

AGENDA

DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers VIA ZOOM

October 22, 2020 – 5:00-8:00 p.m.

NOTE: The City of Des Moines is currently operating under a Proclamation of Emergency issued on March 5, 2020 and Governor Inslee's Stay-at-Home order issued March 23, 2020 in response to the COVID-19 Pandemic. Accordingly, this meeting will be held virtually using Zoom.

Public Comment continues to be encouraged and will be accepted in the following manner:

- (1) In writing, either by email to the City Clerk's Office at <https://www.desmoineswa.gov/FormCenter/City-Forms-3/Council-Meeting-Comments-49> or by mail; Attn: City Clerk Office, 21630 11th Avenue S., Des Moines WA 98198 no later than 4:00 p.m. day of the meeting. Please provide us with your first and last name and the city in which you live. Your full name and the subject of your public comment will be read into the record at the Council meeting. Incomplete forms will not be read into the record, however the full correspondence will be attached to the Council packet and uploaded to the website as part of the permanent record.
- (2) By participation via Zoom. If you wish to provide oral public comment please email the City Clerk's office at <https://www.desmoineswa.gov/FormCenter/City-Forms-3/Council-Meeting-Comments-49> no later than 4:00 p.m. day of the meeting to receive your Zoom log-in and personal identification number. Please note that Zoom attendees do not interact with one another; they join in listen-only mode until it is their turn to address the Council.

City Council meetings can also be viewed live on Comcast Channel 21 or live streamed on the City's website at www.desmoineswa.gov.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC VIA ZOOM/WRITTEN PUBLIC COMMENT

ADMINISTRATION REPORT

- Item 1: INTRODUCTION OF REPRESENTATIVE TINA ORWALL I-976
- Item 2: UPDATE
- Item 3: SOUTH KING HOUSING & HOMLESSNESS POLICY UPDATE

CONSENT CALENDAR

- Page 5 Item 1: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers through October 16, 2020 in the attached list and further described as follows:
- | | | |
|---------------------------|----------------|---------------|
| Total A/P Checks/Vouchers | #161427-161525 | \$ 775,474.07 |
| Electronic Wire Transfers | # 1538-1549 | \$ 262,353.82 |
| Payroll Checks | # 19391-19391 | \$ 435.16 |
| Payroll Direct Deposit | #400001-400149 | \$ 362,122.62 |
- Total Checks and Wires for A/P and Payroll: \$1,400,385.67
- Page 7 Item 2: DRAFT ORDINANCE NO. 20-042, CREATING NEW DOMESTIC VIOLENCE OFFENSES IN THE CRIMINAL CODE
Motion 1 is to suspend Rule 26(a) in order to enact Draft Ordinance No. 20-042 on first reading.
- Motion 2** is to enact Draft Ordinance No. 20-042, relating to public safety, defining additional crimes of domestic violence, and adding new sections to chapter 9.68 DMMC.
- Page 15 Item 3: MASTER LICENSE AGREEMENT – EXTENET SYSTEMS, INC
Motion is to approve the Master License Agreement with Extenet Systems, Inc. authorizing Extenet's use of City light poles for telecommunications purposes subject to City approval and compliance with City Code, and authorize the City Manager to sign the Agreement substantially in the form as submitted.
- Page 55 Item 4: INTERLOCAL AGREEMENT – SCHOOL RESILIENCE TO AIR POLLUTION STUDY
Motion is to approve the Interlocal Agreement with the cities of Burien, Federal Way, Normandy Park and SeaTac to provide funding for a University of Washington study on school resilience to air pollution, and authorize the City Manager to sign the agreement substantially in form as attached.
- Page 65 Item 5: BARNES CREEK/KENT DES MOINES ROAD CULVERT PROJECT: DESIGN AGREEMENT GCB 3395 WITH WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT)
Motion is to approve Local Agency Agreement GCB 3395 between the City of Des Moines and the Washington State Department of Transportation for the design and permitting of the Barnes Creek/Kent-Des Moines Road Culvert Replacement Project in the amount of \$575,848, plus a 20% contingency and further authorize the City Manager or his designee to sign said Agreement, substantially in the form as submitted.

PUBLIC HEARING

- Page 89 Item 1: 2021 PRELIMINARY ANNUAL BUDGET, FIRST READING
Staff Presentation: Finance Director Beth Anne Wroe

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS – (4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

November 12, 2020 City Council Regular Meeting

ADJOURNMENT

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CITY OF DES MOINES
Voucher Certification Approval
October 22, 2020
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 October 22, 2020 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through October 16, 2020 and payroll transfers through October 5, 2020 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:

for, 
 Beth Anne Wroe, Finance Director

			# From	# To	Amounts	
Claims Vouchers:						
Total A/P Checks/Vouchers			161427	-	161525	775,474.07
Voided Checks				-		0.00
Electronic Wire Transfers			1538	-	1549	262,353.82
Total claims paid					1,037,827.89	
Payroll Vouchers						
Payroll Checks	10/5/2020		19391	-	19391	435.16
Direct Deposit			400001		400149	362,122.62
Total Paychecks/Direct Deposits paid					362,557.78	
Total checks and wires for A/P & Payroll					1,400,385.67	

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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 No. 20-042, creating
new domestic violence offenses in the
criminal code

ATTACHMENTS:

1. Draft Ordinance No. 20-042

FOR AGENDA OF: October 22, 2020

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: October 15, 2020

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal TG
- ☐ Finance ____
- ☐ Courts ____
- ☒ Police KT

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** 

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider proposed Draft Ordinance 20-042 that would create two new criminal domestic violence offenses within the Des Moines Municipal Code. It is recommended that the City Council pass the proposed Draft Ordinance, providing additional tools for the City to protect victims of domestic violence.

Suggested Motions

Motion 1: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 20-042 on first reading.”

Motion 2: “I move to enact Draft Ordinance No. 20-042, relating to public safety, defining additional crimes of domestic violence, and adding new sections to chapter 9.68 DMMC.”

Background

The month of October has been recognized by the Des Moines City Council as “Domestic Violence Awareness Month” and the City Council through a Proclamation made on September 24, 2020 encouraged the community to ensure that victims of domestic violence know that they are not alone and to offer support to survivors.

Protecting the public from violent crime is a vital function of government. As in any other jurisdiction, crimes of domestic violence are far too common and have an enormous impact, not only on the direct victims, but also other members of the household, and the community at large. Domestic violence affects every community, targets all ethnicities and spares no economic class. The most vulnerable victims are those who cannot protect themselves, which includes children who are exposed to violence and may be physically harmed by an adult in the home.

Unlike many other violent crimes, domestic violence primarily happens behind closed doors, making it harder for law enforcement to detect and ultimately help victims involved. Children who are a vulnerable population are subject to this violence, trauma and lasting negative effects that are suffered.

Holding an abuser accountable for their actions may subsequently lead to appropriate treatment and ultimately may change the trajectory for that family unit. Most importantly, intervention early, could forever impact the lives of victims and their family members within our community.

Currently, King County is reporting that DV homicides are quadruple what they were in 2019. There have been 28 violent deaths so far this year related to Domestic Violence. In 2019 there were 7 deaths, as in 2018. The brutality of the violence has also escalated, including increased strangulation which can quickly turn lethal. Stay at home orders forced close quarters of victims and abusers as well as mounting pressure of economic strain and uncertainty. For many children who are living in a tense and violent household, going to school offered daily reprieve and predictability. With schools closed, children no longer have that protection.

In the City of Des Moines, prosecutions for Domestic Violence Assault 4 have increased 18% since April of 2020.

Discussion

Numerous studies have shown that when children witness abuse they are not merely innocent bystanders. The psychological effect and the effect on a child’s brain development that comes from witnessing domestic violence makes the child an additional victim of the crime. Although they may be “unintended victims”, they are living within an environment which has continual volatility and unpredictability and are living in a state of constant fear and uncertainty. The psychological aftermath of repeated exposure to domestic violence is profound. The early years of child development is where the body and brain are constantly developing. Repeated exposure to domestic violence inflict trauma to a child who has no power to flee the circumstance. Repeated exposure inflicts physical harm, fear, worry, anxiety, feeling of helplessness, guilt, and intentionally inflicted pain.

Additionally, studies show that children who remain in a home that is subject to violence are more likely to exhibit these same behaviors and patterns throughout the remainder of their life.

Currently, the effect on children who witness misdemeanor domestic violence offenses is not adequately addressed by the City's Criminal Code. The proposed Draft Ordinance would make it a gross misdemeanor to commit a criminal act of domestic violence when a child in the household is able to see, hear, or otherwise perceive that the offense is occurring, which can be charged separately from the underlying offense. This will allow the City to hold the offender responsible, not only for the harm he or she is doing to the direct victim, but also for the serious collateral effect the violence is having on the mental health and brain development of the children who are not able to avoid being a witness to abuse.

A second issue that is not adequately addressed by the current code is that when the Court issues a No-Contact Order in a domestic violence case, a child who is victimized by their exposure may not be adequately protected. The ability of the Court to issue an order naming the child as a protected party can be constrained by the child not being a named victim. If the child were named as a victim of a separate crime, as the Draft Ordinance would allow, the Court could issue an order protecting the child from the person who has caused serious trauma, if appropriate in that case.

This measure would allow the City to better protect our youngest community members and citizens, who will grow up and be the future of our City. While their voices are the quietest, they must still be heard. Holding abusers accountable for harm inflicted on children will set a continued tone in our City. One that seeks to continue to prioritize public safety. Safer homes make a safer community for all.

The proposed Draft Ordinance would also create a new gross misdemeanor offense for incidents of strangulation that do not meet the standards for filing felony Assault in the Second Degree charges. Strangulation is an extremely dangerous form of assault that involves the restriction of breathing and/or blood flow to the brain by means of constriction of the neck or throat or covering up of the nose and mouth. It is an act of intimidation and control by domestic abusers and is far too often fatal. Even when strangulation does not immediately result in the death of the victim, incidents of DV strangulation are highly predictive of future lethality. One review of domestic violence homicides found that 43% of victims had been strangled by their murderer within the prior 12 months.

Due to the seriousness of this act, the State Legislature has elevated assault by strangulation to Assault in the Second Degree, a class "B" felony, punishable by up to ten years in prison. In too many cases however, the County Prosecutor's Office determines that an assault with strangulation does not meet the standards for filing felony charges.

In order to ensure that these serious assaults not be reduced to simply the lowest level of gross misdemeanor assault, the proposed Draft Ordinance would create a new gross misdemeanor charge of Strangulation that can be charged as an additional separate offense from DV Assault 4 for strangulation incidents that have been determined not to arise to Assault 2. This charge would allow the City to hold the offender accountable for the heightened seriousness and dangerousness of the act. It would further allow the Court to more effectively tailor the terms of the offender's

sentence to reflect the nature of the offense, and the conviction would be a signal to police and prosecutors of the heightened danger to future victims of domestic violence posed by the individual.

Alternatives

The Council may:

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

Financial Impact

Staff does not anticipate that adopting the proposed Draft Ordinance will add to existing police and prosecution costs.

Recommendation or Conclusion

Staff recommends approval of the proposed Draft Ordinance.

CITY ATTORNEY'S FIRST DRAFT 10/15/2020**DRAFT ORDINANCE NO. 20-042**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to public safety, defining additional crimes of domestic violence, and adding new sections to chapter 9.68 DMMC.

WHEREAS, Article XI Section 11 of the Washington State Constitution authorizes Cities to establish such crimes as necessary to protect the public safety, health, and welfare, so long as said crimes do not conflict with state law, and

WHEREAS, the Legislature has authorized Code Cities such as Des Moines to adopt and enforce misdemeanors and gross misdemeanors as appropriate to good government of the City through RCW 35A.11.020, and

WHEREAS, Title 9 of the Des Moines Municipal Code identifies certain criminal violations designed to provide for public health, welfare and safety within the City, and

WHEREAS, domestic violence offenses are among the most significant criminal violations of City code in terms of both seriousness and impact to the victims and community, and

WHEREAS, crimes of domestic violence can result in short- and long-term negative effects suffered by not just the direct victims but also the child witnesses, and

WHEREAS, children witnessing acts of domestic violence have been shown to suffer near-term effects such as anxiety, guilt, isolation, low self-esteem, and behavioral issues, and

WHEREAS, the short- and long-term psychological effect on children who witness acts of domestic violence makes those children additional victims of the violence, which merits treatment as a separate crime, and

WHEREAS, assault by strangulation may result in immobilization of a victim, may cause a loss of consciousness, injury, or even death, and has been a factor in a significant number of domestic violence related assaults and fatalities, and

WHEREAS, assault by strangulation is often knowingly inflicted upon an intimate partner with the intent to commit

Ordinance No. _____
Page 2 of 4

physical injury, or substantial or great bodily harm, which experts say is a tactic of control, and

WHEREAS, research into domestic violence fatalities shows that an abuser's attempt to strangle the victim can be a dramatic predictor of future lethality in intimate partner violence cases, including a Center for Disease Control study that found that 43% of domestic violence homicide victims had been strangled by the perpetrator within the prior twelve months, and

WHEREAS, strangulation not rising to felony assault is an act of brutality, control, intimidation, and reckless disregard for human life that has a separate character, purpose, and intent from assault in the fourth degree, and

WHEREAS, the City Council of the City of Des Moines finds that adopting the crime of exposing children to domestic violence and the crime of domestic violence involving strangulation are necessary to protect the public safety, health, and welfare; now therefore,

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

Sec. 1. Findings. The recitals to this Ordinance are hereby incorporated by reference, as if fully set forth herein.

Sec. 2. A new section is added to chapter 9.68 DMMC to read as follows:

Exposing children to domestic violence.

(1) A person commits the crime of exposing children to domestic violence when he or she:

(a) Commits a crime of domestic violence, as defined in RCW 10.99.020; and

(b) The crime is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child, stepchild, or a minor child residing within the household of the person or victim.

Ordinance No. ____
 Page 3 of 4

(2) For the purposes of this section, "witnessed" shall mean if the crime is seen or directly perceived in any other manner by the child.

(3) Exposing children to domestic violence is a gross misdemeanor.

(4) Every person who, in the commission of a crime of domestic violence, commits a violation of this section, may be punished therefor as well as for the crime of domestic violence, and may be prosecuted for each crime separately.

Sec. 3. A new section is added to chapter 9.68 DMMC to read as follows:

Strangulation.

(1) A person is guilty of strangulation if, under circumstances not amounting to a felony, he or she assaults another by means of strangulation.

(2) "Strangulation" shall mean intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by obstructing the nose or mouth of another person.

(3) Strangulation is a gross misdemeanor.

(4) Every person who, in the commission of a crime of domestic violence, commits a violation of this section, may be punished therefor as well as for the crime of domestic violence, and may be prosecuted for each crime separately.

Sec. 4. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Ordinance No. ____
Page 4 of 4

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 5. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2020 and signed in authentication thereof this ____ day of ____, 2020.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Master License Agreement – Extenet Systems, Inc.

ATTACHMENTS:

1. Master License Agreement – Extenet Systems, Inc.

FOR AGENDA OF: October 22, 2020

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: October 15, 2020

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works *R. Blum*

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal *TG*
- ☐ Finance _____
- ☐ Courts _____
- ☐ Police _____

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

Purpose and Recommendation

The purpose of this agenda item is for City Council consideration of a Master License Agreement with Extenet Systems, Inc. for the purpose of leasing unused space on City owned light poles in order to enhance telecommunications capabilities and service for residents in the City. This Agreement is consistent with the terms of the City Council's recently updated Telecommunications Code in Chapter 20.07 DMMC as well as state and federal law. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion 1: "I move to approve the Master License Agreement with Extenet Systems, Inc. authorizing Extenet's use of City light poles for telecommunications purposes subject to City approval and compliance with City Code, and authorize the City Manager to sign the Agreement substantially in the form as submitted."

Background

In recent years, the proliferation of personal wireless devices and data usage has increased the need for telecommunications providers to enhance coverage. Additionally, with the onset of the COVID-19 Pandemic, many residents now find themselves working or going to school from home and the demand on providers to provide quality services into previously underserved areas is growing. The broadband industry has begun investing billions of dollars to meet the growing demand for faster speed internet, in both the wired and wireless space.

Over the course of twelve months in 2017 and 2018, the Des Moines City Council reviewed and approved Ordinance 1699, which laid the framework for a safe, planned and well-regulated roll out of modern telecommunications infrastructure to meet the demands of Des Moines residents and businesses.

Pursuant to Ordinance 1699 (Antennas and Wireless Telecommunications Facilities), prior to installation of a small cell wireless facility in City right of way, a telecommunications provider must have a City approved Franchise Agreement as well as a pole use agreement with the pole owner. Extenet applied for a Franchise Agreement with the City and it was approved by the City Council on September 9, 2019.

In order to complete the next step before the potential installation of facilities, a telecommunications provider must have a pole use agreement with the pole owner. In the City of Des Moines, roughly 90% of the poles are owned by Puget Sound Energy (PSE) and use of those poles would require an agreement with PSE prior to installation. The other roughly 10% of the poles in the City are owned by the City, and this Agreement would only apply to the poles owned by the City.

Upon approval of this Agreement but prior to installation, Extenet must submit a Site License Addenda to be reviewed by City staff to ensure compliance with City codes and the Franchise Agreement. Per the terms of this Agreement, the City is under no obligation to accept the installation of equipment on City Poles if it is determined in the City's sole discretion that the installation will interfere in any way with the City's primary use of the Poles, or of the public right of way for transportation purposes, including transportation signalization or public safety, City utility, communication facilities or electrical facilities and their maintenance and operations or the City determines that such installation would conflict with City policy as expressed by law, ordinance or regulation.

Discussion

Pursuant to a 2019 FCC order that was recently upheld by the Ninth Circuit, state and local governments are required to grant access to their infrastructure within the public Right Of Way for wireless facility attachments. This Master License Agreement sets the parameters for Extenet to install small-cell wireless facilities on City poles subject to an approved submission demonstrating compliance with City Codes and the previously approved Franchise Agreement.

The key terms of this Agreement are summarized below:

1. Term: This is a five year agreement with two potential renewals of five year terms.
2. Compensation: The City is largely limited by federal regulations as to what can be charged, and the City has charged the maximum that is allowed without providing additional justifications. If the federal regulations allow the City to charge more in the future, this Agreement allows the City to make those changes.
3. Approval Process: Extenet is required to submit a Site License Addendum (Exhibit C) for approval of specific sites.

4. The Agreement requires Extenet to show compliance with City Code and Franchise including design criteria, RF emissions and weight loads.
5. General considerations include insurance requirements, performance bonds, maintenance requirements and the non-interference with City's use of pole.
6. There are a number of federal and state regulations that preempt the City's authority to regulate small cell technology and this Agreement regulates those portions where the City has authority.

As stated above, this Agreement does not approve the installation of small cell facilities, but it sets the framework. Although the City cannot prohibit telecommunications providers from locating on City poles, the City does have the ability to ensure that all provisions of the City's Codes are met prior to approval and installation.

Alternatives

Approve the Agreement as written (recommended), approve with amendments or direct staff to continue negotiations.

Financial Impact

Extenet will be responsible for one-time costs of preparation of this Agreement (\$500) as well as administrative fees for additional submittals (\$500). Additionally, Extenet will be subject to rental fees of \$270 per year per pole. At this time Extenet has identified three potential poles for installation of facilities. The maximum amounts are set by order of the FCC and charging rates or fees in excess of these amounts could result in a legal challenge and is not recommended.

Recommendation

Legal and Public Works recommend approval of this Master License Agreement.

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**WIRELESS COMMUNICATION FACILITIES
MASTER LICENSE AGREEMENT
between
THE CITY OF DES MOINES
and
EXTENET SYSTEMS, INC.**

This WIRELESS COMMUNICATION FACILITIES MASTER LICENSE AGREEMENT hereinafter (“Agreement”) is entered into by and between the City of Des Moines, a municipal corporation of the state of Washington, hereinafter referred to as (the “City”), and ExteNet Systems, Inc., a Delaware corporation, hereinafter referred to as (the “Company”).

RECITALS

WHEREAS, the City owns certain improved real property and structures, described in Exhibit A, attached hereto and incorporated herein (the “City Poles”), and

WHEREAS, the City owns the City Poles in its proprietary capacity; and

WHEREAS, the Company is engaged in the operation of small cell sites (“Small Cell, as further defined below”) and desires to license from the City, and the City is willing to license the City Poles, described in Exhibit A, attached hereto and incorporated herein; and

NOW THEREFORE, for valuable consideration the sufficiency of which is hereby acknowledged and in consideration of the terms, conditions, covenants and performances contained herein, it is mutually agreed as follows.

TERMS OF LICENSE

1. Definitions

1.1. “City Poles” means street light poles owned and operated by the City in public right-of-way and public utility easements adjacent to the right-of—way and approved for Company’s Site Equipment as further described on Exhibit A. The term “City Poles” does not include real property owned by City or the fixtures located thereon or improvements there to, including but not limited to, buildings, water towers and parks.

1.2. “Site Equipment” means antennas and any associated utility or equipment box, and transmitters, receivers, radios, amplifiers, ancillary fiber-optic cables and wiring, and ancillary equipment for the transmission and reception of radio communication signals for voice and other data transmission, including the means and devices used to attach Site Equipment to City Poles, peripherals, and wiring, cabling, power feeds, and any approved signage attached or connected to the City Poles.

1.3. “Site License Addendum” means the document in the form substantially similar to Exhibit C that, when fully executed, incorporates the provisions of this Agreement and authorizes the Company to install, operate, repair, replace, and maintain the Site Equipment on City Poles identified in the specific Site License Addendum.

1.4. “Small Cell” means a personal wireless services facility that is consistent with RCW 80.36.375(2)(d) as it currently exists or is subsequently amended.

1.5. “Spectrum Act” refers to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 USC 1455.

2. **City Poles**

2.1. The City represents as follows:

2.1.1. it owns the City Poles and all appurtenances;

2.1.2. it is fully authorized to enter into this Agreement; and

2.1.3. the individual executing this Agreement is authorized to bind the City to the provisions hereof.

2.1.4. The City hereby licenses to Company a portion of the City Poles, identified on Exhibit A and as approved on the Site License Addendum, attached hereto and incorporated herein by reference, together with non-exclusive access rights, to and from the City Poles, sufficient for Company’s use of the City Poles, as outlined in Section 11 herein. This Agreement allows Company to utilize City Poles within the present limits of the City and as such limits may be hereafter extended.

2.2. Company’s use of an individual City Pole is subject to the City’s prior approval of a Site License Addendum for each City Pole.

2.3. The authority granted by this Agreement is a limited, non-exclusive authorization to occupy and use certain City Poles as approved by a Site License Addendum. Such use must also follow the Des Moines Municipal Code (the “DMMC”) and all other federal, state, and local laws and regulations. The provisions of this Agreement are expressly contingent upon the approval by the City of a valid telecommunications franchise which expressly authorizes the deployment of Small Cell in the public right of way.

2.4. Nothing contained within this Agreement shall be construed to grant or convey any right, title, or interest in the City Poles to the Company other than for the purpose of placing and operating the Site Equipment. Further, nothing in this Agreement shall be interpreted to create or vest in Company any easement or other ownership or property interest to any City Poles, property, or rights-of-way. This Agreement shall not constitute an assignment of any City’s ownership of or other rights to City Poles, property, or rights-of-way.

3. **Allowed Use**

3.1. Company may install, operate, maintain and remove, at Company’s sole responsibility and expense Small Cell Facilities utilizing Site Equipment approved by the City. Company shall not use the City Poles for any other purpose whatsoever without the prior written consent of the City, which consent may be withheld for any lawful reason. This Agreement does not grant Company the right or license to utilize City Poles for facilities other than Small Cell Facilities.

3.2. Prior to use of the City Poles by Company, Company and City must execute a Site License Addendum in the form substantially similar to Exhibit C that covers the specific Small Cell facilities and location of the specific City Poles.

3.3. All Site License Addenda are subject to the terms and conditions of this Agreement. Further, the Company acknowledges and agrees that as a result of the City's review of the Site License Addenda, the City may deny the installation of Site Equipment outright or require additional terms and/or conditions which will be stated in each Site License Addendum. The City is under no obligation to accept the installation of the Site Equipment on the City Poles if it determines in its sole discretion that the installation will interfere in any way with the City's primary use of the City Poles, or of the public right of way for transportation purposes, including transportation signalization or public safety, City utility, communication facilities or electrical facilities and their maintenance and operations or the City determines that such installation would conflict with City policy as expressed by law, ordinance or regulation.

3.4. Company represents, warrants and covenants that its Site Equipment installed pursuant to this Agreement and each Site License Addendum will be utilized solely for providing the following services: the provision of data and voice coverage and capacity for mobile device users. Company is not authorized to and shall not use its Site Equipment to offer or provide any other services not specified herein without prior written permission from the City and any other necessary permits and approvals, including but not limited to installation and operation of wires and facilities to provide backhaul transmission service to a third party or the expansion of the facility to include additional antenna, radios and other infrastructure that would eliminate concealment or transform the City Poles into a micro or macro cell site as such terms are defined by state and federal law.

3.5. Company in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any and all existing and future public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the City, electroliers, cable television, location monitoring services, public safety and other existing telecommunications equipment, utility, or municipal property, without the express written approval of the City or owners of the affected property or properties, except as permitted by applicable laws or this Agreement. However, the City agrees that to the extent it permits any other tenants, licensees, or users, to use the City Poles such third party will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with the existing industry standards to the then existing equipment of Company; provided, however that this exception shall not apply to the extent such equipment is deployed for the public health and safety. The parties acknowledge that the City does not have the expertise to determine if there is harmful interference, and that the City can rely on documentation provided by the third party that its equipment does not interfere with Company's Small Cell Facilities. Further, Company agrees that the only recourse Company shall have is to request that such third party interfering equipment be removed from the City Pole.

3.6. Company shall not place any advertising or lighting devices in, on or about the City Poles, unless such signs or lighting are a part of the design of the pole and provide a public benefit as approved by the City. Examples of installations providing a public benefit include way signage and civic banners. However, Company is required to place a sticker with the contact name and number so that the City can contact the Company as necessary for repairs and in emergency situations.

4. **Effective Date**

All references in this Agreement to the “Effective Date”, “the date hereof”, or similar references shall refer to the date of last signature.

5. **Term**

The term of this Agreement shall commence as of the Effective Date and shall expire five (5) years from effective date (“Initial Term”); provided that this Agreement may be extended for two additional five (5) year terms (each additional five (5) year term is a “Renewal Term”). Each Renewal Term shall be automatic unless either party provides written notice to the other at least six (6) months prior to the expiration of the Initial Term or Renewal Term that such party does not intend to renew the Agreement. The Initial Term and the Renewal Terms shall collectively be referred to as the “Term”. A Site License Addendum shall not extend this Agreement. Each Site License Addendum shall terminate with the expiration or termination of this Agreement.

6. **Compensation**

a. One Time Fees

6.1. Prior to execution of this Agreement, Company shall pay a one-time fee in the amount of five hundred Dollars (\$500.00) for the Owner’s preparation and consideration of the Agreement.

6.2. Company shall be responsible for paying a non-refundable administrative fee for the processing and review of a Site License Addendum by City equal to Five hundred Dollars (\$500.00) (“Administrative Fee”) to City for each City Pole requested in a Site License Addendum submitted for review and approval. The Administrative Fee shall be submitted with every Site License Addendum as a prerequisite to begin review of the Site License Addendum. Company shall have the right to amend the Site License Addendum to correct errors or provide additional information without having to pay a second Administrative Fee. The Administrative Fee shall increase as of January 1st of each successive year by adding an adjustment equal to four percent (4%) over the Administrative Fee paid for the immediately preceding year. Any additional costs incurred by the City in excess of the Administrative Fee shall be paid by the Company within thirty (30) days of an invoice by the City. Company may, upon written request, challenge such fees and request any reasonable documentation from the City, which substantiates these costs in excess of the administrative fee as reasonable.

b. Recurring Fees

6.3. Rent. Company acknowledges that the FCC has adopted a Declaratory Ruling (FCC 18-133) that relates to the rent but that Declaratory Ruling is currently the subject of litigation and is not yet in effect. Paragraphs 6.4 and 6.5 govern the payment of rent and how it may be impacted by the coming into effect of the Declaratory Ruling and the resolution of related litigation during the Term and any Renewal Terms.

6.4. Upon the effective date of the FCC Declaratory Ruling (FCC 18-133), and during any period in which the Alternate Rent provisions in paragraph 6.5 are not applicable, the Company shall pay Rent as described in this paragraph. For Site License Addendums executed by both parties, Company shall pay to the City the base amount of two hundred and seventy dollars (\$270.00) per calendar year for each City Pole covered by a Site License Addendum (i.e. Site License Addendums

may include more than one City Pole), and such base amount shall be increased on January 1 of each calendar year after 2020 by the CPI Increase, defined below (the “Rent”). Rent for the first calendar year of a Site License Addendum for each individual City Pole shall be pro-rated based on the number of days covered from the Rent Commencement Date to December 31. The first payment of Rent shall be paid on the Rent Commencement Date. Every payment of Rent, after the first payment, shall be due and payable in advance on January 1 of each calendar year throughout the term of each such Site License Addendum. There shall be no refunds of Rent paid due to the termination or expiration of the License for any reason.

6.5. Alternate Rent. In the event the relevant provisions of the FCC Declaratory Ruling cease to be effective, (for example, because they are stayed after having gone into effect, or they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific amount as Rent), the Company shall pay Alternate Rent as described in this paragraph following written notice from the City. For Site License Addendums, Company shall pay to the City alternate rent in the base amount of one thousand five hundred dollars (\$1,500.00) per calendar year for each City Pole covered by a Site License Addendum, and such base amount shall be increased on January 1 of each calendar year by the CPI Increase (“Alternate Rent”). Alternate Rent for the first calendar year of a Site License Addendum for each individual City Pole shall be pro-rated based on the number of days covered from the Rent Commencement Date to December 31. The first payment of Alternate Rent shall be paid on the Rent Commencement Date. Every payment of Alternate Rent, after the first payment, shall be due and payable in advance on January 1 of each calendar year throughout the term of each such Site License Addendum. There shall be no refunds of Alternate Rent paid due to the termination or expiration of the License for any reason.

6.6. The City agrees that, irrespective of whether the relevant provisions of the FCC Declaratory Ruling (FCC 18-133) cease to be effective, no Alternate Rent shall be due for any periods during which the relevant provisions of the FCC Declaratory Ruling were in effect. However, if Company has paid Rent pursuant to the provisions of Section 6.5 above for a calendar year, and the relevant provisions of the FCC Declaratory Ruling subsequently cease to be effective during the same calendar year, the Company shall pay the difference between the Rent and the Alternate Rent for the period from the date the relevant provisions of the FCC Declaratory Ruling ceased to be effective, until December 31 of that year (“Rent Adjustment”). Such Rent Adjustment shall be paid to City on January 1 of the following year.

6.7. The annual rent increase shall be established by application of the Consumer Price Index, All Urban Consumers, Seattle – Tacoma – Bellevue, Washington Area, for the 12 – month period ending in June of the preceding year, published by the U.S. Department of Labor, Bureau of Labor Statistics, (hereinafter, “CPI”). The annual rental rate will be established by multiplying the annual rate for the previous year by the CPI and then adding that amount to the annual rate for the previous year.

6.8. Company is responsible for and agrees to reimburse the City for electrical service for its Site Equipment. The reimbursement of such electrical services shall be paid to the City on a calendar quarterly basis. The parties may mutually agree to installation of metering equipment to determine actual electrical usage or estimated usage based on the electrical demands of like small cell facilities.

6.9. Rent shall be delivered or mailed to the City's Finance Department at 21630 11th Ave S., Des Moines, WA 98198. Rent payment must reference the pole location and assigned site identification number.

6.10. Receipt of any Rent by the City, with knowledge of any breach of this Agreement by Company, or of any default on the part of Company in the observance or performance of any of the conditions or covenants of this Agreement, shall not be deemed a waiver of any provision of this Agreement.

6.11. If after the end of the Initial Term or any Renewal Term, as the case may be, Company remains in possession of Site Equipment on the City Poles without entering into a new license with City, and/or City has not provided written notice to Company that the Agreement will not be renewed, Company shall become a tenant whose occupancy may be terminated upon thirty (30) days written notice. Company shall pay Rent during the hold over period for all Site License Addenda in the amount of One Hundred-Fifty percent (150%) of the monthly adjusted annual rent.

6.12. If any sums payable to City under this Agreement are not received by the City on or before the fifth (5th) day following its due date, Company agrees to pay interest compounded at the rate of one percent (1%) per month from the due date or the highest rate allowed by law, whichever is greater, but not to exceed eighteen percent (18%) in any event for all Site License Addenda for which payment was not received. Where a check is returned to the City by a bank or other financial institution with the indication that the check cannot be honored, there shall be a fee assessed to Company based on the current statutory maximum allowed. City and Company agree that such charges represent a fair and reasonable estimate of the costs incurred by City by reason of late payments and uncollectible checks, and the failure by Company to pay any such charges by no later than thirty (30) days after Company's receipt of written demand therefore by City shall be a default under this Agreement. City's acceptance of less than the full amount of any payment due from Company shall not be deemed an accord and satisfaction, waiver, or compromise of such payment unless specifically agreed to in writing by City.

6.13. City hereby agrees to provide to Company certain documentation (the "Rental Documentation") evidencing City's interest in, and right to receive payments under, this Agreement, including a complete and fully executed Internal Revenue Service Form W-9, or equivalent, for any party to whom rental payments are to be made pursuant to this Agreement. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Company, City agrees to provide updated Rental Documentation in a form reasonably acceptable to Company.

7. **Taxes, Assessments & Utilities.** In addition to the Rent, Company shall pay annually in advance to the City the then current, applicable leasehold excise tax, unless the Company is centrally assessed by the State of Washington and provides documentation, that is acceptable to the City, of its central assessment, which evidence shall then be attached to this Agreement as Exhibit D. If Company is centrally assessed by the State of Washington and Company provides satisfactory evidence of its central assessment to City, then for any and all periods that Company reports the property as operating property, as defined in RCW 84.12.200, Company will not be required to pay leasehold excise tax to City. Should the City collect from Company and pay to the Department of Revenue leasehold excise tax which is subsequently determined to be a duplicate payment or over-payment of tax by Company, Company shall not have any claim against the City, but shall look directly to the Department of Revenue for reimbursement.

8. **Permits**

8.1. Prior to performing any construction, maintenance or repair work on the City Poles, the Company shall secure all necessary federal (including any FCC or FAA requirements), state and local permits and approvals (collectively referred to hereinafter as “Government Approvals”) at its sole expense. The City hereby authorizes Company to make any and all applications and/or submissions necessary to obtain all Government Approvals from all applicable governmental and/or regulatory entities required for construction, maintenance, or operation of the Site Equipment on the City Poles. Notwithstanding the above, the City has certain obligations and procedures as a municipality, including but not limited to permitting procedures, zoning requirements and Council approval requirements, and nothing in this Agreement shall be interpreted or applied to deprive the City of the exercise of its administrative or quasi-judicial discretion in any Governmental Approval process or otherwise adhering to its procedures or exercising its obligations under the DMMC.

8.2. Company must obtain Governmental Approvals for each Site License Addendum prior to the commencement of any build-out of the Site Equipment and within six (6) months after the effective date of the Site License Addendum. The Site License Addendum shall automatically terminate on the expiration of such six (6) month period if the necessary Government Approvals are not obtained. No Site Equipment shall be permitted on the City Poles prior to the granting of such Governmental Approvals.

8.3. Company shall complete installation of its Site Equipment approved by the City pursuant to a Site License Addendum no later than three (3) months after the receipt of Governmental Approvals and shall commence operation no later than three (3) months after installation, which such dates may be delayed due to any force majeure event or mutually agreed upon by the parties. Company shall provide notice to the City of the completion of its installation. Failure of Company to complete installation, commence operation of the applicable Site Equipment, or apply for Governmental Approvals, as provided above, shall allow the City to terminate the affected Site License Addendum upon ten (10) days’ notice to Company. Company may request an extension of the timelines listed in Sections 8.2 and 8.3, for up to an additional three (3) months, which extension shall not be unreasonably withheld.

9. **Non-Interference with City Poles**

9.1. The City shall not be responsible for interference with the Company’s Site Equipment caused by the electronics equipment of the City or any senior lessee on the City Poles. If such interference occurs and cannot be remedied then the Company may cancel the Site License Addendum pursuant to Section 29.2.1, without penalty.

9.2. Company has an obligation to cooperate with other users of the City Poles to remedy interference. Further, Company may not cause interference with the equipment of the City or of senior lessees, provided such equipment is lawfully installed and properly operated. Company shall remedy interference caused to radio or television equipment in the vicinity of the subject Poles.

9.3. Outside the historic and/or primary use including future planned primary use of the City Poles, the City shall not use, nor shall the City permit its tenants, employees, or agents to use any portion of the City Poles that are the subject of a Site License Addendum in any way which materially interferes with the operations of Company authorized by this Agreement. Such new interference shall be terminated within a reasonable time upon written notice to the City. Notwithstanding the foregoing

nothing in this Section shall be construed to imply that Company is seeking or entitled to an exclusive license with the City which will interfere with the historic, and/or primary use including future planned primary use of the City Poles by the City.

9.4. The City agrees that it will require any other subsequent occupants outside of the historical uses of the City Poles to provide to Company and the City the same assurances against interference and any subsequent occupants outside the historical uses of the City Poles, shall have the obligation to eliminate any unreasonable interference with the operations of Company caused by the subsequent occupants.

9.5. To the extent any Company Site Equipment interferes or disturbs equipment owned by any third party, Company shall notify such third party directly and shall make good faith efforts to resolve the matter with such third party prior to involving the City.

10. **Radio Frequency Interference Study**

10.1. Company must comply with all laws including all laws relating to the allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the City Poles, including all applicable FCC standards, whether such RF or EMF presence or exposure results from the Site Equipment alone or from the cumulative effect of the Site Equipment added to all other sources on or near the City Poles. Company must provide to the City a copy of the report, required for Company's Site License Addendum, of an independent engineering consultant analyzing whether RF and EMF emissions at the proposed City Poles would comply with FCC standards, taking into consideration the Site Equipment installation specifications and distance to residential windows (each, an "Emissions Report"). Further, Company shall, at its own cost and expense, perform an RF emissions test following installation to validate that the Site Equipment once installed complies with the FCC standards.

10.2. If, after Company initiates operation of its Site Equipment, the City has reason to believe that Company's operation of its Site Equipment has caused or is causing any electrical, electromagnetic, radio frequency, or other interference with the operation and use of any other authorized communications facilities on the City Poles, whether operated by the City, emergency network or another pre-existing lessee, user or occupant with rights prior in time to Company, upon notice, Company shall promptly commence curative measures until the interference has been corrected to the reasonable satisfaction of the City of the facilities being interfered with. If such interference has not been corrected within thirty (30) days of Company's receipt of the initial notice from City, Company or City may terminate the Site License Addendum upon thirty (30) days' notice to the other party and neither party shall have any further obligations or responsibilities under the Site License Addendum.

10.3. Company shall not affix or mount any antennas, devices, equipment or related material, in any manner or in any location which would cause degradation in the operation or use of communications systems at the City Poles which serve the City or other users. This would include but not be limited to impacting the received or transmitted signal strength or patterns of any systems at the site serving the needs of the City. If at any time the operation of Company's Site Equipment interferes with the reception or transmission of public safety, utility or traffic signalization communications, Company shall immediately cease operation of the site until such time as the interference is corrected.

11. **City Poles Access & Security**

Company shall comply with the following:

11.1. Company is hereby granted a non-exclusive right to access the City Poles for maintenance, operation and/or repair of the Site Equipment. Company shall obtain all necessary Governmental Approvals prior to such maintenance operation and/ or repair.

11.2. Company shall use its best efforts to perform such repairs during such hours that will minimally interfere with the City's primary use of the City Poles. Company is required to give forty-eight (48) hours advance notice to the City before accessing the City Poles to perform normal/regular maintenance of the Site Equipment; provided that Company shall be permitted access to the Site Equipment without being required to give notice in the event of an emergency, provided that the Company shall submit to the City, no later than fifteen (15) days after the emergency, a written report describing the emergency and the reason(s) why immediate access to the City Poles was required. In the event of (i) a public emergency, such as, but not limited to, road failure, evacuation, natural disasters, hazardous substance spills, fatal or serious injury accidents, and/or (ii) during City use at the City Poles, Company's access may, at the reasonable discretion of the City, be temporarily limited or restricted; provided, that any temporary limitation or restriction in Company's access shall be restored as soon as the circumstances shall allow, as determined by the City, in its sole discretion.

11.3. Company shall designate a Site Equipment Manager, and a secondary contact person to serve as the primary point of contact for the City with regard to Site Equipment maintenance and access. The contact information for such contacts is attached here to as Exhibit G. Company may designate a new Site Equipment Manager or secondary contact person by providing notice to the City pursuant to Section 34.5. Company shall communicate and provide notice to the City staff designated on Exhibit G for all maintenance and access requirements.

11.4. Company shall meet with the City, and other telecommunications operators if necessary, upon request, to schedule and coordinate construction and maintenance of the City Poles, Site Equipment and use of the rights-of-way.

11.5. Outside the City's regular business hours, Company shall be required to contact the on-call staff detailed on Exhibit G to make arrangements for City staff to provide access. Company shall be responsible for any reasonable costs incurred for the on-call time to respond to the after-hours access. Payment is due thirty (30) days after receipt of invoice.

12. **Hazardous Materials**

12.1. Company shall not cause or permit any Hazardous Materials to be brought upon, stored, used, released or disposed of on the City Poles which would cause the City Poles to be in violation of any applicable laws or which would require remediation or correction to the City Poles. "Hazardous Materials" means any dangerous, toxic or harmful substance, material or waste that is or becomes regulated by any local government authority, the State of Washington, or the United States Government due to its potential harm to the health, safety or welfare of humans or the environment. Company shall be responsible for all spills or other releases of any Hazardous Materials that may occur on the City Poles arising out of Company's activities or caused by the Company, its employees, contractors, subcontractors, or invitees; and, at Company's cost, shall promptly conduct any investigation and remediation as required by any applicable laws, at Company's sole cost.

13. **Pole Replacement**

13.1. The City may allow the Company to replace existing City Poles if they are not structurally capable of holding the Site Equipment, for and in consideration of Company's agreement to design and pay all costs for the new City Pole, including all costs to accommodate the Site Equipment that are incurred by other utilities, companies or the City, who own existing attachments or equipment on the City Poles. Costs shall also include any dismantling, removal, and disposal of the existing City Pole. Additional costs that Company may be liable for include, but are not limited to, replacement of foundation, replacement streetlight, replacement of junction boxes to non-skid boxes, additional conduit if needed, and geotechnical analysis. All systems must meet the City standards, National Electrical Code and the International Building Code.

13.2. The design and appearance of any such replacement poles will need to be approved by City through a Site License Addendum prior to installation. Upon completion of the construction and inspection or acceptance of the City Pole, the Company hereby deeds the Pole to the City, without need for further documentation or agreement, provided, however, that Company shall continue to own its Site Equipment.

13.3. A mock-up of a prototype for the replacement pole shall be constructed at a site designated by the City for the City's review and approval prior to installation in the public right-of-way, provided, however, that the City may waive this requirement if the Company establishes that the Company's proposed small cell has been successfully installed on a pole in another local jurisdiction which is identical to or substantially conforms to the City Pole.

13.4. The Company shall maintain one (1) replacement City Pole suitable for its use at the City's public works facility for every five (5) City Poles approved by Site License Addenda, with a minimum of one such replacement City Pole. The City may waive this requirement if the Company establishes that it has a replacement pole located within 100 miles of the jurisdictional boundaries of the City.

14. **Maintenance/Stewardship**

14.1. Company shall, at its own expense and at all times, keep the Site Equipment in good order, repair and condition and keep and use the City Poles in accordance with all Laws. Company shall permit or cause no waste, damage or injury to the City Poles. Company is responsible for any damage caused to City Poles by Company and shall coordinate with City an appropriate schedule and plans for repairs to any damaged City Poles.

14.2. City shall have no obligation to the Company to maintain or safeguard the City Poles, except that City shall not intentionally permit access to the Site Equipment to any third party without the prior approval of Company, except as otherwise provided herein or in an emergency situation.

15. **Repairs by City; Increased Maintenance Costs; Emergency Situations**

15.1. City reserves the right to make alterations, repairs, maintenance, additions, removals, improvements, and all other similar work to all or any part of the City Poles for any purpose. Company's use of the City Poles may not impede or delay City's authority and ability to make any changes to the City Poles.

15.2. Pursuant to the design requirements agreed to between the City and Company, Company shall install a disconnect mechanism to enable the City to disconnect Company's Site Equipment in order to safely work on the City Poles or in case of an emergency.

15.3. City shall have no duty to Company to make any repairs or improvements to the City Poles.

15.4. City is not responsible for any third party damage to Site Equipment.

15.5. In the event that the presence of Company's Site Equipment on the City Poles results in increased maintenance or repair costs to the City, Company shall, within thirty (30) days of receipt of written notification by the City, which shall include documentation evidencing such increase as the result of Company's use, pay City for the incremental maintenance or repair costs incurred by the City.

15.6. In the event of any emergency in which any of Company's Site Equipment endangers the property, life, health, or safety of any person, entity or the City Poles, or if Company's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity or the City, Company shall immediately take the proper emergency measures to repair its Site Equipment and to cure or eliminate the dangerous conditions for the protection of property, life, health, or safety of any person, entity or the City. Company shall notify the City, orally or in writing, as soon as practicable following the onset of the emergency. The City retains the right and privilege to take proper emergency measures, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If the City becomes aware of an emergency before the Company, then the City shall notify Company by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Company's operations.

15.7. The City will not be liable in any manner, and Company hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the City's access to the Site Equipment, including the removal of Company's Site Equipment from a City pole in an emergency, except damage resulting directly and exclusively from the gross negligence or willful misconduct of the City or its agents and not contributed to by the acts, omissions, or negligence of Company, its agents, or contractors. Further, City shall not be liable for any business interruption damages, lost profits and consequential damages, brought by or under users of Company's Site Equipment as the result of any interruption of service due to damage or destruction of Company's Site Equipment 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 gross negligence or any willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

15.8. City shall not be liable for any damages to any person or property, nor shall Company be relieved from any of its obligations under this Agreement, as a direct or indirect result of temporary interruption in the electrical power provided to the City Poles. Under no circumstances shall City be liable for indirect, special, incidental, or consequential damages resulting from such an interruption.

16. **Sub-license & Assignment by Company**

16.1. Company may not sublicense or co-locate any other broadcast equipment on the City Poles or Site Equipment, without express written consent by City, which consent may be denied by the City for any lawful reason.

16.2. Neither this Agreement, nor any rights created by it, may be assigned, or transferred without the express written permission from the City. Any such assignment shall be in writing on a form approved by the City and shall include an assumption of this Agreement and Company's obligations hereunder by the assignee.

16.3. 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. Further, no assignment or transfer of this Agreement shall be deemed to occur based on the public trading of Company'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 Agreement.

16.4. Notwithstanding the foregoing, Company may assign its interest in this Agreement, without the City's consent, to any entity which controls, is controlled by, or is under common control with Company, or to any entity resulting from any merger or consolidation with Company, or to any partner or member of Company, or to any partnership in which Company is a general partner, or to any person or entity which acquires fifty-one percent (51%) or more the ownership of Company or fifty-one percent (51%) or more of the assets of Company, or to any entity which obtains a security interest in a substantial portion of Company's assets; provided, that the assignment includes an assumption of all obligations of Company under this Agreement by the assignee; and provided further, that Company shall provide the City with a copy of said written assignment, acceptable to the City, and a copy of the additional insured endorsement and Certificate of Insurance in a and any applicable bonds, all on forms acceptable to the City, within thirty (30) days prior to the effective date of the assignment. Any such assignment shall not serve to release Company from its obligations under this Agreement unless City specifically consented to the assignment in writing. Such assignment shall be contingent on the assignee obtaining a City business license. Further, Company may assign this Agreement and/or any Site License Addendum to any entity which acquires all or substantially all of Company's assets within the State of Washington by reason of a merger, acquisition or other business reorganization without approval or consent of City.

16.5. The City's consent to one assignment shall not waive the requirement of obtaining the City's consent to any subsequent assignment.

16.6. Except for a permitted assignment as provided in Sections 16.3 and 16.4, Company shall reimburse the City on demand for any reasonable costs that the City incurs in connection with any proposed assignment, including the costs of investigating the acceptability of the proposed assignee and legal costs incurred in connection with considering any requested consent.

16.7. The Parties acknowledge that Small Cell Facilities deployed by Company on a City Pole pursuant to this Agreement may be owned and/or remotely operated by a third-party wireless carrier customer ("Carriers") and installed and maintained by Company pursuant to existing agreements between Company and a Carrier. The Site Equipment shall be treated as Company's Site Equipment for all purposes under this Agreement and any applicable Site License Addendum. Company shall remain solely responsible and liable for the performance of all obligations under this Agreement and applicable Site License Addenda with respect to any Site Equipment owned and/or remotely operated by a Carrier.

Company shall identify on the Site License Addenda the identity of the Carrier on whose behalf it is operating the Site Equipment on each City Pole. Company is not required to submit its contract with such Carrier.

17. **Sub-license & Assignment by City**

17.1. Should the City sell, lease, license, transfer, or otherwise convey all or any part of the City Poles that are the subject of this Agreement to any transferee other than Company, such transfer shall be subject to this Agreement.

17.2. The City retains the right to sublicense or enter into any type of agreement for any portion of the City Poles for any reason, including but not limited to, co-locating wireless facilities, if it will not unreasonably interfere with the Company's use of the City Poles.

17.3. The City may transfer and assign its rights and obligations hereunder and no further liability or obligation shall thereafter accrue against the City hereunder, provided that the assignee or transferee assumes, in writing, all of the City's obligations under this Agreement, which shall remain in full force and effect.

18. **Improvements, Fixtures and Personal Property; Inspection by City**

18.1. The City agrees that, notwithstanding any provision of statutory or common law, the Site Equipment and any other Company improvements to the City Poles, including but not limited to personal property, shall remain the exclusive property of the Company.

18.2. Any revisions to the Site Equipment listed on a Site License Addendum after initial installation shall require an amendment to the Site License Addendum. Such amendment is not required for routine maintenance and repair of the Site Equipment, or the replacement of an antenna or equipment of similar size, weight and height, provided that such replacement adheres to the DMMC does not defeat the concealment elements used in the original deployment of the Site Equipment and does not impact the structural integrity of the pole.

18.3. Any amendment to a Site License Addendum requires a payment of an "Administrative Amendment Fee" consistent with the costs associated with the City's processing of such amendment. Payment of this fee shall be due thirty (30) days after receipt of invoice. Approval of the City under this Agreement to such modifications does not relieve Company from obtaining permits and/or Governmental Approvals as necessary to commence such modifications.

18.4. The City may from time-to-time access the City Poles to inspect any work done by Company to insure compliance with the approved plans and specifications, to require reasonable revisions to ensure that the respective uses of the City Poles are compatible or otherwise. Further, this right shall not impose any obligation upon the City to make inspections to ascertain the safety of Company's improvements or the condition of the City Poles.

19. **Destruction of or Damage to the City Poles or any Site Structures.**

19.1. If a City Pole or any structure on a City Pole is destroyed or damaged by collision, fire or casualty so as to render the City Poles and/or Site Equipment unfit for use by the City or Company, then the City, at its sole discretion, may replace such destroyed or damaged pole with another pole, even if such replacement pole is not capable of maintaining the Site Equipment. The Company may request to reinstall the Site Equipment or to replace the pole themselves consistent with the applicable Site License Addendum or may terminate the Site License Addendum without penalty. As described in Section 29.3.3, the Company is not responsible for Rent payments on such City Pole from the date of such damage or destruction until its Site Equipment has been reinstalled.

19.2. If the Company chooses to reinstall the Site Equipment or a replacement pole and such replacement pole or Site Equipment differs from the approved Site License Addendum, then the Company shall submit a new Site License Addendum. Such Site License Addendum shall be given priority review and is not subject to the chronological order review requirements of Section 27.1.2.

19.3. City shall not be liable to Company for any direct or indirect or consequential damages including but not limited to inconvenience, annoyance, or loss of profits, nor for any expenses, or any other damage resulting from the repair of such damage.

20. **Condemnation**

If all or any portion of the City Poles is needed, taken, or condemned for any public purpose such that the Company cannot use its Site Equipment on the City Poles, either party may terminate this Agreement or the applicable Site License Addendum. All proceeds from any taking or condemnation of the Site or City Poles shall belong and be paid to the City. Company shall have all rights to its Site Equipment and personal property, which are included in any taking or condemnation.

21. **Insurance**

21.1. At Company's sole cost and expense, Company shall maintain throughout the term of this Agreement insurance as set forth in Exhibit E, attached hereto and incorporated herein.

21.2. The City may require increases in said coverage by written notice to Company, as the City deems reasonably necessary.

21.3. Company's maintenance of insurance as required by this Section 21 shall not be construed to limit the liability of Company to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Company's maintenance of insurance policies required by this Agreement shall not be construed to excuse unfaithful performance by Company.

22. **Hold Harmless**

22.1. The City and its employees and agents shall not be liable for injury or damage to any persons or property, including City Poles, resulting from the installation (including without limitation Company's replacement of City Poles), operation or maintenance of the Site Equipment on the City Poles.

22.2. Company releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from 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 Company, its agents, servants, officers, employees and contractors in the performance of this Agreement and any rights granted within this Agreement.

22.3. Inspection or acceptance by the City of any work performed by Company at the time of completion of construction shall not be grounds for avoidance by Company of any of its obligations under this Section 22. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised.

22.4. The City shall promptly notify Company of any claim or suit and request in writing that Company indemnify the City. City's failure to so notify and request indemnification shall not relieve Company of any liability that Company might have, except to the extent that such failure prejudices Company's ability to defend such claim or suit.

22.5. Company shall indemnify, defend and hold harmless the City from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including without limitation, diminution in the value of the City Poles, damages for loss or restriction of use of the City Poles, and sums paid in settlement of claims, attorneys' fees, consultant and expert fees, investigation, clean-up, remediation or other costs incurred or suffered by the City, arising out of any use, storage, release or disposal of Hazardous Materials by Company, its employees, contractors, subcontractors, or invitees. This indemnification shall survive the termination or expiration of this Agreement.

22.6. Company may choose counsel to defend the City subject to this Section 22.6. In the event that Company refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Agreement, 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 Company, Company 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 Company to represent the City, then upon the prior written approval and consent of Company, 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 Company shall pay the reasonable fees and expenses of such separate counsel, except that Company 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 (including the use of in-house counsel) but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Company. 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.

22.7. Except to the extent that damage or injury arises from the gross negligence or willful misconduct, malicious actions of the City, its employees or contractors, the obligations of Company

under the indemnification provisions of this Section 22.6 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, agents, employees or contractors. 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 Company'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 Company for claims made against the City by Company's employees. This waiver has been mutually negotiated by the parties.

22.8. Company acknowledges and agrees that Company, bears all risks of loss or damage or relocation or replacement of its Site Equipment and materials installed on City Poles pursuant to this Agreement from any cause, and the City shall not be liable for any cost of replacement or of repair to damaged Site Equipment, including, without limitation, damage caused by the City's removal of the Site Equipment, loss of line of sight path, activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, or contractors, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Company releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

22.9. Company shall indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, consequential, special, indirect, business interruption damages and lost profits, brought by or under users of Company's Site Equipment as the result of any interruption of service due to damage or destruction of Company's Site Equipment caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, or any third parties, except to the extent any such damage or destruction is caused by or arises from the gross negligence, willful misconduct, or criminal actions on the part of the City, its officers, employees, or elected or appointed officials. This limitation of liability shall apply even if City is advised of the possibility thereof, whether such damages arise out of breach of contract, breach of warranty, negligence, strict liability or any other theory of liability and whether such damages were foreseeable or not at the time this Agreement was executed.

22.10. In the event that Company's transmission technology or facilities emit electromagnetic impulses (EMF) or radio frequency emissions, Company expressly agrees that this indemnity provision extends to any and all third party claims for injury, sickness or death of any person, including employees of Company, arising out of or caused by said emissions.

22.11. Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

22.12. The provisions of this Section 22 shall survive the expiration, revocation, or termination of this Agreement.

23. **Performance Bond**

23.1. Company shall furnish a surety bond or bonds, a copy of which is attached in substantially the same form to this Agreement as Exhibit F, covering faithful performance of this Agreement and payment of all obligations arising thereunder, including but not limited to proper construction, long-term facility maintenance, rent, timely removal of equipment and restoration. The bond shall be in-force during the entire term or subsequent extensions. The bond shall be in a form acceptable to the City. The performance bond for this Agreement shall not only indemnify City for the usual performance provisions of this Agreement, but in addition shall be a bond to guarantee payment of any and all tax liability of any type, kind, nature or description due as a result of this Agreement. Said performance bond shall be issued to City prior to the issuance of any approvals for the construction of its facilities on the licensed property. If City so uses or applies any portion of the performance bond, Company shall upon notice, restore the performance bond to the full amount above specified, and Company's failure to do so shall constitute a material breach of this Agreement. This performance bond shall be in addition to any construction or maintenance bonds imposed by the City as part of its permitting process. This performance bond shall remain in place until all of Company's Site Equipment has been removed by Company unless otherwise permitted to remain by City. The amount of the bond shall be dependent on the number of City Poles used by the Company as follows:

- a. \$100,000 bond for usage of 1-10 City Poles;
- b. \$250,000 bond for usage of 11-50 City Poles; and
- c. \$500,000 bond for usage of 50 or more City Poles.

24. **Nondiscrimination**

Company, for itself, its successors, and assigns as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state or local laws applicable to the City Poles, including, without limitation, Chapter 49.60 RCW and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the U.S. Department of Transportation ---Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate the Agreement and to re-enter and repossess the City Poles, consistent with Section 29.1.

25. **Stop Work**

If Company defaults in the performance or observation of any covenant or agreement contained in this Agreement, the City, without notice if deemed by the City that an emergency exists, or if no emergency, with thirty (30) days' notice, may direct Company to stop work and may itself perform or cause to be performed such covenant or agreement and may enter upon the City Poles for such purpose. Such an emergency shall include, but not be limited to, endangerment of life, the City Poles or rights of way, or failure of Company to obtain in a timely manner any insurance. Company shall reimburse the City the entire cost and expense of such performance by the City within thirty (30) days of the date of the City's invoice. Any act or thing done by the City under the provisions of this Section 25 shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

26. **Prerequisites for Approval.** Company acknowledges the following:

26.1. City Council review and approval is required prior to the City entering into this Agreement.

26.2. The City Council, has by approval of this agreement, expressly authorized the City Manager or his/her designee to execute Site License Addenda consistent with this Agreement in the exercise of the powers granted by law and ordinance to insure the faithful performance of City contracts.

26.3. A fully executed Site License Addendum between the City and Company, and any required Governmental Approvals are required prior to construction or installation of the Site Equipment on the City Poles.

26.4. The execution of this Agreement by the City shall in no way constitute review and/or approval by other applicable jurisdictions and permitting authorities, including other City Departments.

26.5. The City requires the Company to obtain a telecommunications franchise from the City, and such agreement must be obtained from the City prior to the execution of this Agreement by the City.

27. **Review of Plans.**

27.1. Prior to installation of any Site Equipment, the Company shall submit the following documents to the City for review, approval or denial: (i) completed Site License Addendum, (ii) a copy of the Emissions Report, and (iii) the Administrative Fee.

27.1.1. Upon submission of a Site License Addendum, the City shall use good faith efforts to process the Site License Addendum in a timely manner. The Administrative Fee shall accompany the submission of all Site License Addenda. City may request additional information during its review of the Site License Addendum. An application will be considered to be complete when all City questions are resolved.

27.1.2. The City will review and process each Site License Addenda in chronological order (date and time) in which complete applications are submitted. Company acknowledges that staff and budget considerations may limit the City's ability to review and process Site License Addenda, however, this shall not waive any shot clock timelines set forth under the FCC for the review of these applications.

27.1.3. Each Site License Addendums requesting access to a City Pole must include a load bearing study to determine whether the attachment of Site Equipment may proceed without City Pole modification or whether the installation will require City Pole re-enforcement or replacement. If City Pole re-enforcement or replacement is necessary, Company shall provide engineering design and specification drawings demonstrating the proposed alteration to the City Pole. All engineering drawings submitted must be completed and stamped by a registered engineer licensed in Washington State. Each Site License Addendum requesting the installation of a new City Pole shall include engineering design and specification drawings. For each Site License Addendum, the City shall:

- a. Verify that the Site License Addendum submittal is complete, and the Administrative Fee has been submitted.

- b. Review engineering design documents to determine: compliance with contractual requirements under this Agreement, no interference with City public safety radio system, traffic signal or street light system, or other communications components; inclusion of appropriate design of stealth and camouflage components necessary to comply with historic preservation requirements or aesthetic design elements; and compliance with City regulations.
- c. Determine if the City Pole is available and if the license of such City Pole is consistent with City's municipal obligations and proprietary interests consistent with Section 2.3.
- d. Determine compliance with any other applicable requirements.

27.1.4. As appropriate, City may require Company to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements or may ask additional questions as necessary to determine feasibility of use of the City Poles. Failure to make the requested design modifications or to answer feasibility questions in a manner acceptable to the City shall result in an incomplete Site License Addendum which may not be processed under this Agreement.

27.1.5. Upon approval of the Site License Addendum, Company shall obtain all required Governmental Approvals to proceed with the installation of the Site Equipment. Installation of the Site Equipment must be completed in accordance with all Government Approvals, including without limitation obtaining all final inspections required by any permits issued by the City.

27.1.6. Any Site Equipment that has not been approved by City or has not received all required Governmental Approvals shall not be installed or if already installed shall be removed immediately by Company at Company's sole cost and expense.

27.2. Company expressly acknowledges and agrees that the City's rights under this Agreement to review, comment on, disapprove and/or accept designs, plans specifications, work plans, construction, equipment, and/or installation, (i) exist for the benefit and protection of the City and its employees and agents, (ii) do not create or impose upon the City, and its employees and agents any standard or duty of care toward Company, all of which are hereby disclaimed, (iii) may not be relied upon by Company in determining whether Company has satisfied any and all applicable Governmental Approval standards and requirements, and (iv) may not be asserted, nor may the exercise or failure to exercise any such rights by the City and its employees and agents be asserted against the City and its employees and agents by Company as a defense, legal or equitable, to Company's obligation to fulfill such Governmental Approval standards and requirements, notwithstanding any acceptance of work by the City and its employees and agents.

28. **Default; Remedies**

28.1. Default by Company.

The following occurrences shall each be deemed an "Event of Default" by Company and may be subject to stop work per section 25:

28.1.1. **Failure to Pay.** Company fails to pay any sum, including Rent or taxes, due under this Agreement following thirty (30) days written notice from City of the failure to pay.

28.1.2. **Abandonment.** Company's failure to remove Site Equipment as further described in Section 32.2.

28.1.3. **Insolvency.** Immediately, upon written notice, if a receiver is appointed to take possession of Company's assets, Company makes a general assignment for the benefit of creditors, or Company becomes insolvent or takes or suffers action under the Bankruptcy Act.

28.1.4. **Lapsed Governmental Approvals.** Company fails to obtain or maintain any Governmental Approvals required to install and operate Site Equipment.

28.1.5. **Failure to Maintain Insurance.** Company fails to maintain appropriate insurance as required pursuant to Exhibit E.

28.1.6. **Prohibited Assignment.** Company assigns this Agreement in violation of Section 16.

28.1.7. **Interference.** Company operates or maintains its Site Equipment in a manner that interferes with or impairs other communication or computer equipment used by the City, the emergency network (or is successor entity) or other entity given prior rights to use the City Poles.

28.1.8. **Improper Construction.** Company constructs Site Equipment on City Poles without approval of a Site License Addendum.

28.1.9. **Other Defaults.** Company violates any material agreement, term or covenant of this Agreement.

28.1.10. **No Waiver.** Waiver or acceptance by the City of any default of the terms of this Agreement by Company shall not operate as a release of Company's responsibility for any prior or subsequent default.

28.2. **City Remedies.** Subject to the cure period described in Section 30 below, the City shall have the following remedies upon an Event of Default. The City's rights and remedies under this Agreement shall be cumulative, and none shall exclude any other right or remedy allowed by law.

28.2.1. **Continuation of Agreement.** Without prejudice to its right to other remedies, the City may continue this Agreement and applicable Site License Addenda in effect, with the right to enforce all of its rights and remedies, including the right to payment of Rent and other charges as they become due.

28.2.2. **Termination of Agreement.** If Company's default is of such a serious nature in the City's reasonable judgment that the default materially affects the purposes of this Agreement, the City may terminate this Agreement. Termination of this Agreement will affect the termination of all Site License Addenda issued under it automatically and without the need for any further action by the City. The City will provide thirty (30) days written notice of termination and shall specify the reasons for such termination. The City will specify the amount of time Company will have to remove its Site Equipment from any affected City Poles, which will be at least thirty (30) days after the date of the City's notice. The City will have the right to make any terminated portion of the City Poles

available for use to other parties as of the effective date of the termination, even if Company's Site Equipment is still on the City Poles. Upon termination of this Agreement, Company will remain liable to City for damages in an amount equal to the Rent and other sums that would have been owed by Company under this Agreement for the balance of the Initial Term or Renewal Term (as the case may be). Further, Company will remain liable for Rent as long as the Site Equipment remains on City Poles unless the City has authorized abandonment of such Site Equipment.

28.2.3. Termination of Site License Addenda. If an Event of Default specific to one or more Site License Addenda is not cured by Company within the applicable cure period, City may terminate such specific Site License Addendum(s).

28.2.4. Default Fees. Without limiting City's rights and remedies under this Agreement, the City may require Company to pay the following default fees ("Default Fees") in the amount of \$100 per day, upon Company's failure to cure, pursuant to Section 30, any of the following:

- a. Company constructs or installs any alteration or improvement without City's prior consent.
- b. Company fails to make a repair on a timely basis.
- c. Failure to meet FCC regulations.
- d. A material breach of this Agreement.
- e. Failure to provide reports or notices pursuant to this Agreement.

29. **Termination**

29.1. City's Termination Rights

29.1.1. Subject to the cure provision of Section 30, the City has the right to terminate, this Agreement or any Site License Addendum upon thirty (30) days written notice if the City determines that Company's exercise of its rights under this Agreement:

- a. Interferes with the City's use of the City Poles and/or the structures on the City Poles for the municipal purposes for which the City owns and administers such structures/site, which may include without limitation the necessity to widen a street or for other municipal projects that result in removing the streetlight;
- b. Poses a threat to public health or safety, constitutes a public nuisance.
- c. The City determines that Company's exercise of its rights under this Agreement interferes with the use of the City Poles or structures thereon by a governmental agency with which the City has an agreement to provide services to the City, e.g. the emergency network; or

- d. That Company ceases to operate as a provider of telecommunications services under federal law. In such a situation the City shall have the option, in its sole discretion and upon six (6) months' written notice to Company, to terminate this Agreement and to require the removal of the Site Equipment from the City Poles, pursuant to Section 32, including the cost of any site remediation, at no cost to the City.

29.1.2. Immediate Removal. The City, may in its sole discretion, determine that exigent circumstances require immediate removal of Site Equipment from a City Pole. Such exigent circumstances may only include reasons of public health, safety or the need to provide street lighting. Company shall remove its Site Equipment within forty-eight (48) hours' notice unless such longer period is provided by the City. The applicable Site License Addendum will terminate upon the removal of the Site Equipment.

29.1.3. Pole Removal. The City has the right to remove any City Poles that it determines in its sole judgment is unnecessary for its municipal purposes (for example street light operations). If the City decides to remove a City Pole, it shall provide Company with at least sixty (60) days written notice to remove its Site Equipment from the City Pole. The applicable Site License Addendum will terminate upon the removal of the Site Equipment.

29.1.4. Pole Replacement. The City has the right to replace any City Poles that it determines in its sole judgment is necessary for its municipal operations. At City's option the applicable Site License Addendum will terminate upon the removal of the Site Equipment or City may allow Company, at Company's sole cost and expense, to relocate its Site Equipment on a replacement pole consistent with the requirements of Section 31.

29.1.5. No Further Obligation. Except those provisions that survive the termination of this Agreement, upon termination under this Section 29.1, neither party will owe any further obligation to the other party provided that Company is not in arrears in making its Rent or other required payments; provided however that Company shall, at Company's sole cost, remove its Site Equipment and restore the site, and provided that, if the City terminates this Agreement pursuant to this Section 29.1, the City shall, at Company's option, attempt to find alternative sites on other City property in order to allow Company to continue to provide service within the City Poles as further described in Section 31. Further, to the extent that City received any pre-paid Rent related to the terminated Site License Addendum, City shall refund such pre-payments to Company.

29.2. Company's Termination Rights.

Company may terminate this Agreement or applicable Site License Addenda, as follows:

29.2.1. Company, upon thirty (30) days' notice at any time determines in its sole discretion that it desires to discontinue use of some or all of the City Poles for any reason whatsoever; provided, however, that if Company terminates this Agreement or a Site License Addendum pursuant to this Section 29.2.1, Company shall pay the City a sum equal to twelve (12) months' Rent for each terminated Site License Addendum and, pursuant to Section 32.1, any and all Rent that continues to accrue, or

29.2.2. The City breaches any material term or provision of this Agreement, subject to the cure period described in Section 30 below.

29.3. Company's Risk of Loss; Suspension Rights.

29.3.1. In choosing to locate Site Equipment on City Poles, Company acknowledges and accepts all risks, including but not limited to:

- a. Acts of God or third parties that may damage Site Equipment (including, but not limited to, fires, earthquakes, storms, and car accidents).
- b. Loss of line of sight path, including where caused by City action.
- c. City change in the use of the Poles.

29.3.2. Company explicitly acknowledges that these risks include bearing all costs associated with such risks, except such costs caused by the gross negligence or willful misconduct of the City.

29.3.3. Upon the occurrence of any of the events described in Section 29.3.1, the Company will not be liable for any Rent during the time the Site Equipment is rendered unusable, except when caused by action of the Company or failure of the Company to perform its obligations under this Agreement.

30. **Cure**. Neither party shall be in default under this Agreement until thirty (30) days after receipt of written notice of default from the other; provided, however, where such default cannot reasonably be cured within thirty (30) days, the defaulting party shall not be in default if it commences to cure such default within said thirty (30) day period and diligently pursues cure to completion.

31. **Relocation**

31.1. Company understands and acknowledges that City may require Company to relocate, temporarily or permanently, one or more of its Site Equipment installations. Company shall at City's direction and upon sixty (60) days prior written notice to Company, relocate such Site Equipment at Company's sole cost and expense whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a City or other public agency project; (b) because the Site Equipment is interfering with or adversely affecting proper operation of City owned poles, traffic signals, communications, or other City Poles; (c) to protect or preserve the public health or safety; or (d) as described in Section 29. In any such case, City shall use reasonable efforts to afford Company a reasonably equivalent alternate location. If Company shall fail to relocate any Site Equipment as requested by the City in accordance with the foregoing provision, City shall, upon thirty (30) written days notice to Company, be entitled to remove or relocate the Site Equipment at Company's sole cost and expense, without further notice to Company. Company shall pay to the City actual costs and expenses incurred by the City in performing any removal work and any storage of Company's property after removal within thirty (30) days of the date of a written demand for this payment from the City. The City will promptly inform Company of the displacement or removal of any City Pole on which any Site Equipment is located.

31.2. In the event Company desires to relocate any Site Equipment from one City Pole to another, Company shall so advise City and shall submit a Site License Addendum consistent with Section 26 for approval by City.

31.3. Company acknowledges that the signing of this Agreement does not entitle the Company to assistance under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

32. **Removal of Site Equipment upon Termination of Agreement**

32.1. Within sixty (60) days after the expiration or earlier termination of a Site License Addendum or this Agreement, Company shall promptly, safely and carefully remove the Site Equipment from applicable City Poles and shall restore the City Poles as instructed by the City, reasonable wear and tear excepted. Rent shall continue to accrue during any time period in which Company continues to have Site Equipment on the City Poles. Such obligation of Company shall survive the expiration or earlier termination of this Agreement. If Company fails to complete this removal work pursuant to this Section 32, then the City, upon written notice to Company, shall have the right at the City's sole election, but not the obligation, to perform this removal work and charge Company for the actual costs and expenses, including, without limitation, reasonable administrative costs. Company shall pay to the City actual costs and expenses incurred by the City in performing any removal work and any storage of Company's property after removal within thirty (30) days of the date of a written demand for this payment from the City. After the City receives the reimbursement payment from Company for the removal work performed by the City, the City shall promptly make available to Company the property belonging to Company and removed by the City pursuant to this Section 33 at no liability to the City. If the City does not receive reimbursement payment from Company within such thirty (30) days, or if City does not elect to remove such items at the City's cost after Company's failure to so remove pursuant to this Section, or if Company does not remove Company's property within thirty (30) days of such property having been made available by the City after Company's payment of removal reimbursement as described above, any items of Company's property remaining on or about the rights of way, City Poles, or stored by the City after the City's removal thereof may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner by law. Alternatively, the City may elect to take title to abandoned property, provided that Company shall submit to the City an instrument satisfactory to the City transferring to the City the ownership of such property. Provided, however, that nothing contained within this Section 32 shall prevent the City from compelling Company to remove any such Site Equipment through judicial action when the City has not permitted Company to abandon said Site Equipment in place.

32.2. The Site Equipment, in whole or in part, may not be abandoned by Company without written approval by the City. Any plan for abandonment or removal of Site Equipment shall be at the sole cost of the Company, must be first approved by the City, and all necessary permits must be obtained prior to such work. Notwithstanding the above, the City may permit Company's Site Equipment to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, Company shall execute such necessary documents to transfer title to City.

32.3. The provisions of this Section 32 shall survive the expiration, revocation, or termination of this Agreement.

33. **Records; Audits**

33.1. The City may require such information, records, and documents from Company from time to time as are appropriate to reasonably monitor compliance with the terms of this Agreement.

33.2. Company shall provide such records within twenty (20) business days of a request by the City for production of the same unless additional time is reasonably needed by Company, in which case, Company shall have such reasonable time as needed for the production of the same, but no longer than forty (40) days. If any person other than Company maintains records on Company's behalf, Company shall be responsible for making such records available to the City.

33.3. Company shall be responsible for clearly and conspicuously identifying any records 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 Company has designated as confidential, trade secret, or proprietary, the City will endeavor to provide written notice of such disclosure request so that Company can take appropriate steps to obtain injunctive relief to prevent disclosure of claimed confidential records. Nothing in this Section prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records. City shall not be liable to Company for its good faith acts in determining release of records, including confidential records, is in 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 Company and not stayed 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, Company 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. In addition to the indemnification obligations pursuant to Section 22, Company shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorneys' fees and litigation expenses), suits, judgments or damages arising from or relating to any failure of Company to comply with this Section.

34. Miscellaneous

34.1. Modifications. This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto. No failure on the part of either party to enforce any covenant or provision herein contained, nor any waiver of any right hereunder, unless in writing signed by the waiving party, shall discharge or invalidate such covenant or provision or affect the right of either party to enforce the same in the event of any subsequent breach or default.

34.2. Broker's Fee. If Company is represented by a real estate broker or other agency in this transaction, Company shall be fully responsible for any fee due such broker and shall hold the City and its employees and agents, harmless from any claims for a commission by such broker or agency.

34.3. Cooperation in Execution of Subsequent Documents. The City and Company agree to cooperate in executing any documents necessary to protect the rights of the parties granted by this Agreement.

34.4. Headings. The headings to paragraphs or sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any paragraph hereof.

34.5. Notices. Except as otherwise designated in this Agreement, all notices hereunder must be in writing and shall be deemed valid if sent by certified mail, return receipt requested, or overnight delivery, addressed as follows (or any other addresses as designated by like notice):

If to City: City of Des Moines
Attn: Bonnie Wilkins, City Clerk
21630 11th Ave S.
Des Moines, WA 98198

And

If to Company: ExteNet Systems, Inc.
3030 Warrenville Road, Suite 340
Lisle, Illinois 60532
Attn: CFO

With a copy to: General Counsel at same address

34.6. Entire Agreement. This Agreement and any attached exhibits constitute the entire agreement between the City and the Company; no prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding except that any subsequently adopted City policies and procedures for telecommunications/communications lease agreements, license agreements, Site License Addenda and final applicable permits shall be binding on the parties.

34.7. Executed in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

34.8. Governed by Laws. This Agreement shall be governed by the laws of the State of Washington.

34.9. Venue. Company agrees that the venue of any action or suit concerning this Agreement shall be in the King County Superior Court, and all actions or suits thereon shall be brought therein.

34.10. Binding on Successors. This Agreement shall be binding upon and inure to the benefits of the heirs, executors, administrators, successors and assigns of the parties, subject to the conditions set forth in Sections 16 and 17 herein.

34.11. Failure to Insist upon Strict Performance. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement shall not constitute a waiver thereof.

34.12. Business License. Prior to constructing any Site Equipment or providing services within the City, Company shall obtain a business license from the City.

34.13. Severability. The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

34.14. No Third Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement.

34.15. Survival. All of the provisions, conditions and requirements of Sections 12, 22, 32, 34.9, and 34.15 survive the expiration or termination of this Agreement, and any renewals or extensions thereof.

34.16. Authority. Each individual executing this Agreement represents and warrants that such individual is duly authorized to execute and delivery this Agreement on behalf of the party it represents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates below indicated.

LANDLORD: CITY OF DES MOINES

Approved as to form:

By: _____

City Attorney

Name: Michael Matthias

Title: City Manager

COMPANY: EXTENET SYSTEMS, INC.

(Company)

By: _____

Name:

Title:

Date:

Exhibit A – City Poles

Exhibit B – INTENTIONALLY OMITTED

Exhibit C – Template Site License Addendum

Exhibit D –Leasehold Excise Tax Exemption

Exhibit E - Insurance

Exhibit F – Performance Bond

Exhibit G – Contact Information

Exhibit C
Site License Addendum

Company shall apply to the City for approval of this Site License Addendum by filling out the below form and submitting the form to the City for approval with the applicable Administrative Fee.

This Site License Addendum ("Addendum"), made this ____ day of _____, 20____ (the "Site License Addendum Effective Date") between the City of Des Moines, hereinafter designated the "City" and _____, d/b/a _____, with its principal offices at _____, hereinafter designated "Company":

1. Addendum. This is a Site License Addendum as referenced in that certain Master License Agreement between The City and Company dated _____, ____ ("Agreement"). All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Addendum, the terms of this Addendum shall govern. Capitalized terms used in this Addendum shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. Project Locations. Attachment 1 identifies the physical location of the City Poles on which the Site Equipment shall be attached.

3. Project Description. Attachment 2 identifies the Site Equipment to be installed on the City Poles, including photo simulations of such Site Equipment attached to the City Poles and a load bearing study. The photo simulations shall include photos indicating the existing City Pole without the Site Equipment and with the proposed Site Equipment attached. If there are any accessory components, for example conduit holding backhaul or electrical, such accessory components shall be depicted in the photo simulations.

4. Emissions Report. Company has commissioned an RF and EMF Emissions Report for the City Poles. Such report is attached hereto in Attachment 3.

5. Backhaul. Backhaul services shall be provided to the Site Equipment as follows:

☐ underground fiber ☐ aboveground fiber ☐ microwave ☐ other _____

and from the following entity: _____.

6. Term. The term of this Addendum shall run concurrently with the Agreement and shall terminate upon the Agreement termination unless earlier terminated by a party consistent with the Agreement.

7. Fees. The Rent and Administrative Fee for the Site Equipment installed pursuant to this Addendum shall be in accordance with Section 6 of the Agreement and shall commence on the first day of the month following execution of this Addendum.

8. Counterparts. This Site License Addendum may be signed in counterparts, each of which shall

be deemed an original, but all of which will constitute one and the same document.

9. Authority. Each individual executing this Site License Addendum represents and warrants that such individual is duly authorized to execute and delivery this Site License Addendum on behalf of the party it represents.

10. Acknowledgment. Company acknowledges that (i) this Site License Addendum is only effective upon the signatures of both parties and (ii) Company shall not have the right to install its Site Equipment on the City Poles until it has received Government Approvals and complied with the requirements (including any insurance or bonding requirements) of such Government Approvals.

EXECUTED to be effective as of the Site License Addendum Effective Date.

CITY OF DES MOINES:

COMPANY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibits:

Attachment 1 – Physical Location of City Poles

Attachment 2 – Photo Simulations, Description of Site Equipment and Load Bearing Study

Attachment 3 – RF and EMF Emissions Report

Attachment 1

Physical Location of City Poles

Attachment 2

Photo Simulations, Description of Site Equipment & Load Bearing Study

Attachment 3

RF and EMF Emissions Report

Exhibit D
Leasehold Excise Tax Exemption

Exhibit E

Insurance Requirements

The Company shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Company, its agents, representatives, employees or subcontractors. Such insurance certificates and endorsements evidencing the insurance required below shall be provided to the City upon execution of this Agreement. The cost of such insurance shall be paid by the Company. Insurance shall meet or exceed the following limits and shall be maintained for the Term and so long as Company has Site Equipment on any City Poles.

A. Minimum Insurance

1. Commercial General Liability coverage with limits not less than \$2,000,000 per occurrence / \$5,000,000 annual aggregate.
2. Stop Gap/Employers Liability coverage with limits not less than \$1,000,000 per accident/disease.
3. Business Automobile Liability coverage with limits not less than \$1,000,000 per accident for any auto.
4. Worker's Compensation coverage as required by the Industrial Insurance Laws of the State of Washington.
5. Umbrella Liability with limits not less than \$10,000,000 per occurrence and in the aggregate.

B. Other Provisions. Commercial General Liability and the Umbrella Liability policies shall be endorsed to:

1. Include the City, its officials, employees and volunteers as additional insureds. A blanket insurance additional insured endorsement is acceptable;
2. State the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
3. Provide that Company's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance;
4. That Company's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City; and
5. Provide that coverage shall not be canceled except after thirty (30) days' written notice has been given to the City. Further, within five (5) days prior to send cancellation or intent not to renew, Company shall obtain and furnish to City replacement insurance policies meeting the above requirements.

C. Acceptability of Insurers

Insurance shall be placed with insurers with a rating of *A.M. Best & Company's Key Rating Guide*

of A Overall and a Financial Size Category of “VII.”

D. Verification of Coverage

Company shall furnish the City with certificates of insurance and a copy of the additional insured endorsement or blanket additional insured endorsement required by this Agreement. The certificates and endorsement are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies and endorsements at any time.

E. Subcontractors

Company shall require subcontractors to provide coverage which complies with the requirements stated herein.

F. Policy Limit Escalation. By written notice to Company, the City may elect to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that the City reasonably determines to affect the reasonable amount of insurance to be provided.

G. Self-Insurance. As of the effective date of this Agreement and the use granted herein, Company is not self-insured for any coverage other than worker’s compensation. Should Company wish to become self-insured for any other coverage at the levels outlined in this Agreement at a later date, Company must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Company shall comply with the following: (i) Company or its parent company shall maintain throughout the term of this Agreement a net worth of at least \$250,000,000; (ii) Company shall provide the City, upon written request, a letter outlining the current equity balance of Company; (iii) Company is responsible for all payments within the self-insured retention; and (iv) Company assumes all defense and indemnity obligations as outlined in Section 22 of this Agreement.

Exhibit F
Performance Bond – To be provided upon execution.

Exhibit G
Contact Information

Site Equipment Manager: Charles Lindsay, 510.910.7787 clindsay@extenetsystems.com

Secondary Site Equipment Manager: Rachel Fenton, 801.910.7949 rfenton@extenetsystems.com

City Contact: Brandon Carver, PBPW Director – 206.870.6543 BCarver@desmoineswa.gov

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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: Interlocal Agreement – School
Resilience to Air Pollution Study

FOR AGENDA OF: October 22, 2020

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

DATE SUBMITTED: October 14, 2020

1. Interlocal Agreement – School Resilience
to Air Pollution Study

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal TG
- ☐ Finance _____
- ☐ Courts _____
- ☐ Police _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is for City Council consideration of an Interlocal Agreement (ILA) with the cities of Burien, Federal Way, Normandy Park and SeaTac to provide funding for a University of Washington study on school resilience to air pollution. The following motion will appear on the Consent Calendar.

Suggested Motion

Motion 1: “I move to approve the Interlocal Agreement with the cities of Burien, Federal Way, Normandy Park and SeaTac to provide funding for a University of Washington study on school resilience to air pollution, and authorize the City Manager to sign the Agreement substantially in the form as attached.”

Background

Increasing evidence has highlighted outdoor impacts of ultrafine particles on communities living in proximity to aircraft descent paths, both within the United States and internationally. A recently completed study in Washington State identified a clear, aircraft associated footprint of ultrafine particles associated with aircraft activities. Elevated concentrations of ultrafine particles have been consistently observed in Boston, Los Angeles and other international airport locations including London, Amsterdam Airport Schiphol and Frankfurt. Evidence is emerging that exposure to aircraft emissions is associated with negative health impacts.

A recent 10-year retrospective population-based study in Los Angeles found a significant increase of pre-term births in women exposed to aircraft related pollution during gestation, and this effect was found to be independent of the effect of roadway traffic pollution. This as well as previous work demonstrating short-term increases in inflammation in adults exposed to community air pollution in aircraft impacted locations demonstrates the need to implement measures to increase resilience in communities.

Representative Tina Orwall has been a leader in this regard, working to address impacts associated with Sea-Tac Airport and the disproportionate impacts experienced by Des Moines and other cities in proximity to the airport.

Discussion

Resiliency in a community is improved when vulnerable members are provided with interventions designed to mitigate or remove their sources of exposure. In partnership with MOV-UP advisory board members, researchers at the University of Washington identified school children as particularly vulnerable to indoor exposures to ultrafine particles from aircraft sources. Currently, it is not well understood how ultrafine particles from aircraft sources may infiltrate into indoor environments. Experimental and theoretical simulations of particle movement suggest a wide range of possible infiltration factors from 10-70% infiltration into indoor spaces. Important determining variables include a) building type, b) ventilation system parameters including central vs local units, filter type and manufacturer as well as c) building management strategies.

Existing literature supports that in-class performance of students is directly impacted by the air quality within the classroom environment. In Los Angeles, researchers studied how changes in ambient air pollution concentrations affected the performance of second through sixth grade students on standardized tests between 2002-2008. Comparisons were made between different cohorts within the same school, to minimize confounder. Researchers found that a lower concentrations of outdoor particulate matter significantly increased mathematics and reading test scores. Similar associations between testing scores and short-term air pollution concentrations have been observed nationally and internationally.

The impact of interventions to remove air pollutants in indoor spaces is more limited. A researcher in Texas examined the impact of rolling Indoor Air Quality (IAQ) improvements at nearly every school in a single school district. This quasi-natural experiment indicated that student performance on standardized tests significantly improved following improvements in IAQ. Rough calculations suggest that IAQ-renovations may be a more cost-effective way to improve standardized test scores than class size reductions. Similarly, preliminary results from another quasi-natural experiment in California, where HEPA air filters were installed in every classroom, office and common area for all schools within five miles of a potential gas leak (but not beyond) found that air filter exposure led to a 0.20 standard deviation increase in mathematics and English scores, with test score improvements persisting into the following year.

This project aims to test the feasibility, in two phases, to demonstrate the effectiveness and measure the impact of intervening within a school environment to reduce exposures to airborne particles of outdoor and indoor origin. Our specific aims are to:

Phase 1 (50k-65k):

Aim 1: Identify the filtration efficiency of current air handling approaches in a selection of five schools North and South of the airport

- a. Determine the size resolved ratio of indoor to outdoor particles in selected unoccupied classrooms
- b. Quantify the current ability of ventilation solutions to remove indoor generated particles (half-life). Do current air quality handling systems adequately remove particles that might contain COVID-19 particles?
- c. Describe the current air exchange rate (AER) of existing filtration systems under different MERV rating filters.
- d. Based on the experimental measures, describe the infiltration capacity of 1) ultrafine particles of aircraft origin 2) ultrafine particles of traffic origin and 3) wildfire smoke

Phase 2: (250k) funding proposed to be provided from State of Washington or other non-City source:

Aim 2: Intervene in selected schools N/S of airport by increasing within classroom particle filtration capacity.

- a. Randomize classrooms to receive an IAQ intervention, based on testing results from Aim 1
- b. Measure IAQ impacts of intervention under different aircraft flow conditions.

Aim 3: Observe medium-term impacts on students receiving IAQ interventions

- a. Quantify impact of IAQ intervention on school absenteeism
- b. Quantify impact of IAQ intervention on quarterly student achievement scores

This project is designed to provide guidance and recommendations to communities impacted by a variety of outdoor air pollution sources to increase resilience within a school setting by identifying impactful interventions, testing deployment, and measuring impact. We expect that the intervention proposed to reduce indoor exposures to outdoor pollutants associated with aircraft traffic will also be effective in reducing exposures to wildfire smoke and roadway traffic. The methods developed will also explicitly test the effectiveness of the filtration strategy in reducing indoor generated particles, potentially decreasing the risk of COVID-19 transmission within classroom settings.

Alternatives

Approve the ILA, Approve the ILA with amendments, or do not approve the ILA.

Financial Impact

The cost to the City for Phase 1 of this study is \$12,500. This amount is currently available in the City budget.

Recommendation

Administration recommends approving the ILA as written.

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INTERLOCAL AGREEMENT BETWEEN THE CITIES OF BURIEN, DES MOINES, FEDERAL WAY, NORMANDY PARK, AND SEATAC FOR A STUDY RELATED TO SCHOOL RESILIENCE TO AIR POLLUTION

Pursuant to RCW 39.34, the Interlocal Cooperation Act, dated October ___, 2020, (the “Effective Date”), this Agreement is entered into between the City of Burien, a municipal corporation, hereinafter referred to as “Burien,” the City of Des Moines, a municipal corporation hereinafter referred to as “Des Moines,” the City of Federal Way, a municipal corporation hereinafter referred to as “Federal Way,” the City of Normandy Park, a municipal corporation hereinafter referred to as “Normandy Park,” and the City of SeaTac, a municipal corporation hereinafter referred to as “SeaTac,” and all five cities collectively referred to as the “Parties.”

1. **Study Description.** A study will be conducted by the University of Washington pertaining to School Resilience to Air Pollution (the “Study”). The Study aims to test the feasibility, in two phases, to demonstrate the effectiveness and measure the impact of intervening within a school environment to reduce exposures to airborne particles of outdoor and indoor origin. Further description of the Study is attached as Exhibit #1.

2. **Study Phases.** The Parties intend to contract with the University of Washington to perform the Study in two phases. The first phase is intended to identify the filtration efficiency of current air handling approaches in a selection of five schools North and South of the Seattle-Tacoma International Airport (the “Airport”). The second phase of the Study is intended to intervene in selected schools north and south of the Airport by increasing within classroom particle filtration capacity and observe medium-term impacts on students receiving IAQ interventions.

3. **Proposed Budget.** The first phase of the study will have a budget of \$50,000 plus overhead costs, and the second phase of the Study will have a budget of \$250,000 plus overhead costs.

4. **Phase 1 Funding.** The Parties agree to collectively provide \$62,500 to fund Phase 1 of the Study. Each Party shall equally pay \$12,500 for its share of the Phase 1 funding in a lump sum to the Fiscal Manager upon execution of a Contract with the University of Washington. The funds will be managed as described in Section 8.

5. **Phase 2 Funding.** Representative Orwall intends to request a budget proviso during the 2021 Legislative Session to fund Phase 2 of the Study. *It is not the intent of this Agreement to commit the Parties to provide funding for Phase 2 of the Study.*

6. **Contract and Contract Administration.** Any contract between the Parties and the University of Washington shall be approved by each party and will be administered by the City of SeaTac (“Contract Administrator”). These responsibilities of the Contract Administrator include monitoring and periodically informing the Parties of the status of work performed under the contract and coordinating with the Fiscal Manager for payment of contract invoices.

7. **Fiscal Management.** Management of fiscal matters associated with this Agreement shall be administered by the City of Burien (“Fiscal Manager”). These responsibilities of the Fiscal Manager include collecting each Party’s Phase 1 funding commitment as outlined in Section 5,

processing contract payments as required, and provide copies of all invoices to each party for review. Additionally, should the Washington State Legislature provide funding for Phase 2 of the Study, the Fiscal Manager shall manage all aspects of obtaining these funds from the State, to make payment for Phase 2 of the Study.

8. **Administration of Agreement.** Supervision and administration of this Agreement shall be the responsibility of each Parties' City Manager (or for the City of Federal Way, its Mayor) or his/her designee.

9. **Duration.** This Agreement shall be effective upon the Effective Date provided above and shall remain in full force and effect through completion of the Study or June 30, 2022. This Agreement may be extended upon mutual agreement of all Parties.

10. **Termination.** Any party may withdraw from this Agreement, effective upon thirty (30) days written notice to the other Parties. However, the withdrawing party shall still be responsible for the payment of its funding obligation as set forth in Section 5.

11. **Modification.** This Agreement may be modified by further written agreement upon mutual acceptance by all Parties.

12. **Alternative Dispute Resolution.** If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the Parties agree to endeavor first to settle the dispute amicably by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the Parties or through JAMS.

13. **Written Notice.** All communications regarding this Agreement shall be sent by electronic communication to the Parties at the email addresses listed on the signature page of the Agreement unless notified to the contrary.

14. **Hold Harmless.** Each party to this Agreement shall defend, indemnify and hold the other party, its appointed and elected officers, agents, counsel, and employees, harmless from claims, actions, injuries, damages, losses, or suits including reasonable attorneys' fees, arising or alleged to have arisen directly or indirectly out of or in consequence of the performance of this Agreement to the extent caused by the fault or negligence of the indemnitor, its appointed or elected officials, counsel, employees, officers, agents, assigns, volunteers or representatives.

15. **Non-Discrimination.** The Parties shall not discriminate in any manner related to this Agreement based on race, color, national origin, gender, gender preference, gender orientation, religion, age, marital status, or disability in employment or the provision of services.

16. **Severability.** If any provision of the Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of both parties.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties.

CITY OF BURIEN:_____
Brian J. Wilson, City Manager

Email: _____

Date: _____

APPROVED AS TO FORM:_____
Name: Garmon Newsom II

Title: City Attorney

CITY OF NORMANDY PARK:_____
Mark E. Hoppen, City Manager

Email: _____

Date: _____

APPROVED AS TO FORM:_____
Name: James Haney

Title: City Attorney

CITY OF FEDERAL WAY:_____
Jim Farrell, City Manager

Email: _____

Date: _____

APPROVED AS TO FORM:_____
Name: _____

Title: City Attorney

CITY OF DES MOINES:_____
Michael Matthias, City Manager

Email: _____

Date: _____

APPROVED AS TO FORM:_____
Name: Tim George

Title: City Attorney

CITY OF DES MOINES:_____
Carl C. Cole, City Manager

Email: ccole@seatacwa.gov

Date: _____

APPROVED AS TO FORM:_____
Name: Mary E. Mirante Bartolo

Title: City Attorney

Exhibit A

Specific Aims – School Resilience to Air Pollution

Increasing evidence has highlighted outdoor impacts of ultrafine particles on communities living in proximity to aircraft descent paths, both within the United States and internationally. The recently completed MOV-UP study in WA State identified a clear, aircraft associated footprint of ultrafine particles associates with aircraft activities. Elevated concentrations of ultrafine particles have been consistently observed in Boston, Los Angeles and other international airport locations including London, Amsterdam Airport Schiphol and Frankfurt. Evidence is emerging that exposure to aircraft emissions is associated with negative health impacts. A recent 10-year retrospective population-based study in Los Angeles found a significant increase of pre-term births in women exposed to aircraft related pollution during gestation, and this effect was found to be independent of the effect of roadway traffic pollution. This as well as previous work demonstrating short-term increases in inflammation in adults exposed to community air pollution in aircraft impacted locations demonstrates the need to implement measures to increase resilience in communities.

Resiliency in a community is improved when vulnerable members are provided with interventions designed to mitigate or remove their sources of exposure. In partnership with MOV-UP advisory board members, researchers at the University of Washington identified school children as particularly vulnerable to indoor exposures to ultrafine particles from aircraft sources. Currently, it is not well understood how ultrafine particles from aircraft sources may infiltrate into indoor environments. Experimental and theoretical simulations of particle movement suggest a wide range of possible infiltration factors from 10-70% infiltration into indoor spaces. Important determining variables include a) building type, b) ventilation system parameters including central vs local units, filter type and manufacturer as well as c) building management strategies.

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This project aims to test the feasibility, in two phases, to demonstrate the effectiveness and measure

the impact of intervening within a school environment to reduce exposures to airborne particles of outdoor and indoor origin. Our specific aims are to:

Phase 1 (50k):

Aim 1: Identify the filtration efficiency of current air handling approaches in a selection of five schools North and South of the airport

- a. Determine the size resolved ratio of indoor to outdoor particles in selected unoccupied classrooms
- b. Quantify the current ability of ventilation solutions to remove indoor generated particles (half-life). Do current air quality handling systems adequately remove particles that might contain COVID-19 particles?
- c. Describe the current air exchange rate (AER) of existing filtration systems under different MERV rating filters.
- d. Based on the experimental measures, describe the infiltration capacity of 1) ultrafine particles of aircraft origin 2) ultrafine particles of traffic origin and 3) wildfire smoke

Phase 2 (250k):

Aim 2: Intervene in selected schools N/S of airport by increasing within classroom particle filtration capacity.

- a. Randomize classrooms to receive an IAQ intervention, based on testing results from Aim 1.
- b. Measure IAQ impacts of intervention under different aircraft flow conditions.

Aim 3: Observe medium-term impacts on students receiving IAQ interventions

- a. Quantify impact of IAQ intervention on school absenteeism
- b. Quantify impact of IAQ intervention on quarterly student achievement scores

This project is designed to provide guidance and recommendations to communities impacted by a variety of outdoor air pollution sources to increase resilience within a school setting by identifying impactful interventions, testing deployment, and measuring impact. We expect that the intervention proposed to reduce indoor exposures to outdoor pollutants associated with aircraft traffic will also be effective in reducing exposures to wildfire smoke and roadway traffic. The methods developed will also explicitly test the effectiveness of the filtration strategy in reducing indoor generated particles, potentially decreasing the risk of COVID-19 transmission within classroom settings.

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Barnes Creek/Kent-Des Moines Road
Culvert Project: Design Agreement
GCB 3395 with Washington State
Department of Transportation
(WSDOT)

ATTACHMENTS:

1. Local Agency Agreement GCB 3395
2. Original Local Agency Agreement GCB 2959

AGENDA OF: October 22, 2020

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: October 14, 2020

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works *R. Blum*

CHIEF OPERATIONS OFFICER: *David J. [Signature]*

- ☒ Legal *TG*
- ☒ Finance *Catharine [Signature]*
- ☐ Courts _____
- ☐ Police _____

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

Purpose and Recommendation:

The purpose of this agenda item is to seek City Council approval of a Local Agency Agreement between Des Moines and Washington State Department of Transportation (WSDOT) for WSDOT to complete the design and permitting of the Barnes Creek/Kent-Des Moines Road Culvert Replacement Project. The Agreement is for a 50/50 cost share of the design, permitting and right-of-way acquisition estimated at \$1,151,696 as shown on Exhibit B of the Local Agency Agreement. This agreement supersedes Agreement GCB 2959 and all project design, permitting and right-of-way costs are now included with new agreement.

The following motion will appear on the Consent Calendar:

Suggested Motion:

Motion: "I move to approve Local Agency Agreement GCB 3395 between the City of Des Moines and the Washington State Department of Transportation for the design and permitting of the Barnes Creek/Kent-Des Moines Road Culvert Replacement Project in the amount of \$575,848, plus a 20% contingency and further authorize the City Manager or his designee to sign said Agreement, substantially in the form as submitted."

Background:

The Barnes Creek drainage basin is fairly large at 355 acres in size and is roughly bounded from Highway 99 to 13th Avenue and S. 216th Street to Kent-Des Moines Road. Barnes Creek is a major tributary of the Massey Creek system with the stream passing below Kent-Des Moines (KDM) Road through a 90-foot long 24-inch diameter vitrified clay culvert with the confluence of Massey Creek located on the south side of KDM. Presently, the upstream end of the KDM culvert is protected with a metal cage to prevent large debris from entering/blocking the culvert entrance. Upstream of the culvert, Barnes Creek is mostly open stream providing a potential of over a mile of fish habitat. A culvert replacement project located upstream at 223rd Street was recently made anticipating the eventual culvert replacement at KDM that would allow access to fish (salmon) to the upper reaches of Barnes Creek.

In 2015, the KDM culvert was cleaned and inspected and an assessment made from both its physical condition and fish barrier potential. The video inspection indicated that the pipe is in poor condition with the structural integrity of the pipe given a “critical” classification. Many sections of the pipe are cracked and are no longer circular and several sections are displaced. As there is no structural integrity in the cracked pipe itself, the current backfill around the pipe is maintaining the current shape (oblong). Should a large segment of the broken culvert become dislodged and expose the backfill material, the backfill will likely fall into the pipe and be washed downstream or block the culvert entirely. Depending on the rate of the loss of backfill, a void above the culvert would develop leading to road failure. Potential remaining life span of the culvert is speculative, but the remaining life is likely less than 10 years.

Aside from the obvious fish barrier caused by the upstream debris guard, the fish passage assessment indicated only 33% passability, meaning the culvert is likely a barrier at least 2/3 of the time allowing passage under limited flow conditions when the flows provide sufficient in depth in the pipe but not too high as to create a velocity barrier.

Several studies have been made, including the 1990 Massey Creek Basin Plan and the 1994 Lower Massey Creek Alternative Analysis, that have indicated that the existing 24-inch culvert is insufficient in size and needs to be upsized to a minimum 48-inch diameter pipe. During large storm events, the existing pipe’s capacity is exceeded creating backwater conditions upstream of the pipe and even overtopping of Kent-Des Moines Road. However, given the need to meet current fish passage requirements the replacement of the pipe will need to be substantially larger than 48-inches and likely a large box culvert. The construction of the replacement will also have to accommodate the heavy traffic of KDM Road, the relatively deep burial depth (20-25 feet) of the culvert, as well as support or relocate numerous utilities that cross over the culvert. An open-cut construction technique will most likely be the method used.

Discussion:

Preliminary design work had started in 2016 but the project was placed on hold when staff learned that the culvert is included in a list of priority state culvert replacements that is required under a federal court mandate to repair hundreds of fish-blocking culverts under state roads in order to maintain the 1850’s treaty fishing rights of the tribes. The project was placed on hold until a discussion was made with WSDOT regarding the timing of the culvert’s replacement, the concern of the condition of the culvert, and whether the state would be interested in a partnership with the City for replacing the project within the next five years.

WSDOT is continuing to make progress toward replacing the culverts under the mandate. Unfortunately, the Barnes Creek Culvert is only one of some 800+ culverts that are under state roads that need to be replaced. As such, it could be ten or more years before the state is able to do this project, given that several hundred culverts have been prioritized higher.

However, after reviewing the 2015 culvert condition assessment and meeting with City staff, WSDOT has agreed to partner with the City in order to substantially speed up the timeline for the project. The attached Local Agency Agreement is for the design and permitting phase of the project to be completed by the end of this year with construction of the project anticipated in the summer of 2021. It is proposed that the City and WSDOT will share 50/50 on the total cost of the project. Once the design and permitting phase is complete, the Agreement will be amended for the construction phase.

The Local Agency Agreement includes the following tasks:

- Project survey
- Preliminary Hydraulic Design
- Preliminary Right-of-Way Plans
- Utility coordination
- Preliminary Public Outreach
- Environmental Permitting
- Plans, Specifications and Estimate package

Agreement GCB 3395

A new agreement is needed to cover additional design and land acquisition costs on the project. The existing culvert is undersized allowing for flow detainment behind the 25-foot road embankment. Replacement of the existing culvert will increase flows by 30%. Additional survey and analysis was required to ensure that water levels during storm events did not pose a threat to public safety. A stormwater analysis and report was prepared for the project to address the downstream concerns as well as fish passage issues brought up by the Tribes.

Initial scoping assumed that the existing culvert would be replaced with a 16-foot wide 3-sided culvert with the lower portion of the culvert buried. During permit review, the Muckleshoots were concerned that the 3-sided culvert would not operate the same as a preferred bridge structure. Additional efforts were needed to justify the culvert functions over the more expensive bridge option. The bridge option would add \$1.3M to the project cost and 120 days of full road closure vs the planned 9 days. To satisfy the Muckleshoots, the footings of the culvert will be embedded deeper to ensure changes to the streambed grade would allow for fish passage.

Another major design change is the inclusion of a 12-foot wide maintenance access to both ends of the culvert. The effort also included additional permit work to mitigate for more shoulder widening as well as property acquisition needed for the maintenance access areas.

Other additional design work includes water quality enhancements requested by the Tribes such as inclusion of large woody debris for fish habitat creation as well as tree mitigation (nearly 250 2-gallon trees need for mitigation) which exceeds the current capacity of the site. The additional property acquisition will be used as the tree mitigation area.

The Agreement allows for a 20% increase in costs (contingency) above the cost estimate of \$1,150,000 for the project's design and permitting.

Financial Impact:

The City's 50% share of the project design and permitting costs have increased from \$250,000 to \$575,848 to cover the added design expenses explained above. The 2020 budget assumes that the project would be constructed this year and therefore adequate funds have been appropriated in this year's Capital outlay. Once the design and permitting work is complete, this agreement will be brought back to Council for amendment for the construction phase of the project, now scheduled for spring/summer 2021.

Alternatives:

The City Council could decide not to continue with the project at this time. This is not recommended by staff given the lead time needed to address the project's potentially lengthy permitting process, design issues, potential right-of-way acquisition, as well as the critical state of the culvert.

Recommendation/Conclusion:

Staff requests that Council approve the proposed motions.

Concurrence:

Legal, Public Works and the Finance Departments concur.

GCB 3395

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter “WSDOT,” and Des Moines, Washington, hereinafter the “City,” collectively the “Parties” and individually the “Party.”

RECITALS

1. The Parties previously entered into GCB 2959, an interlocal agreement, that was executed on April 25, 2018.
2. The Parties desire to supersede GCB 2959 to update the language and cost estimate by entering into this GCB 3395 Agreement, hereinafter the “Agreement.”
3. WSDOT is carrying out the SR 516 Barnes Creek Fish Passage Project, hereinafter the “Project,” in WSDOT’s SR 516 right of way, hereinafter “SR 516 right of way,” as shown in Exhibit A. The existing culvert at Barnes Creek on SR 516, which is located within the city limits of Des Moines, is in need of replacement and has been identified as a fish passage barrier by the Washington Department of Fish and Wildlife (WDFW ID 991191). The new replacement culvert constructed by the Project will provide improved fish passage for a number of species. Once completed, the new culvert will fulfill a requirement of Federal Injunction C70-9213: “Permanent Injunction Regarding Culvert Correction.”
4. The Parties have agreed that the City will make a contribution to the Project on a fifty (50) percent cost basis.
5. The Project is in the public’s best interest because the new culvert will maintain structural support for the highway and improve fish habitat.

NOW, THEREFORE, pursuant to RCW 47.28.140, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants and performances contained herein, and the attached Exhibit A and Exhibit B that are incorporated herein by this reference,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. CONTRIBUTION

- 1.1 In consideration of the faithful performance by WSDOT of the work for the Project, hereinafter the “Work,” the City shall pay a contribution to WSDOT of fifty (50) percent of the total actual cost.

- 1.2 The Work for the Project's design phase, including Preliminary Engineering and Right of Way, is estimated to cost a total of One Million One Hundred Fifty One Thousand Six Hundred Ninety Six Dollars (\$1,151,696), as shown in Exhibit B. The City's contribution for the design phase Work is Five Hundred Seventy Five Thousand Eight Hundred Forty Eight Dollars (\$575,848, which is 50 percent of \$1,151,696). The City shall make its contribution payments in accordance with Section 2 of this Agreement.

2. PAYMENT

- 2.1 WSDOT shall provide monthly invoices to the City for the City's fifty (50) percent contribution for the actual costs of the Work performed. Upon receipt of a detailed, itemized invoice from WSDOT, the City shall make payment to WSDOT within sixty (60) calendar days. All sums due from the City to WSDOT and not paid within sixty (60) calendar days of the date of invoice shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater; provided that, if the highest rate allowable by law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest shall be calculated from the sixty-first calendar day until the date paid. If the City objects to all or any portion of an invoice it shall notify WSDOT within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. WSDOT and the City shall make every effort to settle the disputed portion, and if necessary utilize dispute resolution as provided for in Section 5.6 of this Agreement. No interest shall be due on any portion of an invoice the City is determined not to owe following settlement between the Parties or completion of dispute resolution process.

3. EXTRA WORK

- 3.1 In the event that unforeseen conditions require an increase above the total cost estimated for the Work, the Parties agree to a twenty (20) percent contingency.
- 3.2 If costs for the Project's design phase Work exceed the total cost estimate, as shown in Exhibit B, then the City shall make additional payment to WSDOT in an amount up to and including One Hundred Fifteen Thousand One Hundred Seventy Dollars (\$115,170, rounded up from \$115,169.6, which is 20 percent of the City's \$575,848 contribution). The maximum amount of the City's contribution for the design phase Work is Six Hundred Ninety One Thousand Eighteen Dollars (\$691,018, the sum of \$575,848 and \$115,170). If costs for the design phase Work exceed the cost estimate by more than 20 percent then this Agreement may be amended by the Parties to cover said increase in cost.

4. PARTY REPRESENTATIVES

- 4.1 For all communications under this Agreement the Parties designate the following representatives:

City of Des Moines	Washington State Department of Transportation
Brandon Carver, PE, PTOE Public Works Director City of Des Moines 21630 11 th Avenue South Des Moines, WA 98198 206.870.6543 BCarver@desmoineswa.us	Norene Pen Project Engineer Washington State Department of Transportation 15700 Dayton Avenue North PO BOX 330310 Seattle, WA 98133 206.440.4612 PenN@wsdot.wa.gov

- 4.2 A Party may designate an alternative representative and in this event shall notify the other Party in writing, which includes communication by email.

5. GENERAL PROVISIONS

- 5.1 Superseded: Upon execution of this Agreement, the Parties agree that interlocal agreement GCB 2959 shall be superseded by this Agreement.
- 5.2 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 5.3 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is executed by the Party's date last signed below.
- 5.4 Termination:
- 5.4.1 This Agreement shall be terminated if both Parties agree, in writing, to terminate the Agreement by those authorized to bind each Party.

- 5.4.2 This Agreement shall be terminated upon (a) completion of the Work and (b) all payments have been made as authorized by this Agreement.
- 5.4.3 If any of the funding allocated to WSDOT for the Project is withdrawn, WSDOT may, at its sole discretion, a) give written notice to the City that the Project shall continue within a narrowed scope of Work with an associated decrease in the City's total contribution amount, or b) give written notice to the City that the Project shall terminate. If WSDOT gives the City written notice of termination pursuant to this Section 5.4.3 then this Agreement shall terminate thirty (30) calendar days from the day the City receives the notice or upon the City's final payment to WSDOT for Work completed *prior* to the City's receipt of notice, whichever is later.
- 5.4.4 If any of the funding allocated to the City for the Project is withdrawn by an outside funding source, the City may, at its sole discretion, give written notice to WSDOT that the City's further contribution to the Project shall terminate. The Parties may confer about narrowing the scope of Work and if they agree the City's contribution to the Project shall continue but at a level commensurate with the narrowed scope. If the Parties are unable to reach agreement then this Agreement shall terminate thirty (30) calendar days from the day WSDOT receives the City's written notice of termination pursuant to this Section 5.4.4 or upon the City's final payment to WSDOT for Work completed *prior* to WSDOT's receipt of notice, whichever is later.
- 5.4.5 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 5.5 Indemnification and Waiver: The Parties shall protect, defend, indemnify, and hold harmless each other and their officers, officials, employees and/or authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their officers, officials, employees and/or authorized agents, or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the indemnifying Party, its officers, officials, employees and/or authorized agents. The Parties agree that their obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any

of their officers, officials, employees and/or authorized agents. For this purpose only, **the Parties, by mutual negotiation, hereby waive**, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. This indemnification and waiver shall survive the expiration or termination of this Agreement.

- 6.6 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the City agree to negotiate to resolve any issues. Should such negotiations fail to produce a satisfactory resolution within one hundred eighty (180) days, WSDOT and the City shall each appoint a member to a disputes board. These two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. Each Party shall be responsible for its own costs and fees. The Parties agree to share equally in the cost of the third disputes board member.
- 6.7 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each shall be solely responsible for payment of its own attorney's fees, witness fees, and costs.
- 6.8 Audits/Records: All records for the Project in support of all costs incurred shall be maintained by WSDOT and the City for a period of six (6) years from the date of termination of this Agreement or the date of any final payment authorized under this Agreement, whichever is later. Each Party shall have full access to and right to examine said records of the other Party, during normal business hours and as often as it deems necessary. Should a Party require copies of any records it agrees to pay the reasonable costs thereof. The Parties agree the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the State of Washington and/or the federal government.
- 6.9 Severability: Should any section, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected and the same shall continue in full force and effect.
- 6.10 Calendar Day: Calendar day means any day on the calendar including Saturday, Sunday or a legal local, state, or federal holiday.

- 6.11 **Independent Contractor:** Parties shall be deemed an independent contractor for all purposes, and the employees of each Party or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

City of Des Moines	Washington State Department of Transportation
<u>Sign and Date:</u>	<u>Sign and Date:</u>
Michael Matthias City Manager	Amir Rasaie Assistant Regional Administrator SnoKing Design – NW Region
Approved as to Form City of Des Moines	Approved as to Form Washington State Department of Transportation
<u>Sign and Date:</u>	<u>Sign and Date:</u>
Attorney for City of Des Moines	Guy M. Bowman Assistant Attorney General

Exhibit A
GCB 3395
Page 1 of 2

Exhibit A
GCB 3395
Page 1 of 2

NOTES:

1. FOR CONSTRUCTION ALIGNMENTS, SEE SHEET AL1
2. FOR DETOURS, SEE SHEETS DT1 - DT2

 Washington State Department of Transportation	60% REVIEW	SR 516 BARNES CREEK FISH PASSAGE VICINITY MAP	Project 2022-2023 VM1 Priority 1 26 2023-10-10
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**HIGH VISIBILITY
STAKING SCHEDULE**

ABILITY SCHEDULE	HIGH VISIBILITY FENCE SCHEDULE
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**HIGH VISIBILITY
STAKING SCHEDULE**

POST

HIGH VISIBILITY STAKING DETAIL



NOTES:

1. PRIOR TO ANY PLANNING OR EXCAVATION WORK THE CONTRACTOR SHALL OBTAIN THE NEAREST EXISTING PAVEMENT MARKS WITH REFERENCE TO THE CENTERLINE OF THE PROJECT AND THE CENTERLINE OF THE EXISTING PAVEMENT MARKINGS IN THE SPECIAL PROVISIONS OF THE SPECIFICATIONS.
2. THE CONTRACTOR SHALL PLACE COMPOST SOCK 1 FOOT TO THE INSIDE OF THE HWF.
3. SEE SHEET RS1 FOR ADDITIONAL DETAILS.
4. SEE STREAM AND CULVERT PLAN PROFILE AND DETAILS FOR ADDITIONAL INFORMATION.
5. MAILBOX TO BE REMOVED PAID UNDER BID ITEM "MAILBOX SUPPORT TYPE 1".

ABILITY SCHEDULE	HIGH VISIBILITY FENCE SCHEDULE
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COST ESTIMATE FOR PRELIMINARY ENGINEERING AND REAL ESTATE/RIGHT OF WAY

SR: 516
 Title: Barnes Creek Fish Passage
 WIN: A51601A
 PIN: 151601A

MP: 0.41

Date: 9/01/2020
 By: Ellen Shih

I4 - Environmental Retrofit, Fish Passage	Budgeted Total Cost
Preliminary Engineering	
General Project Management	\$ 370,167.3
Environmental Review and Permitting	\$ 116,356.5
Bridge and Structures	\$ 3,000.0
Project Development	\$ 562,172.5

Exhibit B
GCB 3395
 Page 1 of 1

Subtotal for Percentages

Preliminary Engineering Total: \$ 1,051,696

Right of Way Total: 4 TCE @ \$25K each \$ 100,000

Total \$ 1,151,696

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Local Agency Participating Agreement Work by WSDOT — Actual Cost		Local Agency Name & Address City of Des Moines 21650 11th Ave. S Des Moines, WA 98198	
Agreement Number GCB 2959		Section/Location Barnes Creek Fish Passage	
State Route 516	Control Section Number 1763	Plans, Specifications and Cost Estimates (PS&E) for the Local Agency Work by LOCAL AGENCY?	☐ Yes ☒ No
Region Northwest		PS&E Due Date:	
Advance Payment Required? ☐ Yes ☒ No		Description of Work:	
Advance Payment Amount		Environmental Retrofit - Fish Passage. 50% Cost Share by the City of Des Moines, Preliminary Engineering	
WSDOT		LOCAL AGENCY	
State Agency Representatives:		Local Agency Representatives:	
Name: Azim Sheik-Taheri		Name: Brandon Carver, P.E., P.T.O.E.	
Title: ARA - Prg Mgmt & Administrative Services		Title: Public Works Director	
Address: 15700 Dayton Ave. North PO Box 330310 Seattle, WA 98133-9710		Address: City of Des Moines 21650 11th Ave. So. Des Moines, WA 98198	
Email Address: SheikAz@wsdot.wa.gov		Email Address: BCarver@desmoineswa.gov	
Phone: 206.440.4761		Phone: 206.870.6543	

This Agreement is made and entered into between the Washington State Department of Transportation (WSDOT) and the above named governmental entity (LOCAL AGENCY).

WHEREAS, WSDOT is planning the construction or improvement of a section of the state route as shown above, and in connection therewith, the LOCAL AGENCY has requested that WSDOT perform certain work for the LOCAL AGENCY as described above under Description of Work and/or further described in Exhibit B, (Work), and

WHEREAS, it is deemed to be in the public's best interest for WSDOT to include the requested Work in WSDOT's construction contract for the state route improvement, and

WHEREAS, the LOCAL AGENCY is obligated for the cost of the Work described herein,

NOW, THEREFORE, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above, and the attached Exhibits which are incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PLANS, SPECIFICATIONS, AND COST ESTIMATES

- 1.1 WSDOT, on behalf of the LOCAL AGENCY, agrees to perform the Work, as further provided herein and pursuant to the attached exhibits. Exhibit A is the Cost Estimate and Exhibit B, if included as an attachment, further defines the Work to be constructed for the LOCAL AGENCY. The combination of the LOCAL AGENCY's Work and WSDOT's improvements hereinafter constitute the Project.
- 1.2 If indicated in the above heading, the LOCAL AGENCY shall provide WSDOT with plans, specifications and cost estimates (PS&E) for the Work.
 - 1.2.1 The PS&E shall be in accordance with the state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), current at the time of Project advertisement, mutually acceptable design standards, or the LOCAL AGENCY's standards, if applicable and specified by the LOCAL AGENCY. Backup calculations for quantities and breakdowns for lump sum items shall be included with the PS&E for the Work.
 - 1.2.2 If the PS&E for the Work, with backup calculations and breakdowns, is not delivered by the above PS&E due date, WSDOT, at its sole discretion, may proceed without the LOCAL AGENCY Work included with WSDOT's improvements. The LOCAL AGENCY agrees to reimburse all WSDOT costs incurred up to and as a result of the LOCAL AGENCY's failure to timely provide the PS&E. This Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6.
- 1.3 WSDOT will incorporate the LOCAL AGENCY's Work or Work PS&E into WSDOT's PS&E for WSDOT's improvements to produce a combined advertisement (Ad) ready PS&E for the Project. WSDOT will document WSDOT performed engineering design work required to incorporate the Work or Work PS&E into WSDOT's PS&E (Design Documentation). WSDOT shall provide up to two intermediate review sets of the PS&E and Design Documentation at mutually agreeable milestones. WSDOT will provide the LOCAL AGENCY with one (1) reproducible copy of the stamped final Design Documentation prior to the proposed Ad date.
- 1.4 WSDOT will provide the LOCAL AGENCY with one (1) reproducible copy of the Ad ready PS&E for the Project a minimum of thirty (30) working days prior to the proposed Ad date. The LOCAL AGENCY will have fifteen (15) working days to review the Ad ready PS&E for the Project, resolve any concerns, and provide WSDOT with written approval, conditional approval, or rejection of the Ad ready PS&E for the Work portion of the Project. In the event the Work portion of the Ad ready PS&E is conditionally approved or rejected, the LOCAL AGENCY shall include the reasons for conditional approval or rejection. The LOCAL AGENCY may request an extension of time in writing, provided that WSDOT receives the written request not later than fifteen (15) working days after the LOCAL AGENCY has received the Ad ready PS&E. WSDOT shall provide a written response, indicating the number of working days extended, if any.
- 1.5 If WSDOT does not receive the LOCAL AGENCY's written approval, conditional approval or rejection of the Work portion of the Ad ready PS&E within fifteen (15) working days and any approved extension of time pursuant to Section 1.4, or if WSDOT cannot accept the LOCAL AGENCY's condition(s) of approval, or if the LOCAL AGENCY has not acquired all right of way and permits required to construct, maintain, and operate the Work, WSDOT may, at its sole discretion, delete the Work from the Project and advertise WSDOT's improvements. The LOCAL AGENCY agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with either WSDOT or LOCAL AGENCY deleting the Work from the Project. This Agreement shall then terminate upon receipt of all reimbursement payments in accordance with Section 6.

2. BID, AWARD, AND COST ADJUSTMENTS

- 2.1 WSDOT will advertise the Project for bids. WSDOT will be the LOCAL AGENCY's representative during the Ad and Project contract award period. When requested by WSDOT, the LOCAL AGENCY shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise that are associated with the Work. All comments and clarifications must go through WSDOT.
- 2.2 If the LOCAL AGENCY is responsible for preparing the Work PS&E, the LOCAL AGENCY agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.
- 2.3 WSDOT shall provide the LOCAL AGENCY with written notification of the bid price for the Work. The LOCAL AGENCY shall have five (5) working days from the date of written notification to provide WSDOT written approval of the bid price for the Work, or request the Work be deleted from the Project. The LOCAL AGENCY may request an extension of time in writing, provided that WSDOT receives the written request not later than five (5) working days after the LOCAL AGENCY has received the written notification. WSDOT shall provide a written response indicating the number of working days extended, if any.
- 2.4 The LOCAL AGENCY acknowledges that if it fails to provide WSDOT with written approval of the bid price for the Work or request that the Work be deleted from the Project within five (5) working days and any approved extension of time pursuant to Section 2.3, WSDOT shall delete the Work from the Project. In this event, the LOCAL AGENCY agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with deleting the Work from the Project. The LOCAL AGENCY understands that deleting the Work from the Project may require an equitable adjustment to the Project contract and agrees to reimburse WSDOT for costs associated with the equitable adjustment. This Agreement shall then terminate upon receipt of all reimbursement and equitable adjustment payments in accordance with Section 6.
- 2.5 If the LOCAL AGENCY approves the bid price for the Work and WSDOT does not award or execute the Project contract, but thereafter re-advertises the Project for bids, WSDOT agrees to pay all WSDOT costs to re-advertise the Project. The LOCAL AGENCY agrees that WSDOT is not responsible for increased bid prices or delay to the Work or other impacts to the LOCAL AGENCY resulting from re-advertising the Project.
- 2.6 If the LOCAL AGENCY approves the bid price for the Work and WSDOT does not award or execute the Project contract and does not re-advertise the Project for bids, this Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6. The LOCAL AGENCY agrees that WSDOT is not responsible for potential increased costs for the Work, delay to the Work or other impacts to the LOCAL AGENCY resulting from not awarding the Project.

3. CONSTRUCTION

- 3.1 WSDOT will be the LOCAL AGENCY's representative during construction and will act as owner in the administration of the contract for the Work. WSDOT will designate a WSDOT Project Engineer to provide all services and tools, including but not limited to construction administration, inspection, materials testing, and representation, necessary to administer and manage the contract to ensure that the Work is constructed in accordance with the contract.
- 3.2 The LOCAL AGENCY may consult with and inquire of WSDOT Project Engineer, attend all meetings, and have access to all documentation concerning the Work. The LOCAL AGENCY shall not provide direction, directly or indirectly, to WSDOT's contractor. All formal contacts between the LOCAL AGENCY and the contractor shall be through WSDOT's representative.
- 3.3 When it becomes known that quantities for a unit bid item will exceed plan quantity for the Work by ten (10) percent or result in a cost increase for the Work exceeding the total amount by the percentage listed under Section 6.5, WSDOT shall consult with the LOCAL AGENCY on possible courses of action within three (3) working days in accordance with Section 4.
- 3.4 The LOCAL AGENCY may inspect the Work. Any costs for such inspection shall be borne solely by the LOCAL AGENCY. All contact between said inspector and the contractor shall be only through WSDOT's inspector or WSDOT's representative.

- 3.5 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard WSDOT practices, as directed by WSDOT's Construction Manual. Once the LOCAL AGENCY has accepted the Work per Section 5, WSDOT will provide one reproducible set of as-built plans to the LOCAL AGENCY within N/A _____ (_____) working days.

4. CONTRACT CHANGES

- 4.1 Changes to the Project contract will be documented by change order in accordance with the Standard Specifications. WSDOT shall process change orders for all changes affecting the Work in the manner set forth in subsection SS 1-04.4, Approval of Changes/Checklist, WSDOT Construction Manual, current edition.
- 4.2 Required changes involve such changes in quantities or alterations to the Work as are necessary to satisfactorily complete the Project. All other changes affecting the Work shall be considered elective changes.
- 4.3 The LOCAL AGENCY authorizes WSDOT to initiate all required changes affecting the Work and to negotiate, document and execute the associated change orders. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for the required changes affecting the Work in accordance with Section 6.
- 4.4 WSDOT will advise the LOCAL AGENCY of any proposed required changes affecting the Work as soon as possible and provide it with an opportunity, if time permits, to review the change before implementation. WSDOT will determine the length of the review time based upon the need to expedite the change to avoid delay to the contractor.
- 4.5 The LOCAL AGENCY may request additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.
- 4.6 All elective changes to the Work shall be approved in writing by the LOCAL AGENCY before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.
- 4.7 WSDOT will make available to the LOCAL AGENCY all change order documentation related to the Work.
- 4.8 In the event it is determined that the LOCAL AGENCY does not have sufficient funds to complete the Work, WSDOT and the LOCAL AGENCY shall negotiate to determine the future of the Work. If it is determined that the Work cannot proceed, the Work shall be brought to a level that is safe for public use and WSDOT will terminate the remainder of the Work from the Project contract. In the event the Work is terminated, Section 5 shall apply for that portion of the Work completed up to the time of termination. The LOCAL AGENCY agrees to pay all costs associated with termination, including contractor claims, in accordance with Section 6.

5. ACCEPTANCE

- 5.1 Prior to Work acceptance, WSDOT and LOCAL AGENCY will perform a joint final inspection. The LOCAL AGENCY agrees, upon satisfactory completion of the Work and receipt of a Notice of Physical Completion of the Work, as determined by WSDOT, to deliver a letter of acceptance to WSDOT which shall include a release of WSDOT from all future claims or demands of any nature resulting from the performance of the Work and WSDOT administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.

5.2 If a letter of acceptance is not received by WSDOT within ninety (90) days following delivery of a Notice of Physical Completion of the Work to the LOCAL AGENCY, the Work and WSDOT administration thereof shall be considered accepted by the LOCAL AGENCY, and WSDOT shall be released from all future claims and demands of any nature resulting from the performance of the Work and WSDOT's administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.

5.3 The LOCAL AGENCY may withhold its acceptance of the Work by submitting written notification to WSDOT within N/A ☐ Working ☐ Calendar (____) days following delivery of a Notice of Physical Completion of the Work. This notification shall include the reason(s) for withholding acceptance.

6. PAYMENT

6.1 The LOCAL AGENCY, in consideration of the faithful performance of the Work performed by WSDOT and its contractor, agrees to reimburse WSDOT for the actual direct and related indirect costs of the Work, as estimated in Exhibit A.

6.2 WSDOT shall provide detailed invoices to the LOCAL AGENCY for the Work performed by WSDOT and its contractor or for costs incurred as provided in Sections 1.2.2, 1.5, 2.4, 4.8 or 8.1.4, and the LOCAL AGENCY agrees to make payment within thirty (30) days from receipt of an invoice. A payment will not constitute agreement as to the appropriateness of any item. At the time of the final invoice, the Parties will resolve any discrepancies.

6.3 The LOCAL AGENCY agrees that if it does not make payment within ninety (90) days after receipt of an invoice, WSDOT may deduct and expend any monies to which the LOCAL AGENCY is entitled to receive from the Motor Vehicle Fund.

6.4 Advance Payment: If an advance payment is required, the LOCAL AGENCY agrees to pay WSDOT the "Advance Payment Amount," shown above, within twenty (20) days after receipt of Project contract award notification. The advance payment represents approximately fifteen percent (15%) of the cost estimate and covers costs incurred by WSDOT in the initial stages of the Work. The advance payment will be carried throughout the life of the LOCAL AGENCY's cost obligations, with final adjustment made in the final invoice.

6.5 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the Work above the cost estimate (including sales tax, engineering, and contingencies) by more than twenty (20) percent, the Parties agree to modify this Agreement by executing a written amendment to address the increase pursuant to Section 10.1, or implement Section 4.8.

7. RIGHT OF ENTRY

7.1 The LOCAL AGENCY hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the LOCAL AGENCY has an interest for the purpose of constructing the Project.

7.2 Where applicable, the LOCAL AGENCY hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the LOCAL AGENCY has an interest for WSDOT to construct, operate, maintain and/or reconstruct signal loop detectors and appurtenances for signals belonging to WSDOT, if any, that are constructed within the LOCAL AGENCY's right of way. The terms of this Section 7.2 shall survive the termination of this Agreement.

8. CLAIMS

8.1 Claims for Additional Payment

8.1.1 In the event the contractor makes claims for additional payment associated with the Work, WSDOT will immediately notify the LOCAL AGENCY of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

- 8.1.2 The LOCAL AGENCY shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of WSDOT in administering the Work.
- 8.1.3 The LOCAL AGENCY shall have the right to review and comment on any settlement for claims associated with the Work. However, WSDOT shall have the ultimate right to settle such claims. In the event the LOCAL AGENCY does not agree with the claim settlement as negotiated by WSDOT, the LOCAL AGENCY shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the LOCAL AGENCY and WSDOT on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 10.7.
- 8.1.4 If WSDOT agrees, the LOCAL AGENCY may defend contractor claims associated with the Work at its own cost, and in doing so, the LOCAL AGENCY agrees to pay any resulting settlement, court judgment or arbitration award. WSDOT will cooperate with the LOCAL AGENCY in the LOCAL AGENCY's defense of the claims. The LOCAL AGENCY agrees to reimburse any WSDOT costs, including attorneys fees, incurred in providing such assistance in accordance with Section 6.

8.2 Claims for Damages: After Work acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs within the limits of the Work located on the LOCAL AGENCY's right of way, the LOCAL AGENCY shall defend such claims and hold harmless WSDOT therefrom, and WSDOT shall not be obligated to pay any claim, judgment or cost of defense. Nothing in this Section, however, shall remove from WSDOT any responsibility defined by the current laws of the state of Washington or from any liability for damages caused by WSDOT's own negligent acts or omissions independent of the Work performed pursuant to this Agreement.

9. OWNERSHIP, OPERATION, AND MAINTENANCE

- 9.1 Upon acceptance of the Work as provided in Section 5, the LOCAL AGENCY shall be the sole owner of that portion of the Work located within the LOCAL AGENCY's right of way, and the LOCAL AGENCY shall be solely responsible for ownership and all future operation and maintenance of the Work at its sole cost, without expense, cost, or liability to WSDOT.
- 9.2 WSDOT facilities constructed on LOCAL AGENCY right of way, if any, as identified in Section 7.2 shall be owned by WSDOT, and WSDOT shall be responsible for the operation and maintenance of such facilities at WSDOT's sole cost, until removed. The terms of this Section shall survive the termination of this Agreement.

10. GENERAL PROVISIONS

- 10.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 10.2 Termination: Neither WSDOT nor the LOCAL AGENCY may terminate this Agreement without the written concurrence of the other Party, except as otherwise provided under Sections 1.2.2, 1.5, 2.4, and 2.6.
 - 10.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the LOCAL AGENCY agrees to reimburse WSDOT for the actual direct and related indirect expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.
 - 10.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 10.3 Independent contractor: WSDOT shall be deemed an independent contractor for all purposes, and the employees of WSDOT or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the LOCAL AGENCY.

- 10.4 **Indemnification**: The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees, authorized agents, or contractors and (b) the LOCAL AGENCY, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, and/or contractors.
- 10.5 **Acceptance of Liability**: The LOCAL AGENCY agrees and accepts full liability for (1) the PS&E provided for the Work to WSDOT, if any; and (2) for any Work the LOCAL AGENCY has provided direction to WSDOT to design and/or construct outside WSDOT's right of way and/or WSDOT's jurisdiction that does not meet WSDOT standards.
- 10.6 **Survivability**: Sections 10.4 and 10.5 shall survive the termination of this Agreement.
- 10.7 **Disputes**: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the LOCAL AGENCY shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.
- 10.8 **Venue**: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs..
- 10.9 **Audits/Records**: All Project records for the Work in support of all costs incurred shall be maintained by WSDOT for a period of three (3) years. The LOCAL AGENCY shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the LOCAL AGENCY require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or state of Washington and/or the federal government.
- 10.10 **Term of Agreement**: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the Work is accepted by the LOCAL AGENCY pursuant to Section 5, or as otherwise provided herein, and all obligations for payment have been met.
- 10.11 **Working Days**: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date signed last below.

LOCAL AGENCY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature: _____ By: <u></u> Print Name <u>michael matthias</u> Title: <u>City manager</u> Date: <u>4.16.18</u>	Signature: _____ By: _____ Print Name _____ Title: _____ Date: _____


Des Moines City Attorney

SCOPING ESTIMATE - BREAKDOWN BY UNIT BID ITEM

SR: 516
 Title: Barnes Creek Fish Passage
 WIN: A51601A
 PIN: 151601A

MP: 0.41

Prepared By: Andrea Dabbs
 Date: 12/18/2017
 Reviewed By: John Crawford
 Date: 12/21/2017

INFLATED ESTIMATE			
PE	@	20.0%	\$500,000
R/W			\$22,500
CN	@	22.0%	\$1,919,000
Total			\$2,441,500

M - Environmental Retrofit, Fish Passage				SECTION 1		Totals		Cost Summary
Snd Item #	Work Item	Price per Unit	Unit	Qty	Cost	Qty	Cost	Cost
Preparation								
0025	Clearing and grubbing	\$ 20,000	Acres	0.14	\$2,755	0.14	\$2,755	\$7,755
0050	Removal of structures and obstructions	\$ 5,000	LS	1	\$5,000	1	\$5,000	
Grading								
0310	Roadway excavation incl haul	\$ 100	CY	18	\$1,750	18	\$1,750	\$41,814
0431	Gravel borrow incl haul	\$ 16	Ton	1,882	\$31,717	1,882	\$31,717	
0470	Embankment compaction	\$ 8	CY	1,043	\$8,347	1,043	\$8,347	
Drainage								
1040	Channel excavation incl haul	\$ 18	CY	178	\$3,200	178	\$3,200	\$492,565
1095	Streambed sediment	\$ 50	CY	350	\$17,511	350	\$17,511	
1088	Quarry spalls	\$ 40	Ton	499	\$19,963	499	\$19,963	
3025	Precast reinf. conc. box culvert no. 1 (16' wide x 10' high x 97' long - wing walls included)	\$ 431,922	LS	1	\$431,922	1	\$431,922	
3075	Temporary stream diversion	\$ 20,000	LS	1	\$20,000	1	\$20,000	
Structure								
4006	Structure excavation class A incl haul	\$ 18	CY	1,027	\$18,480	1,027	\$18,480	\$73,980
4013	Shoring or extra excavation class A	\$ 55,500	LS	1	\$55,500	1	\$55,500	
Surfacing								
5100	Crushed surfacing base course	\$ 32	Ton	148	\$4,727	148	\$4,727	\$4,727
Hot Mix Asphalt								
5711	Planing Bituminous Pavement	\$ 30	SY	206	\$6,167	206	\$6,167	\$49,018
5767	HMA Cl. 1/2 in. PG 64-22	\$ 200	Ton	196	\$39,113	196	\$39,113	
5830	Job mix compliance price adjustment		Calc	Est	\$1,173	3%	\$1,173	
5835	Compaction price adjustment		Calc	Est	\$782	2%	\$782	
5837	Asphalt cost price adjustment		Calc	Est	\$782	2%	\$782	
Erosion Control & Planting								
6490	Erosion water pollution control prevention	\$ 50,000	Est	1	\$50,000	1	\$50,000	\$70,887
6424	TESG compliance incentive		Calc	Est	\$2,500	5%	\$2,500	
xxxx	Roadside Restoration	\$ 125,000	Acres	0.14	\$17,217	0.14	\$17,217	
6635	High visibility silt fence	\$ 5	LF	234	\$1,170	234	\$1,170	
Traffic								
6751	Beam Guardrail Type 1	\$ 30	LF	84	\$2,520	84	\$2,520	\$139,780
6757	Beam Guardrail type 31	\$ 60	LF	40	\$2,400	40	\$2,400	
6719	Beam Guardrail type 31 non-flared terminal	\$ 3,000	EA	2	\$6,000	2	\$6,000	
6806	Paint line	\$ 3	LF	536	\$1,608	536	\$1,608	
6881	Plastic drainage marking	\$ 50	EA	2	\$100	2	\$100	
6884	Raised pavement marker type 2	\$ 1,200	Hun	0.07	\$80	0	\$80	
6888	Temporary pavement markings	\$ 2	LF	536	\$1,072	536	\$1,072	
6971	Project temporary traffic control (includes Temp Detour and Construction Signing Class A)	\$ 126,000	LS	1	\$126,000	1	\$126,000	
Other								
7093	Type B progress schedule	\$ 5,000	LS	1	\$5,000	1	\$5,000	\$37,883
7037	Structure surveying	\$ 5,000	LS	1	\$5,000	1	\$5,000	
7038	Roadway surveying	\$ 5,000	LS	1	\$5,000	1	\$5,000	
7480	Roadside Cleanup	\$ 20,000	Est	1	\$20,000	1	\$20,000	
7725	Reimbursement for third party damage	\$ 5	Est	1	\$5	1	\$5	
7728	Minor change	\$ 1	Calc	(1)	(\$1)	-1	(\$1)	
7732	Aggregate compliance price adjustment	\$ 1	Calc	(1)	(\$1)	-1	(\$1)	
7736	SPCC plan	\$ 1,000	LS	1	\$1,000	1	\$1,000	
7554	Construction geotextile for permanent erosion control	\$ 5	SY	392	\$1,960	392	\$1,960	

Subtotal for Percentages							
Bid Item Subtotal:				\$917,519		\$917,519	\$917,519
Miscellaneous	30.0%			\$275,256			\$275,256
Subtotal:				\$1,192,774			\$1,192,774
Mobilization	10.0%			\$119,277			\$119,277
Subtotal:				\$1,312,052			\$1,312,052
Sales Tax	10.0%			\$131,205			\$131,205
Bid Item Total:				\$1,443,257			\$1,443,257
Construction Engineering				22.0%	\$317,517		\$317,517
Contingencies				4.0%	\$57,730		\$57,730
Construction Total:					\$1,818,504		\$1,818,504
Preliminary Engineering				20.0%	\$288,651		\$288,651
Stream design group				5.0%	\$72,163		\$72,163
Geotechnical				\$75,000			\$75,000
Preliminary Engineering Total:					\$435,814		\$435,814
Right of Way Total:				2 TCE @ \$10K each	\$20,000		\$20,000
Total Project Costs:					\$2,274,318		\$2,274,318

ASSUMPTIONS:

- This project will need approximately 25 working days to complete all work.
- Sales Tax adjusted to 10% per Washington State Department of Revenue website 12/18/17
- Preliminary Engineering adjusted to 20% based on similar Fish Passage project PE costs.
- Construction Engineering adjusted to 22% and Contingencies adjusted to 4% per Plans Preparation Manual dated November 2013.
- Miscellaneous adjusted to 30% due to limited maturity of project and to capture costs and risks not identified during the scoping phase.
- Wing walls are incidental to the Precast Reinf. Conc. Box Culvert No. 1, and included in the Lump Sum cost.
- Culvert estimated at 97 ft in length which is based on matching current conditions (existing culvert = 97 ft long, per WDFW Culvert Assessment Report)
- There are 7 known utilities (aerial & buried) within the project limits. All known utilities hold permit or franchise with WSDOT and potential impact/relocation costs will be the responsibility of utility.
- Right of Way costs estimated for two temporary construction easements
- Removal of Raised Pavement Markers, Pavement Markings, Plastic Lanes, and Paint Lines are incidental to the Planing Bituminous Pavement work. Incidental is defined as "liable to happen as a consequence of."

Exhibit B
SCOPE OF WORK
SR 516/Barnes Creek – Fish Passage

This project will remove the existing fish barrier and replace it with a fish passable structure.

This agreement provides for the design of this project including:

- Survey
- Preliminary Hydraulic Design
- Preliminary Right of Way Plans
- Utility Coordination
- Preliminary Public Outreach
- Environmental Permitting
- PS&E Package for Advertisement

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing:
2021 Preliminary Annual Budget

ATTACHMENTS:

1. Draft Ordinance No. 20-062
2. Appendix A

FOR AGENDA OF: October 22, 2020

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: October 13, 2020

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

☒ Legal /s/ TG

☒ Finance *Anthony W. Rose*

☐ Courts _____

☐ Police _____

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

Purpose and Recommendation

The purpose of this agenda item is to:

- Present to the City Council the 2021 Preliminary Annual Budget for review and consideration, and;
- To hold a preliminary public hearing on the 2021 Preliminary Annual Budget, and;
- To consider for first reading the Draft Ordinance No. 20-062— adopting the final annual budget for the City of Des Moines, Washington for the fiscal year 2021.

The attached Draft Ordinance Appendix A presents the budget summary of sources and uses by funds to be adopted as the final budget by City Council later in the year.

Suggested Motion

Motion 1: “I move to pass Draft Ordinance No. 20-062 to a second reading on November 12, 2020 for further City Council consideration and approval.”

Background

In accordance with state law, the 2021 Preliminary Annual Budget was presented to the City Council and made available to the public on October 8, 2020.

Budget adoption requires two public hearings. The first public hearing is scheduled for October 22, 2020 and the final public hearing is scheduled for November 12, 2020. Notice of these public hearings were provided to the public on October 2, 2020 and October 9, 2020

Recommendation

Staff recommends that the City Council authorize the second reading of Draft Ordinance No. 20-062 on November 12, 2020 further City Council consideration and approval.

CITY ATTORNEY'S FIRST DRAFT 10/13/2020**DRAFT ORDINANCE NO. 20-062**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting the final annual budget for the City of Des Moines, Washington, for the fiscal year ending December 31, 2021, in summary form, ratifying and confirming revenues and expenditures previously implemented for fiscal year 2020, as such revenues and expenditures form the basis for development of the budget for fiscal year 2021, approving revenues and expenditures for fiscal year 2021, and temporarily suspending the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2020 budget might be inconsistent.

WHEREAS, the City Manager for the City of Des Moines has prepared and submitted the preliminary annual budget for the fiscal year ending December 31, 2021 to the City Council and has filed these budgets with the City Clerk, and

WHEREAS, the City Council finds that the City Manager's proposed budget for fiscal year 2021 reflects revenues and expenditures that are intended to ensure provision of vital municipal services at acceptable levels, and

WHEREAS, the City Council finds that the City Manager's proposed annual budget for fiscal year 2021 appropriately relies upon anticipated year-end balances derived from revenues and expenditures previously approved and authorized by the City Council as part of the City's budget for fiscal year 2020, and

WHEREAS, the City Council finds that the fund adjustments and transfers proposed by the City Manager for fiscal year 2020 are necessary and in the public's interest, and

WHEREAS, the Des Moines City Council scheduled the preliminary public hearing for October 22, 2020, to take public comment with respect to the proposed 2021 annual budget, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and the preliminary public hearing was held on the 22nd day of October, 2020, and all persons wishing to be heard were heard; now therefore,

Ordinance No. _____
Page 2 of 3

WHEREAS, the Des Moines City Council scheduled the final public hearing for November 12, 2020, to take public comment with respect to the proposed 2021 annual budget, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and the final public hearing was held on the 12th day of November, 2020, and all persons wishing to be heard were heard; now therefore,

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

Sec. 1. The findings set forth in the preamble to this Ordinance are hereby adopted and incorporated by reference.

Sec. 2. Based on the findings adopted herein, the City Council temporarily suspends the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2021 annual budget might be inconsistent.

Sec. 3. The fund adjustments and transfers proposed by the City Manager for fiscal year 2020 which are incorporated in the annual budget for fiscal year 2021, are hereby authorized and approved by the City Council.

Sec. 4. Because the City's annual budget for fiscal year 2021 rely upon anticipated year-end fund balances or shortages derived from revenues collected and expenditures incurred in fiscal year 2020, the City Council hereby ratifies and confirms all revenues, from whatever source derived, and expenditures incurred by the City to the extent such revenues and expenditures are in accordance with the City's annual budget for fiscal year 2020 or any subsequent budget amendments formally approved by the City Council.

Sec. 5. The City Council hereby adopts, affirms and approves any and all revenues, from whatever source derived, and expenditures as referenced in the attached annual budget for fiscal year 2021.

Sec. 6. The final annual budget for the City of Des Moines' fiscal year 2021 is hereby adopted and approved in summary

Ordinance No. _____
 Page 3 of 3

form as set forth in the attached Appendix "A", which is by this reference incorporated herein

Sec 7. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with the other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec 8. Effective date. This Ordinance shall take effect and be in full force (5) five days after its final passage by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this 12th day of November, 2020 and signed in authentication thereof this 12th day of November, 2020.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

Published: _____

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ORDINANCE NO. 20-062
2021 ANNUAL BUDGET
SUMMARY OF SOURCES AND USES

		Estimated		
		Beginning Fund		
		Balance	Revenue	Total Sources
	Funds			
	001 General Fund	\$ 5,074,059	\$ 23,702,622	\$ 28,776,681
Special Revenue	101 Streets	\$ 640,253	\$ 1,714,365	\$ 2,354,618
	102 Street Pavement	1,601,930	630,074	2,232,004
	105 Development	4,272,119	2,642,859	6,914,978
	107 Police Drug Seizure	22,718	1,250	23,968
	111 Hotel-Motel Tax	74,489	70,250	144,739
	113 Affordable Housing Sales Tax	-	30,000	30,000
	120 Traffic In Lieu	910,771	1,186,000	2,096,771
	121 Traffic Impact - City-wide	862,230	1,492,500	2,354,730
	122 Traffic Impact - Pacific Ridge	598,158	40,250	638,408
	130 REET 1	850,348	607,500	1,457,848
	131 REET 2	385,950	605,000	990,950
	135 Park Levy	10,806	182,750	193,556
	136 Park In Lieu	404,611	136,805	541,416
	139 One Time Sales Tax	868,590	110,000	978,590
	140 Redondo Zone	8,429	88,550	96,979
	141 Waterfront Zone	131,240	190,350	321,590
	142 PBPW Automation Fee	391,031	127,000	518,031
	151 Urban Forestry	-	5,000	5,000
	180 Abatement	49,375	2,350	51,725
	190 Automated Speed Enforce (ASE)	276,011	112,000	388,011
	199 Transportation Benefit District	1,106,217	-	1,106,217
Total Special Revenue Funds		\$ 13,465,276	\$ 9,974,853	\$ 23,440,129
Debt Service	201 REET 1 Debt Service	\$ 16,917	\$ 19,242	\$ 36,159
	202 REET 2 Debt Service	31,869	246,203	278,072
	208 2018 LTGO Debt Service	113,392	230,950	344,342
	Total Debt Service	\$ 162,178	\$ 496,395	\$ 658,573
Capital Project	310 Municipal Capital Improvement	\$ 4,094,185	\$ 4,070,000	\$ 8,164,185
	319 Transportation Capital Improvement	1,600,974	1,393,000	2,993,974
	Total Capital Project Funds	\$ 5,695,159	\$ 5,463,000	\$ 11,158,159
Enterprise	401 Marina	\$ 3,069,761	\$ 4,514,966	\$ 7,584,727
	450 Surface Water Management	\$ 8,017,023	\$ 4,525,940	\$ 12,542,963
Internal Service	500 Equipment Rental Operations	\$ 333,064	555,864	888,928
	501 Equipment Rental Replacement	2,560,074	635,829	3,195,903
	506 Facility Repair & Replacement	637,750	161,770	799,520
	511 Computer Replacement	1,064,159	153,800	1,217,959
	520 Self Insurance	793,350	699,147	1,492,497
	530 Unemployment Insurance	471,560	36,130	507,690
Total Internal Service Funds		\$ 5,859,957	\$ 2,242,540	\$ 8,102,497
Total Budget		\$ 41,343,413	\$ 50,920,316	\$ 92,263,729

		Estimated Ending Fund		
Funds		Expenditure	Balance	Total Uses
001	General Fund	\$ 24,674,595	\$ 4,102,086	\$ 28,776,681
Special Revenue	101 Streets	\$ 1,708,734	\$ 645,884	\$ 2,354,618
	102 Street Pavement	618,000	1,614,004	2,232,004
	105 Development	3,112,496	3,802,482	6,914,978
	107 Police Drug Seizure	1,000	22,968	23,968
	111 Hotel-Motel Tax	70,250	74,489	144,739
	113 Affordable Housing Sales Tax	30,000	-	30,000
	120 Traffic In Lieu	-	2,096,771	2,096,771
	121 Traffic Impact - City-wide	552,000	1,802,730	2,354,730
	122 Traffic Impact - Pacific Ridge	-	638,408	638,408
	130 REET 1	111,094	1,346,754	1,457,848
	131 REET 2	331,203	659,747	990,950
	135 Park Levy	100,000	93,556	193,556
	136 Park In Lieu	150,000	391,416	541,416
	139 One Time Sales Tax	378,000	600,590	978,590
	140 Redondo Zone	71,075	25,904	96,979
	141 Waterfront Zone	126,116	195,474	321,590
	142 PBPW Automation Fee	93,190	424,841	518,031
	151 Urban Forestry	5,000	-	5,000
	180 Abatement	1,000	50,725	51,725
	190 Automated Speed Enforce (ASE)	183,000	205,011	388,011
	199 Transportation Benefit District	-	1,106,217	1,106,217
Total Special Revenue Funds		\$ 7,642,158	\$ 15,797,971	\$ 23,440,129
Debt Service	201 REET 1 Debt Service	\$ 14,076	\$ 22,083	\$ 36,159
	202 REET 2 Debt Service	241,657	36,415	278,072
	208 2018 LTGO Debt Service	230,600	113,742	344,342
	Total Debt Service	\$ 486,333	\$ 172,240	\$ 658,573
Capital Project	310 Municipal Capital Improvement	\$ 8,024,000	\$ 140,185	\$ 8,164,185
	319 Transportation Capital Improvement	1,465,000	1,528,974	2,993,974
	Total Capital Project Funds	\$ 9,489,000	\$ 1,669,159	\$ 11,158,159
Enterprise	401 Marina	\$ 4,570,846	\$ 3,013,881	\$ 7,584,727
	450 Surface Water Management	\$ 6,195,106	\$ 6,347,857	\$ 12,542,963
Internal Service	500 Equipment Rental Operations	573,092	315,836	888,928
	501 Equipment Rental Replacement	290,000	2,905,903	3,195,903
	506 Facility Repair & Replacement	270,000	529,520	799,520
	511 Computer Replacement	263,461	954,498	1,217,959
	520 Self Insurance	746,451	746,046	1,492,497
	530 Unemployment Insurance	120,000	387,690	507,690
Total Internal Service Funds		\$ 2,263,004	\$ 5,839,493	\$ 8,102,497
Total Budget		\$ 55,321,042	\$ 36,942,687	\$ 92,263,729

Bonnie Wilkins

From: Alice Thorell <aheartgrove@gmail.com>
Sent: Thursday, October 22, 2020 2:57 PM
To: _CityCouncil
Cc: Michael Matthias
Subject: Support for proposals

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the Des Moines City Council:

I understand the City Council will soon discuss a proposal of bodycams for Des Moines police officers and a budget request of \$140k. I am writing today in support of this proposal. Our human memories are notoriously flawed. Body cameras help to establish an objective, factual record of what occurs during police interactions with citizens. This not only keeps police officers accountable when they use force, but it also protects officers from false allegations. Bodycams can establish transparency and build community trust.

I also support the formation of a rapid-response mental health crisis team. According to the Washington Post, about 20% of fatal police shootings involve someone with mental health problems. No doubt some involved dangerous individuals with weapons who were threatening citizens and/or officers. This is not an easy or simple problem to solve. But families who are seeking help for their unarmed loved ones during a mental health crisis should have options other than calling armed police officers. This [Crosscut article](#) about a Des Moines family demonstrates the need for an integrated mental health crisis support system in our community.

I know these things cost money and that doesn't come out of thin air, but these reforms are timely and important. They are good for our families and beneficial to the community.

Regards,

Alice Thorell
Des Moines resident for 14 years

Bonnie Wilkins

From: noreply@civicplus.com
Sent: Wednesday, October 21, 2020 2:16 PM
To: Bonnie Wilkins; Taria Keane; Matt Pina; JC Harris; Luisa Bangs; Jeremy Nutting; Anthony Martinelli; Matt Mahoney; Traci Buxton
Subject: Online Form Submittal: Council / Public Meeting Comments

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Council / Public Meeting Comments

Your name and the subject of your comment will be read into the record at the next available City Council meeting.

First Name	Patrick
Last Name	Nardo
Address1	1224 S 2445h Pl
City	Des Moines
State	WA
Zip	98198
Phone	2533447018
Email	pamate974@gmail.com
Subject	Truth in Proclamations
Comment	As a sitting Council Member, if you do not tell the truth, the whole truth, and nothing but the truth, you will have told a lie. Ultimately it will ensnare you. Your name recognition strategy will come back and adversely affect future candidacy.
Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?	No

Email not displaying correctly? [View it in your browser.](#)

Progressive Mind Body Therapeutics LLC

Arubaj Mind Body Wellness Center

22007 Marine View Drive S, Suite 104 Des Moines, WA 98198

206 592 1423, Fax 206 592 1428 admin@arubajwellness.com

October 20, 2020

City of Des Moines, WA

21630 11th Avenue, Suite A

Des Moines WA 98198-6398

Matt Pina, Mayor

Matt Mahoney, Deputy Mayor

Eric Lane, MA

Economic Relief & Resource Coordinator / Land Use Planner II

RECEIVED

OCT 22 2020

**CITY OF DES MOINES
CITY CLERK**

Gentlemen,

I am writing to thank you and your administrative staff for consideration and subsequent decision to grant my company Progressive Mind Body Therapeutics LLC an award of \$8500.00.

As you know, my business as well as other similar business in Des Moines and surrounding area have been significantly impacted financially by shut down and lost revenue caused by the COVID-19 pandemic. This money was much needed and well received.

Prior to receiving these funds, we were unsure of our survivability in business until the end of 2020. This GRO Grant provided us the ability to sustain operational viability until the first of the year 2021. Hopefully, fear and the restrictive measures that are affecting our day to day lives will have eased by then and the return to a more sustainable existence will be forthcoming.

With our sincere appreciation in granting Progressive Mind Body Therapeutics LLC, the opportunity to remain a functional part of Des Moines service business community.

Yours in Health and Wellness,



John T Jackson, LMT, CST-D

Arubajwellness.com



RECOMMENDED BUDGET 2021

CHALLENGES

- COVID-19 PANDEMIC:
 - IMPLEMENTING PROTOCOLS TO PREVENT THE SPREAD OF THE VIRUS.
 - CARRY ON GOVERNMENT BUSINESS AND ESSENTIAL FUNCTIONS.
- WORSENING ECONOMIC CONDITIONS.
- DECLINING REVENUES.

RIGOROUS DISCIPLINE AND LESSONS LEARNED FROM 2014

- STRUCTURAL EXPENDITURES ARE PAID FOR BY STRUCTURAL REVENUE.
- ONE TIME MONEY IS USED FOR ONE-TIME PAYMENTS.
- NECESSITY OF ADEQUATE CONTINGENCY FUND.
- THESE BECAME CULTURAL FOUNDATIONS TO THE BUDGET GOING FORWARD.



RESULTS OF RECOVERY FROM 2014 CRISIS

- ▶ BALANCED, SOLVENT BUDGET FOR LAST 5 YEARS.
- ▶ SIGNIFICANT BOND RATING UPGRADE FROM STANDARD & POORS TO AA+ AND UPGRADE FROM MOODY'S:
 - ▶ RESULTING IN SAVINGS OF HUNDREDS OF THOUSANDS OF DOLLARS IN BOND ISSUANCE INTEREST COSTS.
- ▶ CONSISTENT 5 YEAR FORECAST PROJECTING SUSTAINABLE FINANCIAL CONDITIONS.



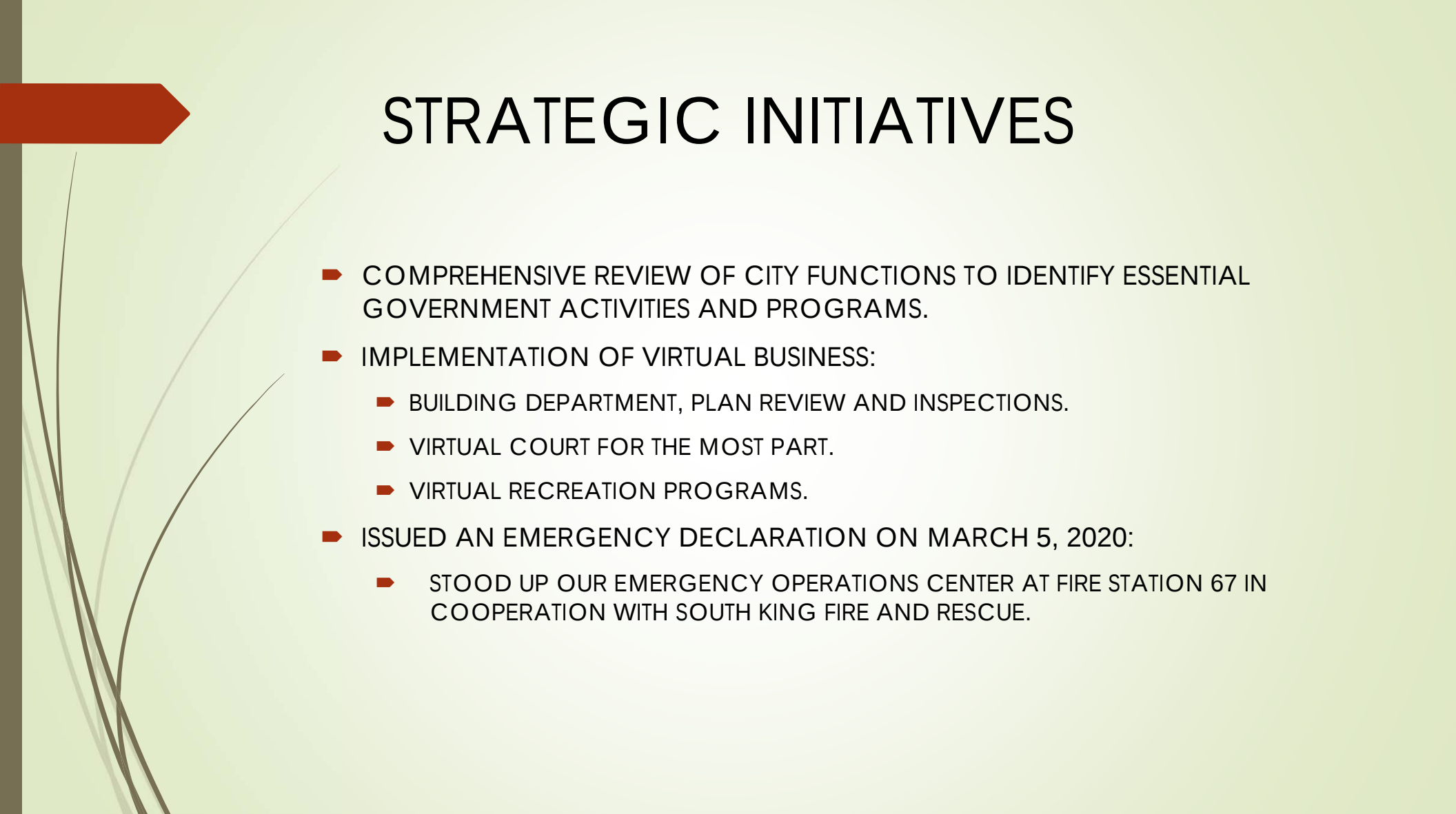
STEPS TAKEN TO AVOID FINANCIAL RISK

- FROZE VACANT POSITIONS.
- INSTITUTED WORKSHARE.
- CUT SEVERAL POSITIONS.
- ESTABLISHED EARLY RETIREMENT BENEFITS.
- PUT POLICE OFFICER IN TRAINING PROGRAM ON HOLD.
- TOOK ADVANTAGE OF FEDERAL AND STATE STAND BY PROGRAM.
- DOCUMENTED COVID-19 RELATED COSTS TO QUALIFY FOR FEDERAL CARES ACT RESOURCES.
- STRATEGIC USE OF ONE TIME REVENUES AND FUND BALANCE.



STRATEGIC INITIATIVES

- E.A.T.S. PROGRAM IMPLEMENTATION.
- GRO BUSINESS ASSISTANCE PROGRAM FOR LOCAL BUSINESSES AND SOCIAL PROGRAMS.
- INSTITUTED CONSERVATIVE BUDGET ASSUMPTIONS RELATIVE TO ANTICIPATED DECREASE IN REVENUES.
- COMMITTED TO ACCOMPLISHING APPROPRIATE CONTINGENT RESERVES BASED ON NATIONAL PROTOCOLS OF GOVERNMENT FINANCE OFFICERS ASSOCIATION:
 - 16.67% OF TOTAL FUND SHOULD REMAIN IN CONTINGENCY RESERVE.



STRATEGIC INITIATIVES

- COMPREHENSIVE REVIEW OF CITY FUNCTIONS TO IDENTIFY ESSENTIAL GOVERNMENT ACTIVITIES AND PROGRAMS.
- IMPLEMENTATION OF VIRTUAL BUSINESS:
 - BUILDING DEPARTMENT, PLAN REVIEW AND INSPECTIONS.
 - VIRTUAL COURT FOR THE MOST PART.
 - VIRTUAL RECREATION PROGRAMS.
- ISSUED AN EMERGENCY DECLARATION ON MARCH 5, 2020:
 - STOOD UP OUR EMERGENCY OPERATIONS CENTER AT FIRE STATION 67 IN COOPERATION WITH SOUTH KING FIRE AND RESCUE.



2021 BUDGET OVERVIEW

- CLOSURE OF CITY FACILITIES – REDUCTION OF PROGRAM FEES AND EVENT REVENUE. ASSUME FACILITIES CLOSED POTENTIALLY THROUGH JUNE 2021.
- 2021 PROPERTY TAX REVENUE DOES NOT INCLUDE THE ADDITIONAL 1% PROPERTY TAX LEVY. THE FORGONE 1% PROPERTY TAX INCREASE OF \$52,528 WILL BE BANKED AND AVAILABLE FOR FUTURE LEVY CAPACITY INCREASES.
- SALES AND B&O TAXES FOR 2021 ARE 7.6% LESS THAN AMOUNT ORIGINALLY BUDGETED IN 2020.
- RETAIN \$300,000 OF THE \$400,000 PLANNED ONE-TIME SALES AND B&O TAX REVENUE IN GENERAL FUND BALANCE TO ENSURE CONTINGENCY RESERVES OF 16.67%.



2021 BUDGET OVERVIEW

- REVIEW OF ESSENTIAL FUNCTIONS.
- STAFFING OVERVIEW – TOTAL DECREASE OF 9.0 FTE'S (4 OF THOSE WERE FUNDED BY ONE-TIME MONIES) AND INCREASE OF 2 HALF TIME POSITIONS:
 - STAFF REDUCTIONS:
 - 2.0 FTE'S IN COURT STAFFING DUE TO CHANGES IN MUNICIPAL COURT OPERATIONS.
 - 3.0 FTE'S FROM PUTTING THE 'HIRE AHEAD PROGRAM' ON HOLD – REDUCTION IN RED LIGHT PROGRAM REVENUE.
 - 2.0 FTE'S IN POLICE DEPARTMENT REORGANIZATION THAT ELIMINATED THE EVIDENCE TECHNICIAN AND THE MANAGEMENT ANALYST.
 - 1.0 FTE FOR THE LAYOFF OF THE ADMINISTRATIVE ASSISTANT, PARKS & RECREATION AND SENIOR SERVICES.
 - 1.0 FTE FOR THE OFFICE MANAGER POSITION AT THE MARINA.
 - STAFFING ADDITIONS:
 - 0.5 FTE IN LIMITED TERM HR POSITION – PROVIDES FULL-TIME ASSISTANCE FOR THE IMPLEMENTATION OF THE HR/PAYROLL SYSTEM.
 - 0.5 FTE FOR A RECORDS SPECIALIST RELATED TO THE BODY CAMERA PROGRAM.



2021 BUDGET OVERVIEW

- BODY CAMERA PROGRAM AND CLOUD STORAGE.
- HUMAN SERVICES ALLOCATION - \$175,000 FOR 2021 (\$25,000 INCREASE).

2021 ANNUAL BUDGET

Funds	Total City Budget	%
General Fund	\$ 28,776,681	31.19%
Special Revenue Funds	\$ 23,440,129	25.41%
Debt Service Funds	\$ 658,573	0.71%
Municipal Capital Improvements Fund	\$ 8,164,185	8.85%
Transportation Capital Improvements Fund	\$ 2,993,974	3.25%
Marina Fund	\$ 7,584,727	8.22%
Surface Water Management Fund	\$ 12,542,963	13.59%
Internal Service Funds	\$ 8,102,497	8.78%
Total City Budget	\$ 92,263,729	100.00%

2021 REVENUE SOURCES BY FUND

(PAGES 24 AND 25 IN BUDGET DOCUMENT)

	Funds	Taxes	Licenses & Permits	Inter-Governmental	Charges for Services	Fines and Forfeits	Miscellaneous	Other Financing Sources	Transfers In	Subtotal	Beginning Fund Balance	TOTAL SOURCES
	001 General Fund	\$ 14,321,858	\$ 1,372,250	\$ 885,986	\$ 5,374,426	\$ 1,512,700	\$ 235,402	\$ -	\$ -	\$ 23,702,622	\$ 5,074,059	\$ 28,776,681
Special Revenue	101 Streets	\$ 488,435	\$ 728,430	\$ -	\$ -	\$ -	\$ 2,500	\$ -	\$ 495,000	\$ 1,714,365	\$ 640,253	\$ 2,354,618
	102 Street Pavement	-	617,574	-	-	-	12,500	-	-	630,074	1,601,930	2,232,004
	105 Development	-	994,150	67,000	1,558,309	1,000	22,400	-	-	2,642,859	4,272,119	6,914,978
	107 Police Drug Seizure	-	-	-	-	-	1,250	-	-	1,250	22,718	23,968
	111 Hotel-Motel Tax	70,000	-	-	-	-	250	-	-	70,250	74,489	144,739
	113 Affordable Housing Sales Tax	30,000	-	-	-	-	-	-	-	30,000	-	30,000
	120 Traffic In Lieu	-	-	-	1,185,000	-	1,000	-	-	1,186,000	910,771	2,096,771
	121 Traffic Impact - City-wide	-	-	-	1,490,000	-	2,500	-	-	1,492,500	862,230	2,354,730
	122 Traffic Impact - Pacific Ridge	-	-	-	39,000	-	1,250	-	-	40,250	598,158	638,408
	130 REET 1	600,000	-	-	-	-	7,500	-	-	607,500	850,348	1,457,848
	131 REET 2	600,000	-	-	-	-	5,000	-	-	605,000	385,950	990,950
	135 Park Levy	-	-	182,500	-	-	250	-	-	182,750	10,806	193,556
	136 Park In Lieu	-	-	-	135,305	-	1,500	-	-	136,805	404,611	541,416
	139 One Time Sales Tax	-	-	-	-	-	10,000	-	100,000	110,000	868,590	978,590
	140 Redondo Zone	-	-	-	-	200	88,350	-	-	88,550	8,429	96,979
	141 Waterfront Zone	-	-	-	-	750	189,600	-	-	190,350	131,240	321,590
	142 PBPW Automation Fee	-	-	-	125,000	-	2,000	-	-	127,000	391,031	518,031
	151 Urban Forestry	-	-	-	5,000	-	-	-	-	5,000	-	5,000
	180 Abatement	-	-	-	-	200	2,150	-	-	2,350	49,375	51,725
	190 Automated Speed Enforce (ASE)	-	-	-	-	110,000	2,000	-	-	112,000	276,011	388,011
	199 Transportation Benefit District	-	-	-	-	-	-	-	-	-	1,106,217	1,106,217
	Total Special Revenue Funds	\$ 1,788,435	\$ 2,340,154	\$ 249,500	\$ 4,537,614	\$ 112,150	\$ 352,000	\$ -	\$ 595,000	\$ 9,974,853	\$ 13,465,276	\$ 23,440,129

2021 REVENUE SOURCES BY FUND (CONTINUED)

		Funds	Taxes	Licenses & Permits	Inter-Governmental	Charges for Services	Fines and Forfeits	Miscellaneous	Other Financing Sources	Transfers In	Subtotal	Beginning Fund Balance	TOTAL SOURCES
Debt Service	201	REET 1 Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 19,242	\$ 19,242	\$ 16,917	\$ 36,159
	202	REET 2 Debt Service	-	-	-	-	-	-	-	246,203	246,203	31,869	278,072
	208	2018 LTGO Debt Service	-	-	-	-	-	350	-	230,600	230,950	113,392	344,342
		Total Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 350	\$ -	\$ 496,045	\$ 496,395	\$ 162,178	\$ 658,573
Capital Project	310	Municipal Capital Improvement	\$ -	\$ -	\$ 3,266,000	\$ -	\$ -	\$ -	\$ -	\$ 804,000	\$ 4,070,000	\$ 4,094,185	\$ 8,164,185
	319	Transportation Capital Improvement	-	-	716,000	-	-	-	-	677,000	1,393,000	1,600,974	2,993,974
		Total Capital Project Funds	\$ -	\$ -	\$ 3,982,000	\$ -	\$ -	\$ -	\$ -	\$ 1,481,000	\$ 5,463,000	\$ 5,695,159	\$ 11,158,159
Enterprise	401	Marina	\$ -	\$ -	\$ -	\$ 4,355,907	\$ 20,000	\$ 89,059	\$ -	\$ 50,000	\$ 4,514,966	\$ 3,069,761	\$ 7,584,727
	450	Surface Water Management	\$ -	\$ -	\$ -	\$ 4,413,440	\$ -	\$ 47,500	\$ 65,000	\$ -	\$ 4,525,940	\$ 8,017,023	\$ 12,542,963
Internal Service	500	Equipment Rental Operations	\$ -	\$ -	\$ -	\$ 553,364	\$ -	\$ 2,500	\$ -	\$ -	\$ 555,864	\$ 333,064	\$ 888,928
	501	Equipment Rental Replacement	-	-	-	379,329	-	6,500	-	250,000	635,829	2,560,074	3,195,903
	506	Facility Repair & Replacement	-	-	-	109,270	-	1,500	-	51,000	161,770	637,750	799,520
	511	Computer Replacement	-	-	-	149,800	-	4,000	-	-	153,800	1,064,159	1,217,959
	520	Self Insurance	-	-	-	694,147	-	5,000	-	-	699,147	793,350	1,492,497
	530	Unemployment Insurance	-	-	-	34,880	-	1,250	-	-	36,130	471,560	507,690
		Total Internal Service Funds	\$ -	\$ -	\$ -	\$ 1,920,790	\$ -	\$ 20,750	\$ -	\$ 301,000	\$ 2,242,540	\$ 5,859,957	\$ 8,102,497
		Total Budget	\$ 16,110,293	\$ 3,712,404	\$ 5,117,486	\$ 20,602,177	\$ 1,644,850	\$ 745,061	\$ 65,000	\$ 2,923,045	\$ 50,920,316	\$ 41,343,413	\$ 92,263,729
		% of Total Revenue	31.64%	7.29%	10.05%	40.46%	3.23%	1.46%	0.13%	5.74%	100.00%		

2021 EXPENDITURE CATEGORIES BY FUND

(PAGES 26 AND 27 IN BUDGET DOCUMENT)

	Funds	Salaries & Wages	Personnel Benefits	Supplies	Services & Charges	Interfund Charges	Transfers Out	Capital Outlay	Debt Service	Subtotal	Ending Fund Balance	TOTAL USES
	001 General Fund	\$ 10,746,246	\$ 3,955,645	\$ 753,967	\$ 4,619,564	\$ 3,899,425	\$ 679,748	\$ 20,000	\$ -	\$ 24,674,595	\$ 4,102,086	\$ 28,776,681
Special Revenue	101 Streets	\$ 394,009	\$ 149,126	\$ 97,713	\$ 677,550	\$ 390,336	\$ -	\$ -	\$ -	\$ 1,708,734	\$ 645,884	\$ 2,354,618
	102 Street Pavement	-	-	-	143,000	-	475,000	-	-	618,000	1,614,004	2,232,004
	105 Development	1,574,007	639,493	35,822	388,065	475,109	-	-	-	3,112,496	3,802,482	6,914,978
	107 Police Drug Seizure	-	-	500	500	-	-	-	-	1,000	22,968	23,968
	111 Hotel-Motel Tax	-	-	-	70,250	-	-	-	-	70,250	74,489	144,739
	113 Affordable Housing Sales Tax	-	-	-	30,000	-	-	-	-	30,000	-	30,000
	120 Traffic In Lieu	-	-	-	-	-	-	-	-	-	2,096,771	2,096,771
	121 Traffic Impact - City-wide	-	-	-	-	-	552,000	-	-	552,000	1,802,730	2,354,730
	122 Traffic Impact - Pacific Ridge	-	-	-	-	-	-	-	-	-	638,408	638,408
	130 REET 1	-	-	-	-	-	111,094	-	-	111,094	1,346,754	1,457,848
	131 REET 2	-	-	-	-	-	331,203	-	-	331,203	659,747	990,950
	135 Park Levy	-	-	-	-	-	100,000	-	-	100,000	93,556	193,556
	136 Park In Lieu	-	-	-	-	-	150,000	-	-	150,000	391,416	541,416
	139 One Time Sales Tax	-	-	-	-	-	378,000	-	-	378,000	600,590	978,590
	140 Redondo Zone	-	-	9,000	31,096	30,979	-	-	-	71,075	25,904	96,979
	141 Waterfront Zone	-	-	10,000	60,304	55,812	-	-	-	126,116	195,474	321,590
	142 PBPW Automation Fee	-	-	-	-	93,190	-	-	-	93,190	424,841	518,031
	151 Urban Forestry	-	-	5,000	-	-	-	-	-	5,000	-	5,000
	180 Abatement	-	-	-	1,000	-	-	-	-	1,000	50,725	51,725
	190 Automated Speed Enforce (ASE)	-	-	-	118,000	20,000	45,000	-	-	183,000	205,011	388,011
	199 Transportation Benefit District	-	-	-	-	-	-	-	-	-	1,106,217	1,106,217
	Total Special Revenue Funds	\$ 1,968,016	\$ 788,619	\$ 158,035	\$ 1,519,765	\$ 1,065,426	\$ 2,142,297	\$ -	\$ -	\$ 7,642,158	\$ 15,797,971	\$ 23,440,129

2021 EXPENDITURE CATEGORIES BY FUND (CONTINUED)

		Funds	Salaries & Wages	Personnel Benefits	Supplies	Services & Charges	Interfund Charges	Transfers Out	Capital Outlay	Debt Service	Subtotal	Ending Fund Balance	TOTAL USES
Debt Service	201	REET 1 Debt Service	\$ -	\$ -	\$ -	\$ 500	\$ 428			\$ 13,148	\$ 14,076	\$ 22,083	\$ 36,159
	202	REET 2 Debt Service	-	-	-	-	6,567			235,090	241,657	36,415	278,072
	208	2018 LTGO Debt Service	-	-	-	-	-			230,600	230,600	113,742	344,342
		Total Debt Service	\$ -	\$ -	\$ -	\$ 500	\$ 6,995	\$ -	\$ -	\$ 478,838	\$ 486,333	\$ 172,240	\$ 658,573
Capital Project													
	310	Municipal Capital Improvement	\$ -	\$ -		\$ -	\$ -	\$ -	\$ 8,024,000		\$ 8,024,000	\$ 140,185	\$ 8,164,185
	319	Transportation Capital Improvement	-	-		-	-	-	1,465,000		1,465,000	1,528,974	2,993,974
		Total Capital Project Funds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,489,000	\$ -	\$ 9,489,000	\$ 1,669,159	\$ 11,158,159
Enterprise	401	Marina	\$ 697,627	\$ 295,124	\$ 1,188,643	\$ 393,310	\$ 735,996	\$ -	\$ 480,000	\$ 780,146	\$ 4,570,846	\$ 3,013,881	\$ 7,584,727
	450	Surface Water Management	\$ 947,951	\$ 424,401	\$ 116,650	\$ 1,281,487	\$ 484,617	\$ -	\$ 2,940,000	\$ -	\$ 6,195,106	\$ 6,347,857	\$ 12,542,963
Internal Service	500	Equipment Rental Operations	\$ 135,446	\$ 66,674	\$ 292,793	\$ 49,950	\$ 28,229	\$ -	\$ -	\$ -	\$ 573,092	\$ 315,836	\$ 888,928
	501	Equipment Rental Replacement	-	-	-	-	-	-	290,000	-	290,000	2,905,903	3,195,903
	506	Facility Repair & Replacement	-	-	-	-	-	-	270,000	-	270,000	529,520	799,520
	511	Computer Replacement	-	-	-	-	-	101,000	162,461	-	263,461	954,498	1,217,959
	520	Self Insurance	-	-	-	729,575	16,876	-	-	-	746,451	746,046	1,492,497
	530	Unemployment Insurance	-	120,000	-	-	-	-	-	-	120,000	387,690	507,690
		Total Internal Service Funds	\$ 135,446	\$ 186,674	\$ 292,793	\$ 779,525	\$ 45,105	\$ 101,000	\$ 722,461	\$ -	\$ 2,263,004	\$ 5,839,493	\$ 8,102,497
		Total Budget	\$ 14,495,286	\$ 5,650,463	\$ 2,510,088	\$ 8,594,151	\$ 6,237,564	\$ 2,923,045	\$ 13,651,461	\$ 1,258,984	\$ 55,321,042	\$ 36,942,687	\$ 92,263,729
		% of Total Expenditures	26.20%	10.21%	4.54%	15.54%	11.28%	5.28%	24.67%	2.28%	100.00%		

2021-2025 General Fund Financial Forecast

(page 49 of budget document)

	PRE-COVID	IMPACT OF COVID	CONTINUATION OF COVID				
	BUDGET 2020	REVISED BUDGET 2020	BUDGET 2021	FORECAST			
				2022	2023	2024	2025
BEGINNING FUND BALANCE	\$ 4,500,950	\$ 5,837,998	\$ 5,074,059	\$ 4,153,086	\$ 4,038,087	\$ 4,113,372	\$ 4,268,474
Operating Revenues	25,195,977	21,688,306	23,134,622	24,219,513	24,821,416	25,605,559	26,283,097
Operating Expenditures	(24,760,709)	(22,652,650)	(23,807,633)	(24,219,512)	(24,646,131)	(25,385,457)	(25,848,446)
Net Activity ("Operating revenues over (under) operating expenditures")	435,268	(964,344)	(673,011)	1	175,285	220,102	434,651
ONE-TIME ACTIVITIES							
Total One-Time Revenues	961,000	2,089,030	568,000	503,600	503,600	258,000	200,200
One-time Expenditures							
Total One-Time Expenditures	(1,454,315)	(1,888,625)	(815,962)	(618,600)	(603,600)	(323,000)	(240,200)
ENDING FUND BALANCE	\$ 4,442,903	\$ 5,074,059	\$ 4,153,086	\$ 4,038,087	\$ 4,113,372	\$ 4,268,474	\$ 4,663,125
GFOA Target of 60 days (approx. 16.67%)	4,127,610	3,776,197	3,968,732	4,037,393	4,108,510	4,231,756	4,308,936
Reserve (shortfall) surplus to GFOA Target	315,293	1,297,862	184,354	694	4,862	36,718	354,189
Ending Reserve - % Total Operating Expenditures	17.94%	22.40%	17.44%	16.67%	16.69%	16.81%	18.04%



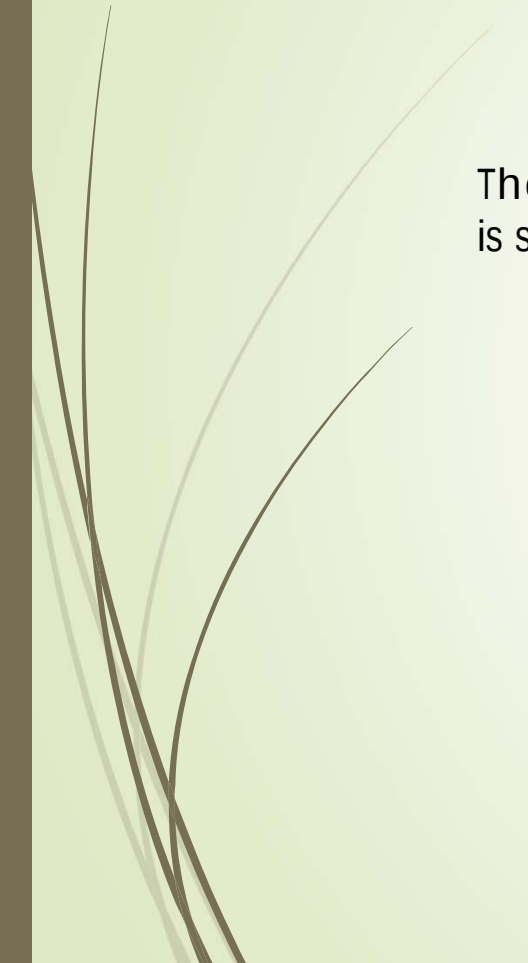
NEXT STEPS – BUDGET CALENDAR

- NOVEMBER 12, 2020:
 - PUBLIC HEARING ON GENERAL PROPERTY TAX LEVY AND REVENUE SOURCES.
 - PUBLIC HEARING ON 2021 ANNUAL BUDGET – 2ND READING.
 - PUBLIC HEARING ON REVISED 2020 ANNUAL BUDGET.



CONCLUSION

The 2021 Annual Budget presented tonight is a balanced budget that is sustainable and solvent into the foreseeable future.





QUESTIONS???



Motion: "I MOVE TO PASS DRAFT ORDINANCE NO. 20-062 TO A SECOND READING ON NOVEMBER 12, 2020 FOR FURTHER CITY COUNCIL CONSIDERATION AND APPROVAL"