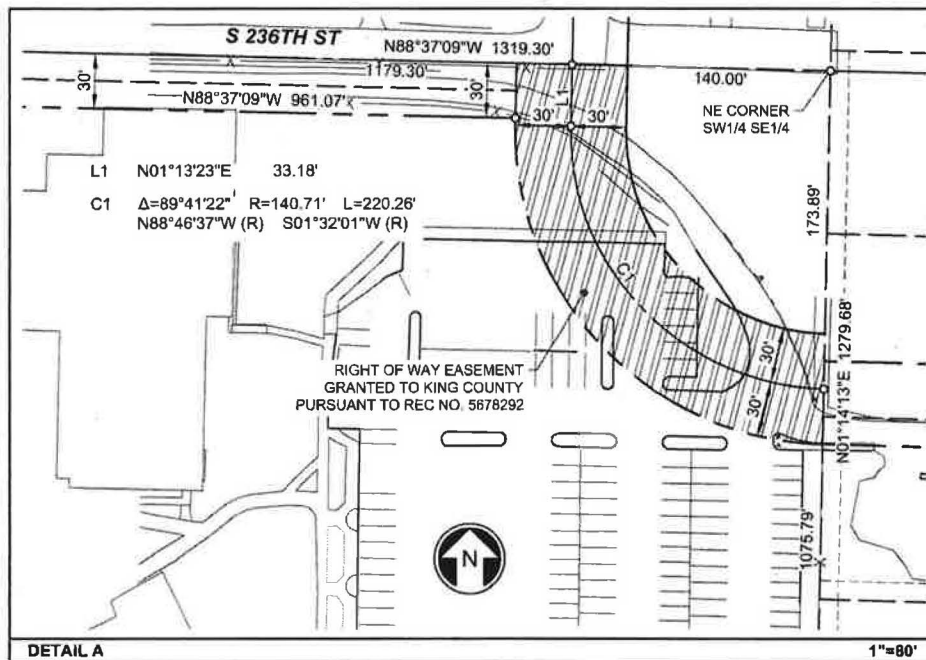
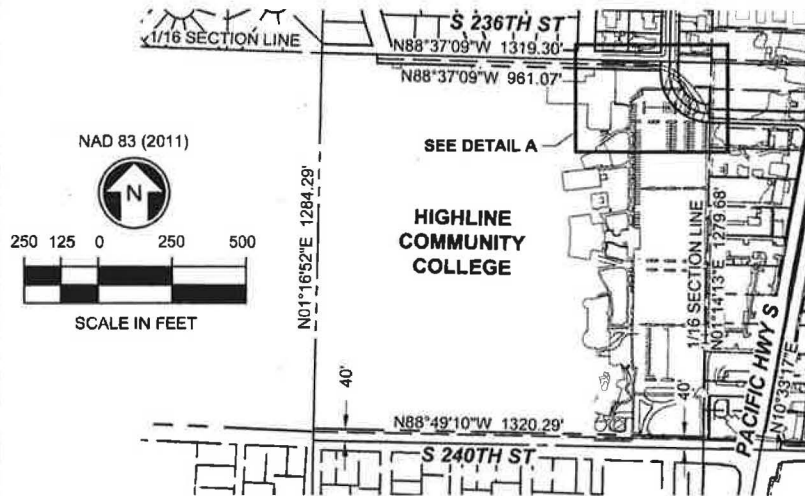
THE CITY OF DES MOINES SHALL RETAIN AN EASEMENT OR THE RIGHT TO EXERCISE AND  
GRANT EASEMENTS IN RESPECT TO THE VACATED LAND FOR THE CONSTRUCTION, REPAIR  
AND MAINTENANCE OF PUBLIC UTILITIES AND SERVICES.

CONTAINING 15,230 SF, MORE OR LESS

*Earl J. Bone 7/31/19*

# SOUTH 236TH STREET VACATION

SW 1/4 SE 1/4 SEC 16, T 22 N, R 4 E, W.M.



DETAIL A

## LEGEND

- STREET RIGHT-OF-WAY LINE
- STREET CENTER LINE
- PROPERTY LINE

THE CITY OF DES MOINES SHALL RETAIN AN EASEMENT OR THE RIGHT TO EXERCISE AND GRANT EASEMENTS IN RESPECT TO THE VACATED LAND FOR THE CONSTRUCTION, REPAIR AND MAINTENANCE OF PUBLIC UTILITIES AND SERVICES.

STREET VACATION

**LD**

**L & A** LIN & ASSOCIATES

LINK LIGHT RAIL TRANSIT SYSTEM



STREET VACATION AREA: 15,230 SF

## EXHIBIT "A" R/W S 236TH ST VACATION

ASSESSOR NO.: N/A DATE: 07/31/2019  
 OWNER: CITY OF DES MOINES  
 BLOCK NO.: N/A LOT NO.: N/A  
 CITY OF DES MOINES KING COUNTY, WA



## A G E N D A   I T E M

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2019-2021 Recycling Program  
Funding

FOR AGENDA OF: September 5, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: August 29, 2019

**ATTACHMENTS:**

1. Washington State Department of Ecology  
Solid Waste Management Local Solid  
Waste Financial Assistance Agreement  
(LSWFA) 2019-2021 Agreement No.  
SWMLSWFA-2019-DeMDSO-00052

**CLEARANCES:**

- ☒ Community Development SAC  
☐ Marina \_\_\_\_\_  
☐ Parks, Recreation & Senior Services \_\_\_\_\_  
☐ Public Works \_\_\_\_\_

CHIEF OPERATIONS OFFICER: DSB

- ☒ Legal SG  
☐ Finance \_\_\_\_\_  
☐ Courts \_\_\_\_\_  
☐ Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: imm

**Purpose and Recommendation**

The purpose of this agenda item is to provide information to Council, enabling it to take action on the acceptance of a grant partially funding the City's Recycling Program for the service period of 2019-2021.

**Suggested Motion**

**Motion 1:** "I move to authorize the City Manager to sign the 2019-2021 Local Solid Waste Financial Assistance Grant between the City of Des Moines and the Washington State Department of Ecology, substantially in the form as attached."

### **Background**

Staff is requesting Council to authorize acceptance of one of three grants for the City's recycling program. The grant is the 2019-2021 Washington State Department of Ecology's Solid Waste Management Local Solid Waste Financial Assistance Agreement (LSWFA) (Attachment 1).

The subject grant will partially fund the City's semi-annual Household Waste Collection and Recycling Events for 2019-2021.

### **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 2019-2021 Recycling Program, the City will sponsor two residential recycling collection events per year (i.e. the Fall and Spring events).

This agenda item seeks City Council approval of the LSWFA grant contract for 2019-2021 (retroactive to July 1, 2019 through June 30, 2021). The LSWFA grant will allocate a state grant share of \$11,824.00 to the City of Des Moines recycling program for household recycling events for the 2019-2021 timeframe.

If the City Council accepts the LSWFA grant for 2019-2021, 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.

Household Collection and Recycling Events – For over 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 tires, lead acid and alkaline batteries, cardboard, propane tanks, appliances and scrap metal, bulky wood, electronic equipment, mattresses and box springs, 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.

### **Alternatives**

1. The City Council may accept the 2019-2021 LSWFA Grant No. SWMLSWFA-2019-DeMDSD-00052 between the City of Des Moines and the Washington State Department of Ecology.
2. The City Council may decline the 2019-2021 LSWFA Grant No. SWMLSWFA-2019-DeMDSD-00052 between the City of Des Moines and the Washington State Department of Ecology and forego LSWFA grant funds.
3. The City Council may continue this Agenda Item and request that staff provides additional information on the LSWFA grant program. Continuance of this item may result in loss of grant funds for the 2019-2021 grant cycle.

### **Financial Impact**

If the City Council accepts the LSWFA grant, there will be no fiscal impact to the City related to Contract Number SWMLSWFA-2019-DeMDSD-00052. However, if the City Council does not accept the LSWFA grant, then the City will need to use General Fund monies to maintain the City's recycling program. The required matching funds for this grant are provided by the two other grants used to fund

the recycling program: King County Health Department Local Hazardous Waste Management Program (LHWMP) Grant and the King County Solid Waste Division Waste Reduction and Recycling (WRR) Grant.

**Recommendation**

Staff recommends that the City Council choose Alternative 1, and accept the 2019-2021 Washington State Department of Ecology LSWFA Grant.

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## Agreement No. SWMLSWFA-2019-DeMDSD-00052

### SOLID WASTE MANAGEMENT LOCAL SOLID WASTE FINANCIAL ASSISTANCE AGREEMENT

#### BETWEEN

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

#### AND

**CITY OF DES MOINES**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and CITY OF DES MOINES, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

#### GENERAL INFORMATION

|                                                         |                                      |
|---------------------------------------------------------|--------------------------------------|
| Project Title:                                          | 2019-21 LSWFA City of Des Moines IMP |
| Total Cost:                                             | \$75,391.50                          |
| Total Eligible Cost:                                    | \$15,765.33                          |
| Ecology Share:                                          | \$11,824.00                          |
| Recipient Share:                                        | \$3,941.33                           |
| The Effective Date of this Agreement is:                | 07/01/2019                           |
| The Expiration Date of this Agreement is no later than: | 06/30/2021                           |
| Project Type:                                           | Planning/Implementation              |

#### Project Short Description:

The RECIPIENT (City of Des Moines) will spend \$15,765.33 to host up to four (4) residential recycling collection events, collecting and managing approximately 53,000 lbs. of recyclable material, 21,500 lbs. of organics, and 5,600 lbs. of household hazardous waste (HHW).

#### Project Long Description:

See the Scope of Work section for more detailed information related to individual Tasks.

#### Overall Goal:

Provide regional solutions and intergovernmental cooperation; prevent or minimize environmental contamination through planning and project implementation; and comply with state and local solid and hazardous waste management plans and laws.

State of Washington Department of Ecology

Agreement No: SWMLSWFA-2019-DeMDSD-00052  
Project Title: 2019-21 LSWFA City of Des Moines IMP  
Recipient Name: CITY OF DES MOINES

## RECIPIENT INFORMATION

Organization Name: CITY OF DES MOINES

Federal Tax ID: 91-6016496

DUNS Number: 079270443

Mailing Address: 21630 11th Ave S, Ste D  
Des Moines, WA 98198-6398

Physical Address: 21630 11th Ave S, Ste D  
Des Moines, Washington 98198-6398

Organization Fax: (206) 870-6544

## Contacts

State of Washington Department of Ecology

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Agreement No: SWMLSWFA-2019-DeMDSD-00052

Project Title: 2019-21 LSWFA City of Des Moines IMP

Recipient Name: CITY OF DES MOINES

|                             |                                                                                                                                                                                      |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Project Manager</b>      | <p>Laura Techico<br/>Principal Planner</p> <p>21630 11th Avenue South<br/>Suite D<br/>Des Moines, Washington 98198<br/>Email: ltechico@desmoineswa.gov<br/>Phone: (206) 870-6595</p> |
| <b>Billing Contact</b>      | <p>Paul Devine<br/>General Manager</p> <p>4715 SW WALKER ST<br/>Seattle, Washington 98116<br/>Email: pauldevine@msn.com<br/>Phone: (206) 938-8262</p>                                |
| <b>Authorized Signatory</b> | <p>Michael Matthias<br/>City Manager</p> <p>21630 11th AVE S<br/>Des Moines, Washington 98198<br/>Email: mmatthias@desmoineswa.gov<br/>Phone: (206) 824-5700</p>                     |

State of Washington Department of Ecology

Agreement No: SWMLSWFA-2019-DeMDSD-00052

Project Title: 2019-21 LSWFA City of Des Moines IMP

Recipient Name: CITY OF DES MOINES

## ECOLOGY INFORMATION

Mailing Address: Department of Ecology  
Solid Waste Management  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Solid Waste Management  
300 Desmond Drive SE  
Lacey, WA 98503

## Contacts

|                          |                                                                                                                                  |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <b>Project Manager</b>   | Vicki Colgan<br><br>3190 - 160th Ave SE<br>Bellevue, Washington 98008-5452<br>Email: vcol461@ecy.wa.gov<br>Phone: (425) 649-7224 |
| <b>Financial Manager</b> | Vicki Colgan<br><br>3190 - 160th Ave SE<br>Bellevue, Washington 98008-5452<br>Email: vcol461@ecy.wa.gov<br>Phone: (425) 649-7224 |



State of Washington Department of Ecology

Agreement No: SWMLSWFA-2019-DeMDSD-00052

Project Title: 2019-21 LSWFA City of Des Moines IMP

Recipient Name: CITY OF DES MOINES

## AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State  
Department of Ecology

CITY OF DES MOINES

By: \_\_\_\_\_

By: \_\_\_\_\_

Laurie Davies  
Solid Waste Management  
Program Manager  
Date

Michael Matthias  
City Manager  
Date

Template Approved to Form by  
Attorney General's Office

State of Washington Department of Ecology  
 Agreement No: SWMLSWFA-2019-DeMDSD-00052  
 Project Title: 2019-21 LSWFA City of Des Moines IMP  
 Recipient Name: CITY OF DES MOINES

## SCOPE OF WORK

Task Number: 1 **Task Cost: \$15,765.33**

Task Title: Recycling Operations

### Task Description:

The RECIPIENT, together with a contractor, will spend \$15,765.33 in hosting up to four (4) residential recycling collection events for City residents during the LSWFA Agreement period. Organics, household hazardous waste (HHW), and other large or hard-to-recycle items will be collected along with 'usual' recyclables at a convenient City location. Educational materials, which describe how to reduce waste and recycle more using City-sponsored or private sector recycling programs, will also be distributed.

These events require advertising, organizing, staging, staffing, distribution of the outreach materials, scheduling and paying vendors, and calculating and reporting outcomes of each event to Ecology. Costs for these activities and associated salaries and benefits are eligible for LSWFA reimbursement. Costs incurred by contractors to implement work identified in this Task are subject to the same eligibility and reimbursement requirements as those for the RECIPIENT, and also require ECOLOGY approval.

The RECIPIENT will report program progress each Quarter, whether or not eligible costs or progress related to these events have occurred.

ECOLOGY now requires the RECIPIENT verify, to the best of their knowledge that materials handled under this Task as recyclables are, in fact, recycled and not disposed. To meet this requirement, the RECIPIENT will complete and upload into EAGL the Recycling Verification Form(s) provided. ECOLOGY also asks the RECIPIENT upload verification form(s) voluntarily for all others in the chain-of-custody that handle these materials. When any collection or vendor changes occur during the Agreement period, the RECIPIENT will upload amended verification in EAGL.

### Task Goal Statement:

Convenient capture and diversion of organic waste, household hazardous waste (HHW), and other hard-to-recycle items from City residents to avoid landfilling and environmental pollution constitute the primary goals of this Task. To foster additional diversion and recycling opportunities, educational materials will also be distributed at each event.

### Task Expected Outcome:

The collection events proposed are expected to net an approximate total of 53,000 lbs. of recyclable material, 21,500 lbs. of organics, and 5,600 lbs. of HHW. These metrics represent the percentage that LSWFA pays of the total project cost.

The RECIPIENT may charge user fees for some items or may drop user fees to increase volume of materials collected. The RECIPIENT will also credit this grant for any revenue received from fees or commodity sales on items this grant is directly supporting. Please note: LSWFA does not pay for costs covered by existing product stewardship programs or any new ones implemented during this Agreement.

Fees for membership in civic, business, technical and or professional organizations must be pre-approved by Ecology and are reimbursable through costs reimbursed for indirect. When a RECIPIENT does not charge indirect, such fees, with prior

State of Washington Department of Ecology

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Agreement No: SWMLSWFA-2019-DeMDSD-00052  
Project Title: 2019-21 LSWFA City of Des Moines IMP  
Recipient Name: CITY OF DES MOINES

approval, may be billed directly under two conditions: 1. Membership is for staff who work 100% of their time on the Task; and 2. Membership is determined reasonable and necessary to complete the Task.

The RECIPIENT agrees to obtain an ECOLOGY review before printing promotional or other materials to be paid for by monies granted under this Agreement. The full text of this requirement can be found in Provision #19 in the General Terms and Conditions below.

Recipient Task Coordinator: Paul Devine

### **Recycling Operations**

#### **Deliverables**

| <b>Number</b> | <b>Description</b>                                                      | <b>Due Date</b> |
|---------------|-------------------------------------------------------------------------|-----------------|
| 1.1           | Work as defined in the Scope of Work for this Agreement is implemented. | 06/30/2021      |

State of Washington Department of Ecology

Agreement No: SWMLSWFA-2019-DeMDSD-00052

Project Title: 2019-21 LSWFA City of Des Moines IMP

Recipient Name: CITY OF DES MOINES

**BUDGET****Funding Distribution EG200038**

**NOTE:** The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: City of Des Moines IMP

Funding Type: Grant

Funding Effective Date: 07/01/2019

Funding Expiration Date: 06/30/2021

Funding Source:

Title: MTCO Model Toxics Control Operating

Type: State

Funding Source %: 100%

Description: Local Solid Waste Financial Assistance

Approved Indirect Costs Rate: Approved State Indirect Rate: 25%

Recipient Match %: 25%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

| City of Des Moines IMP | Task Total   |
|------------------------|--------------|
| Recycling Operations   | \$ 15,765.33 |

**Total: \$ 15,765.33**



Agreement No: SWMLSWFA-2019-DeMDSD-00052  
 Project Title: 2019-21 LSWFA City of Des Moines IMP  
 Recipient Name: CITY OF DES MOINES

### **Funding Distribution Summary**

#### **Recipient / Ecology Share**

| <b>Funding Distribution Name</b> | <b>Recipient Match %</b> | <b>Recipient Share</b> | <b>Ecology Share</b> | <b>Total</b>        |
|----------------------------------|--------------------------|------------------------|----------------------|---------------------|
| City of Des Moines IMP           | 25.00 %                  | \$ 3,941.33            | \$ 11,824.00         | \$ 15,765.33        |
| <b>Total</b>                     |                          | <b>\$ 3,941.33</b>     | <b>\$ 11,824.00</b>  | <b>\$ 15,765.33</b> |

### **AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

### **SPECIAL TERMS AND CONDITIONS**

RECIPIENT shall update the Spending Plan and Outcomes Data Collection form at least quarterly. The Spending Plan and Outcomes Data Collection form must be submitted along with a Payment Request/Progress Report. By checking the box provided in the Outcomes Data Collection section of the form, the RECIPIENT certifies that the outcomes reported for that quarter represent ONLY what was achieved with LSWFA (Ecology share plus local contribution). RECIPIENT shall not report outcomes achieved with funds that exceed the LSWFA Agreement's total budget.

RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial (including payment requests), performance, and other reports required by this Agreement. ECOLOGY shall have the right to deny reimbursement of payment requests received after this date.

### **GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

#### **A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY**

##### **EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended,

Agreement No: SWMLSWFA-2019-DeMDSD-00052

Project Title: 2019-21 LSWFA City of Des Moines IMP

Recipient Name: CITY OF DES MOINES

declared ineligible, or voluntarily excluded from participation in this covered transaction.

5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

#### **B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:**

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

Agreement No: SWMLSWFA-2019-DeMDSD-00052  
 Project Title: 2019-21 LSWFA City of Des Moines IMP  
 Recipient Name: CITY OF DES MOINES

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

##### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.



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- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff and contractors working at the project site.
- Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
  - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
  - Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## 5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

## 6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

## 7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

## 8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of



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Washington which affect wages and job safety.

b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.

c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.

d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## 9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

## 10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

## 11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

a) RECIPIENT notifies the funding program of an appeal request.

b) Appeal request must be in writing and state the disputed issue(s).

c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.

d) ECOLOGY reviews the RECIPIENT's appeal.

e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in

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accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

## 12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)



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RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

## 18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

## 19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

## 20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through

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September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
  2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.



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d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

### 23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

### 24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

### 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

### 26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

### 27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

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imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 28. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Failure to Commence Work.** ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

**Non-Performance.** The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

### b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Non-Allocation of Funds.** ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

### c) By Mutual Agreement

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ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

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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: Property Acquisition for Midway Park  
Expansion in Pacific Ridge (22104 28<sup>th</sup> Ave. S.)

ATTACHMENTS:

1. Purchase and Sale Agreement
2. Map of Acquisition

FOR AGENDA OF: September 5, 2019

DEPT. OF ORIGIN: Parks, Recreation and Senior  
Services

DATE SUBMITTED: August 29, 2019

CLEARANCES:

☐ Community Development \_\_\_\_\_

☐ Marina \_\_\_\_\_

☒ Parks, Recreation & Senior Services SMC

☐ Public Works \_\_\_\_\_

CHIEF OPERATIONS OFFICER: DSS

☒ Legal JD

☒ Finance Baw

☐ Courts \_\_\_\_\_

☐ Police \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: [Signature]

#### **Purpose and Recommendation**

The purpose of this agenda item is to ratify the City's acquisition of the property at 22104 28<sup>th</sup> Ave. S. in the interest of establishing more open space for Midway Park in Pacific Ridge. The City received King County Conservation Futures Tax funding of \$675,900 to expand Midway Park and provide open passive recreational space for this neighborhood – a neighborhood with a deficit of parks and open space in the City.

#### **Suggested Motion**

**Motion 1:** "I move to ratify and approve the agreement for purchase of the property at 22104 28<sup>th</sup> Ave S in Des Moines, for the purchase price of \$460,000 plus closing costs, and direct Administration to bring forward a budget amendment reflecting the cost for the purchase."

**Motion 2:** “I move to direct Administration to proceed with demolition of structures on the property at 22104 28<sup>th</sup> Ave. S. in Des Moines, and to make other improvements as necessary to convert this residential property to Park property, once the current residents vacate the residence in late 2020.”

### **Background**

Located at 22104 28<sup>th</sup> Ave S in Des Moines, this property abuts Midway Park and provides the opportunity to continue expansion of the park. The property and residence located upon it is owned by the Nouanemy and Sayacheck family. City staff, along with Windermere Real Estate agent Janel Stoneback were able to meet with the family and explore the option of purchasing the property for park expansion. After negotiations, an agreement was reached and a purchase price of \$460,000 was agreed upon (see discussion points below).

King County’s Conservation Futures tax levy (CFT) is a dedicated portion of property taxes collected throughout King County. CFT funds are used to purchase open space lands and conservation easements in unincorporated King County and in King County’s cities.

As a result of a competitive grant process, the City was awarded \$675,900 in King County Conservation Futures funds to acquire multiple parcels adjacent to Midway Park. King County also granted a match waiver, so that no City matching funds are required. The City identified the sites for acquisition, and has already successfully purchased the adjacent parcel, 22106 28<sup>th</sup> Ave. S. Providing additional park and open spaces in the City is in accordance with the City’s Comprehensive Plan, and the Parks Master Plan.

### **Discussion**

King County’s Conservation Futures tax levy (CFT) is a dedicated portion of property taxes collected throughout King County. CFT funds are used to purchase open space lands and conservation easements in unincorporated King County and in King County’s cities Midway Park is a small neighborhood park with play equipment, a sports court, picnic tables, and walking paths. It is the only open space in the Pacific Ridge neighborhood, and has incredible community support behind it. The park already enjoys support and partnership through the Des Moines Area Food Bank and its summer meals programming, as well as the community garden, which affords neighbors the opportunity to learn about growing healthy food. The health opportunities for physical activity are tremendous and providing more open space for this is critical to this neighborhood.

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The Des Moines Parks and Recreation Master Plan cites priorities for land acquisition, with expansion of Midway Park being a land acquisition priority. Expanding Midway Park is a goal in the City of Des Moines 2035 Comprehensive Plan, Chapter 6 – The Parks, Recreation and Open Space Element. Chapter 11 is devoted to the Pacific Ridge neighborhood, and expanding open space in the area. Chapter 12 – Healthy Des Moines Element establishes goals aimed at improving access to physical activity and healthy foods, and facilitating the long-term implementation of the Healthy Des Moines Initiative.

Acquiring this parcel is a crucial step in expanding this vital neighborhood park, which is a priority under the City’s Comprehensive Plan. The parties agreed to a fair market purchase price of \$460,000, and the purchase will close on January 15, 2020. Pursuant to negotiations, the residents will remain in

the home until October 2020, at which time subject to Council approval, the City will demolish the structure and utilize the land for open space expansion of Midway Park.

Expansion of the park to 28<sup>th</sup> Ave. S. will have additional benefit and result in better view corridors into Midway Park. This will assist our Police Department in keeping Midway Park a safe environment for residents.

#### **Alternatives**

None.

#### **Financial Impact**

The purchase price of the property is \$460,000. The City received the King County Conservation Futures Tax (CFT) grant award of \$675,900 with no requirement for a match – this project is grant funded in its entirety. There will be no financial impact to the City.

#### **Recommendation**

Staff recommends approval of the motion.

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Form 21  
Residential Purchase & Sale Agreement  
Rev. 2/17  
Page 1 of 5

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Northwest Multiple Listing Service  
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**RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT  
SPECIFIC TERMS**

1. Date: July 2, 2019 MLS No.: FSBO Offer Expiration Date: 07/31/2019

2. Buyer: City Of Des moines Michael Matthias (signer)  
Buyer Buyer Status

3. Seller: Sy Nouanemy Tina Savachack  
Seller Seller

4. Property: Legal Description attached as Exhibit A. Tax Parcel No(s): 2156400363  
22104 28th Ave S Des Moines King WA 98198  
Address City County State Zip

5. Included Items: ☐ stove/range; ☐ refrigerator; ☐ washer; ☐ dryer; ☐ dishwasher; ☐ hot tub; ☐ fireplace insert;  
☐ wood stove; ☐ satellite dish; ☐ security system; ☐ attached television(s); ☐ attached speaker(s); ☐ microwave;  
☐ generator; ☐ other

6. Purchase Price: \$ 460,000.00 Four Hundred sixty Thousand Dollars Dollars

7. Earnest Money: \$ 5,000.00 ☒ Check; ☐ Note; ☐ Other (held by ☐ Selling Firm; ☐ Closing Agent)

8. Default: (check only one) ☐ Forfeiture of Earnest Money; ☐ Seller's Election of Remedies

9. Title Insurance Company: CW Title

10. Closing Agent: CW Escrow Wendy Lemieux  
Company (individual optional)

11. Closing Date: 01/15/2020; Possession Date: ☐ on Closing; ☒ Other October 31st, 2020

12. Services of Closing Agent for Payment of Utilities: ☒ Requested (attach NWMLS Form 22K); ☐ Waived

13. Charges/Assessments Levied Before but Due After Closing: ☐ assumed by Buyer; ☒ prepaid in full by Seller at Closing

14. Seller Citizenship (FIRPTA): Seller ☐ is; ☒ is not a foreign person for purposes of U.S. income taxation

15. Agency Disclosure: Selling Broker represents: ☒ Buyer; ☐ Seller; ☐ both parties; ☐ neither party  
Listing Broker represents: ☐ Seller; ☐ both parties

16. Addenda: 22D(Optional Clauses) 22J(Lead Disclosure) 22K(Utilities) 22T(Title Contingency)  
41C(Selling Commission) 34(Addendum) 22AA(Appraisal Addendum) 7-11-19  
41B, 22E  
7-2-19 Tina Savachack 07-12-19  
Buyer's Signature Date Seller's Signature Date  
Buyer's Signature Date Seller's Signature 07-12-19 Date  
Buyer's Address Seller's Address  
City, State, Zip City, State, Zip  
Phone No. Fax No. Phone No. Fax No.  
Buyer's E-mail Address Seller's E-mail Address  
Windermere Real Estate South Inc 1840  
Selling Firm MLS Office No.  
Janel Stoneback 93953  
Selling Broker (Print) MLS LAG No.  
(206) 244-5900 (206) 478-7773 (206) 241-6837  
Firm Phone No. Broker Phone No. Firm Fax No.  
Burien@windermere.com  
Selling Firm Document E-mail Address  
Janel@windermere.com  
Selling Broker's E-mail Address  
111578 3553  
Selling Broker DOL License No. Selling Firm DOL License No. Listing Broker DOL License No. Listing Firm DOL License No.







# A G E N D A   I T E M

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft VISION 2050 Plan

ATTACHMENTS:

1. Draft Comment Letter from Des Moines

FOR AGENDA OF: September 5, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: August 26, 2019

CLEARANCES:

- ☒ Community Development SMC  
☐ Marina \_\_\_\_\_  
☐ Parks, Recreation & Senior Services \_\_\_\_\_  
☒ Public Works AM

CHIEF OPERATIONS OFFICER: DSB

- ☒ Legal TS6  
☐ Finance \_\_\_\_\_  
☐ Courts \_\_\_\_\_  
☐ Police \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: DSB for r.m.

### Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider the proposed comment letter (Refer to Attachment 1) on the Puget Sound Regional Council's Draft VISION 2050 Plan and authorize the Mayor and City Manager to sign.

### Suggested Motion

**Motion 1:** "I move to authorize the Mayor and the City Manager to sign the comment letter on the draft VISION 2050 plan substantially in the form submitted in Attachment 1."

## **Background**

The Puget Sound Regional Council (PSRC) recently released a draft update to the region's long-range growth management, environmental, economic, and transportation strategy – VISION 2050 – for a 60-day comment period ending on September 16, 2019. VISION 2050 is an update to VISION 2040, the regional plan adopted in 2008. Forecasts show the region needs to plan for 1.8 million additional people and 1.2 million new jobs by 2050.

Over the last two years, the PSRC has worked with local governments, businesses, organizations and individuals to renew the region's vision for a sustainable, healthy, and prosperous region. The City of Des Moines has been fortunate to have Councilmember Buxton as a representative providing thorough and committed review of VISION 2050 as part of the Sound Cities Association.

Environmental impacts of different growth alternatives were assessed in a Supplemental Environmental Impact Statement and there is support for a preferred alternative focusing growth near transit, which results in better transportation and environmental effects than the other alternatives.

The City of Des Moines previously provided comments on both the scoping and environmental analysis for the VISION 2050 Plan. Des Moines was supportive of a hybrid alternative with aspects of both 'Stay the Course' and 'Transit Focused Growth'. Key issues of importance previously expressed by City include:

1. Emphasis must be placed on 'Last Mile' transportation systems, allocating appropriate resources through regional transportation planning and funding. The Last Mile refers to the provision of travel service from the nearest public transportation node to a home or place of employment.
2. Mitigation measures for impacts related to displacement, social equity and transportation should include preserving local flexibility in accommodating additional housing and employment growth.
3. VISION 2050 should provide policy guidance regarding the planning and management of the regional airport system. This includes taking into account factors related to existing growth dynamics and disproportionate negative impacts from ever increasing operations of Sea-Tac International Airport.

The draft VISION 2050 plan assumes Transit Focused Growth as the preferred alternative with the goal for 65% of the region's population growth and 75% of the employment growth to be located in regional growth centers and within walking distance of high-capacity transit. High-capacity transit includes existing or planned light rail, commuter rail, ferry, streetcar, and bus rapid transit. Des Moines is designated a High Capacity Transit Community.

## **Discussion**

Many of the City's comments provided during the development of the draft VISION 2050 plan have been addressed. However, there are several areas where additional policy recommendations are warranted as expressed in the attached comment letter and summarized below:

1. Amend transportation policies and actions to address the 'Last Mile' dynamic. Emphasis on the



‘Last Mile’ transportation systems is critical to the successful implementation of VISION 2050 for High Capacity Transit Communities. Allocating appropriate resources through regional transportation planning and funding to improve east-west access options to light rail and BRT will be critical to maximizing the value of transit investments in our community.

2. Modify Transportation Policy MPP-T-28 to recognize recent state legislation related to the siting of a new primary commercial aviation facility in Washington. This policy currently focuses on optimizing existing airport facilities prior to siting a new airport.
3. Add a transportation policy that addresses the expansion of passenger only ferry service. While VISION 2050 acknowledges expansion of passenger only ferry routes and new routes being studied for the future within the context of the Regional Transportation Plan, there are no specific policies or actions contained within VISION 2050.
4. Recommended clarification to transportation policies MPP-RC-6, MPP-RC-7 and MPP-RC-8 related to the allocation of funding to high capacity transit areas.

#### **Alternatives**

1. Authorize signature of the VISION 2050 comment letter substantially in the form submitted.
2. Authorize signature of the VISION 2050 comment letter as amended by the City Council.
3. Decline to submit a comment letter on the draft VISION 2050 plan.

#### **Financial Impact**

None.

#### **Recommendation**

Administration recommends that City Council authorize the Mayor and City Manager to sign the comment letter on the VISION 2050 Plan substantially in the form submitted.

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DRAFT

September 5, 2019

Paul Inghram, AICP  
 Director of Growth Management  
 Puget Sound Regional Council  
 1011 Western Avenue, Suite 500  
 Seattle, WA 98104

Subject: Draft VISION 2050 Plan Comments

Dear Mr. Inghram,

The City of Des Moines appreciates the opportunity to review and comment on the Draft Vision 2050 Plan. The City values the important work of the Puget Sound Regional Council (PSRC) and their continued efforts to work with regional stakeholders to update the plan.

The City of Des Moines previously provided comments on both the scoping and environmental analysis for the VISION 2050. In considering the draft VISION 2050 Plan, we would like to re-emphasize several critical factors in the increased urbanization of Des Moines as a High-Capacity Transit (HCT) Community.

First, critical consideration must be given to the ‘last mile’ dynamic which relates to the provision of travel service from the nearest public transportation node to a home or office. In the case of Des Moines (and other communities), east-west access is limited and presents a barrier to people using transit. Ultimately the value of access to the transit systems will dictate their value in our community. Des Moines recommends amending transportation policies (e.g., MPP-T-9 and/or MPP-T-10 and MPP-T-33 and MP-T-34) to address the ‘Last Mile’ dynamic.

Des Moines (and other proximate cities), face undue and disproportionate negative impacts from the ever increasing operations of Sea-Tac International Airport. This has both social equity and public health implications. Des Moines is supportive of the process anticipated in the new State legislation for siting a second regional airport. Des Moines recommends modifying Transportation Policy MPP-T-28 to recognize the legislative direction to identify a location for a new primary commercial aviation facility in Washington. The language currently in MPP-T-28 is now outdated due to the new legislation.

Des Moines suggests this policy be revised to read:

*“Promote coordinated planning and effective management to optimize the regional existing aviation system and support the process of prior to development of a new primary commercial aviation facility in Washington new airports. Accommodate anticipated regional growth in aviation while minimizing health and noise impacts in communities.”*

While VISION 2050 acknowledges expansion of passenger only ferry routes and new routes being studied for the future within the context of the Regional Transportation Plan, there are no specific

policies or actions contained within VISION 2050. Des Moines recommends adding a transportation policy to VISION 2050 that addresses support for the potential expansion of passenger-only ferry service.

The City of Des Moines is newly designated as a High-Capacity Transit Community (HCTC). The addition of the new designation of HCTC to the regional centers framework is a fundamental shift in the dynamic of future growth in the region. As noted in the plan:

*“VISION 2050 incorporates a renewed focus on locating growth near current and future high-capacity transit facilities.” and,*

*“MPP-RGS-7 Attract 65% of the region’s residential and 75% of the region’s employment growth to high-capacity transit station areas to realize the multiple public benefits of compact growth around high-capacity transit investments. As jurisdictions plan for growth targets, focus development near high-capacity transit to achieve the regional goal.”*

The discussion on pages 25 through 30 of the plan recognizes this shift, however the funding policies do not. Funding eligibility must also shift to support the regional growth strategy.

Note that the City of Des Moines does not have a light rail station, either currently or planned, and station area planning would generally occur by neighboring cities. Des Moines will be expected to accommodate a higher portion of regional growth, and with that expectation, funding should be available, although the City will not necessarily control the station area planning. Future light rail will pass through Des Moines and Bus Rapid Transit is located linearly along Pacific Highway South within the City.

Des Moines recommends the following clarifications to VISION 2050 policies related to the allocation of funding to High Capacity Transit areas:

- *MPP-RC-6 - Give funding priority – both for transportation infrastructure and for economic development – to support designated regional growth centers, ~~and~~ manufacturing/industrial centers, and High Capacity Transit areas consistent with the regional vision. Regional funds are prioritized to those areas expected to accommodate regional growth centers.*
- *MPP-RC-7 - Direct subregional funding, especially county-level and local funds, to countywide centers, high capacity transit areas ~~with a station area plan~~, and other local centers. County-level and local funding are also appropriate to prioritize to regional and local centers.*
- *MPP-RC-8 - Recognize and give regional funding priority to transportation facilities, infrastructure, and services that explicitly advance the development of housing in designated regional growth centers and high capacity transit areas. Give additional priority to projects and services that advance affordable housing.*

Thank you for the opportunity to comment, and for serious consideration of the City’s comments and concerns. We look forward to the opportunity to continue this discussion on behalf of all of our residents.

Sincerely,

Matt Pina  
Mayor

Michael Matthias  
City Manager



Schadt  
22315 6<sup>th</sup> Ave So. A164  
Des Moines, WA 98198

SEATTLE WA 98101  
27 AUG 2019 PM 3:1



RECEIVED

AUG 29 2019  
MAYOR LINA & DM City Council  
CITY OF DES MOINES  
CITY CLERK  
City Hall  
21630 11<sup>th</sup> Ave. So.  
Des Moines, WA 98198

3198-631730



Just a quick note  
of thanks for the  
lovely flower planters  
all over the down  
town & Marina district  
this summer.

Truly awesome!

J. Schadt



P.O. Box 1209  
Seattle, WA 98111-1209  
Tel: 787-3000

[www.portseattle.org](http://www.portseattle.org)

September 5, 2019

The Honorable Matt Pina  
City of Des Moines  
21630 11<sup>th</sup> Avenue South  
Suite A  
Des Moines, WA 98198

Dear Mayor Pina,

I am writing in response to your letter of August 13, 2019 advising of the City of Des Moines' decision to suspend participation in the Sea-Tac Stakeholder Advisory Round Table (StART) and to the similar decision made by the Cities of Burien and Federal Way. Let me start by apologizing for the lack of timely notification regarding the preliminary design funding. We are re-committed to prompt communication with all airport-area communities on SAMP-related and other relevant issues.

Trust is essential, and I am glad to see it referenced in your communication. Port staff and the city representatives all worked hard to design StART as a forum for community input and action, with stakeholders from all parties at the table working to address current operational concerns. Our intent is to continue holding StART meetings.

We have made meaningful progress and initiated several new actions at Sea-Tac directly resulting from StART, including: the Late Night Noise Limitation program, accommodation in late-night schedules and publicizing performance; adjusting the runway glide slope; working with FAA to reduce use of the third runway at night; initiating a Ground Noise analysis; and requesting airlines to upgrade or replace older, louder equipment at Sea-Tac. We also expect the working groups to continue to dive into industry-specific topics.

I welcome a conversation about how we can form partnerships to develop positive outcomes for all, with all parties held to the same standards. In that spirit, we will be contacting you and the other cities to explore a constructive way forward in our work together.

Sincerely,

A handwritten signature in black ink, appearing to read "AP Metruck".

Stephen P. Metruck  
Executive Director

cc: Port of Seattle Commission  
The Honorable Jimmy Matta, City of Burien  
The Honorable Jim Ferrell, City of Federal Way  
The Honorable Erin Sitterley, City of SeaTac  
The Honorable Allan Ekberg, City of Tukwila  
The Honorable Jonathan Chicquette, City of Normandy Park  
City Manager/Administrators, Highline Cities  
The Honorable Eileen Cody, Washington State Legislature

The Honorable Matt Pina  
September 5, 2019  
Page Two

The Honorable Joe Fitzgibbon, Washington State Legislature  
The Honorable Mia Gregerson, Washington State Legislature  
The Honorable Karen Keiser, Washington State Legislature  
The Honorable Joe Nguyen, Washington State Legislature  
The Honorable Tina Orwall, Washington State Legislature  
The Honorable Mike Pellicciotti, Washington State Legislature  
The Honorable Kristine Reeves, Washington State Legislature  
The Honorable Claire Wilson, Washington State Legislature  
The Honorable Maria Cantwell, Washington State Senator  
The Honorable Patty Murray, Washington State Senator  
The Honorable Pramila Jayapal, Washington State Representative  
The Honorable Rick Larsen, Washington State Representative  
The Honorable Adam Smith, Washington State Representative



# South Correctional Entity 2018-2019 Highlights

Devon Schrum, Executive Director

Prepared for:  
City of Des Moines City Council  
September 5, 2019





# 2018 – 2019 Brings Changes for SCORE

- Leadership transition
- Federal Way decision to leave
- Housing Contracts – rates analysis overdue

## Multi-Disciplinary Stakeholder Work Begins...

- Predictability
- Stability
- Equitability
- Feasibility

# Key Financial Policy Strategies

- Contract Revenue Assumptions for SCORE Budget Development
- Debt Service Paid through SCORE
- Develop a Comprehensive Housing Contract System
- Transition SCORE to a Biennium Budget
- Develop a Six (6) Year Cost Projection Schedule
- Mission Based Management

2020 Budget Operations Budget Assumes...

# Other Critical Work

- Bond Refunding
- Interlocal Agreement Revision
- Policies
- Medication Assisted Treatment Program - Grant

# REDONDO FISHING PIER



**SEPTEMBER 5<sup>TH</sup>, 2019**  
**CITY OF DES MOINES**

## **FACILITY CONDITION BRIEFING**

R. Brandon Carver, P.E., P.T.O.E.  
Public Works Director



# REDONDO FISHING PIER - FACILITY UPDATE



# REDONDO FISHING PIER - FACILITY UPDATE



- ENGINEERING EFFORTS TO DATE
  - Structural Fishing Pier Structural Inspection
    - Facility completely closed due to structural deficiencies on 7/11/19
    - Structural review started the next day
  - Consultants confirmed – **Structure is unsafe and should remain closed.**
  - Several alternatives were evaluated:
    - What short term repairs are available – if any?
    - Can the Pier be refurbished?
      - Is this feasible? Practical? Economical?
    - What would it cost to replace the Pier?
  - Are there other opportunities (economy of scale)?



# REDONDO FISHING PIER - FACILITY UPDATE



- ENGINEERING EFFORTS TO DATE (Continued....)

## **RECOMMENDATION:**

- Rebuild the Pier to current Marine Standards
  - Approx. cost (Design, Permitting, Construction) - \$2,500,000
  - Design life of 50 + Years
  - Remain Closed - Should be completed within 2-4 years
  - Squid/Fishing alternatives at Marina (Harbormaster will explain shortly....)

## Other Alternatives (Not Recommended)

- Short Term Repair
  - Open within 6 months
  - Limited life span - Approx. 2-years
  - Would require monthly inspection, and closures for Environmental Loads
  - \$100,000
- Mid Term
  - Open within 2-3 years
  - Short life span - Approximately 10-years
  - \$400,000



# REDONDO FISHING PIER - FACILITY UPDATE



**Other Opportunities? Several.....**



# REDONDO FISHING PIER - FACILITY UPDATE



- OPPORTUNITIES:

- Fishing Pier, Restroom, Bulkhead Integrated Structurally
    - ✦ Timber fishing pier replacement - \$2,500,000
    - ✦ Restroom Relocation - \$920,000
    - ✦ Timber bulkhead replacement - \$3,760,000
      - TOTAL PROGRAM (INDIVIDUAL PROJECTS) ~ \$7,200,000
    - ✦ Each project expected 2-4 year timeline with required federal permitting
  - Combining individual projects (economy of scale & streamlined permitting)
    - ✦ Approx. engineering and construction savings – 15-25%
      - TOTAL PROGRAM (COMBINED PROJECTS) ~ \$5,900,000
- \* With replacement of Timber bulkhead, opportunity to enhance access to water for the planned underwater dive park

# REDONDO FISHING PIER - FACILITY UPDATE



- What's Next?
  - 2020-2025 Capital Improvement Plan (CIP)
    - ✦ September 26<sup>th</sup>
    - ✦ At that time staff will be seeking direction to initiate design
  - Funding
    - ✦ Regional Asset – Regional Funding
  - Squid/Fishing alternatives at Marina – Harbor Master

# REDONDO FISHING PIER - FACILITY UPDATE



Questions ?





# REDONDO FISHING PIER - FACILITY UPDATE



- BACKGROUND

- Fishing Pier Completed ~1980
  - ✦ Timber substructure (Piles) & timber superstructure (Walking Surface)
    - Timber substructure elements exhibiting severe degradation and failure
- Restroom Completed ~ 1980
  - ✦ Timber substructure (Pile Foundation)
    - Timber substructure exhibiting degradation
    - Utilities experience repeated damage due to exposure to elements
- Timber Bulkhead (MaST to Boat Launch)~ 1980
  - ✦ Timber piles, timber lagging, concrete lagging
    - Structure exhibiting degradation and failure requiring constant repairs



# King County Veterans, Seniors and Human Services Levy Grant

Susan Cezar

Chief Strategic Officer

September 5, 2019

# King County Veterans, Seniors, and Human Services Grants - About

- VSHSL purpose: create and enhance services reflecting King County's diverse senior population
- New model – senior hubs: collaborations among existing senior centers - more robust and inclusive services
- Senior centers to expand staffing and capacity to serve a defined geographic area or cultural group
- No match required

# City of Des Moines Grant

- Des Moines/Normandy Park Activity Center - partnership with Central Area Senior Center (500 30th Ave S, Seattle)
- Awarded 1.5 million (both centers) for 2019-2023
- Des Moines: approximately \$500,000 over this period
- 2019 and 2020 = \$185,300
  - Increase diversity and population served
  - King County Councilmember Dave Upthegrove – thank you for your support



# Grant – Use of Funds

Continues program/facility improvements and adds capacity to better serve our residents, inclusive of all of the demographic of Des Moines/Normandy Park

Leveraging of resources between the Des Moines/Normandy Park and Central centers

- Expand hours/programs
- Staffing for cultural outreach specialist, van driver, social worker, translation, food services etc.
- Expand senior veterans served
- Purchase of van for senior transportation

# Next steps

- Grant acceptance to City Council – upon receipt of grant agreement from King County
- Purchase of van in 2019 or early 2020
- Coordination with Central Senior Center on work program/staffing
- Updates to City Council on progress
- Serving more seniors with fun and inclusive events, programs, multi-cultural food, field trips and classes!

[illegible]



# Midway Park

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King County  
Conservation Futures Tax Funds



# Awarded CFT funds – with a match waiver

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- Conservation Futures Tax Levy funds (CFT) is a dedicated portion of property taxes collected throughout King County, and then utilized to purchase open space lands.
- The City was awarded \$675,900 in CFT funds to acquire multiple parcels adjacent to Midway Park. We were awarded these funds without the need for a match, which is a new and significant addition to CFT funds through bond funding.



# Midway Park – Pacific Ridge Neighborhood

---

- Midway Park is the only open space in the Pacific Ridge neighborhood, which has the largest deficit of parks and open space in the City.
- Midway Park provides critical access to physical activity, healthy foods through the community garden, and passive recreation.
- The goal continues to be to expand open space in this vital neighborhood park, which is a priority in our City's Comprehensive Plan, and our Parks and Recreation Master Plan.



# Moving Forward

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- In May, with Council approval, the City successfully purchased the vacant parcel, 22106 28<sup>th</sup> Ave S, for \$65,000.
- In the interest of continued expansion of open space at Midway Park, the City was able to meet with the family residing at 22104 28<sup>th</sup> Ave S and explore purchasing the property.
- After negotiations, a fair market purchase price of \$460,000 was agreed upon, plus closing and relocation costs. The purchase will close on January 15, 2020. The family will be able to remain in the home until October 2020. We'd like to acknowledge Janel Stoneback, our Windermere Real Estate agent for her dedication to this effort and continued support.
- The remainder of the funds will be utilized for eligible city acquisition expenses.







# Next Steps

---

- Motion 1:

Approve the agreement for purchase of the property at 22104 28<sup>th</sup> Ave S in Des Moines, for the purchase price of \$460,000 plus closing costs, and direct Administration to bring forward a budget amendment reflecting the cost for the purchase.

- Motion 2:

Direct Administration to proceed with demolition of structures on the property at 22104 28<sup>th</sup> Ave. S. in Des Moines, and to make other improvements as necessary to convert this residential property to Park property, once the current residents vacate the residence in late 2020.

# Draft VISION 2050 Comment Letter

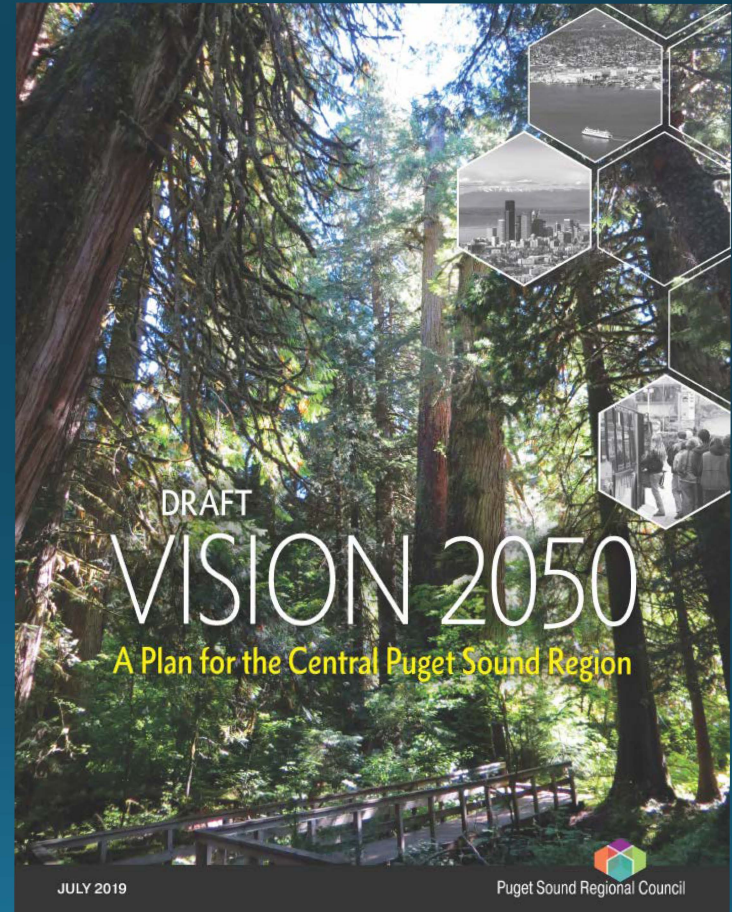
September 5, 2019

Denise Lathrop, AICP – Planning & Development Services Mgr.



# Purpose & Context

- Consider the proposed comment letter on the Draft VISION 2050 Plan
- Authorize the Mayor and City Manager to sign





# Draft VISION 2050

*Growth Management Strategy for the Puget Sound Region*

- Establishes Multicounty Planning Policies that support economic, social, and environmental resiliency, and address issues such as climate change and housing needs
- Updates Regional Geographies:
  - Framework to distribute forecast growth (1.8 million additional people and 1.2 million new jobs by 2050)
  - Based on size, function, and access to high-capacity transit
  - Des Moines is now a High Capacity Transit Community (HCTC)



# Des Moines Key Points

- 'Last Mile' transportation dynamic and allocation of resources to plan and fund needed improvements
- Funding eligibility that supports the regional growth strategy and in particular high capacity transit areas and local centers without stations
- Potential expansion of passenger-only ferry service
- Planning and management of the regional airport system and siting of a new primary commercial aviation facility

# Suggested Motion

"I move to authorize the Mayor and the City Manager to sign the comment letter on the draft VISION 2050 plan substantially in the form submitted in Attachment 1."