

AGENDA

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

June 23, 2016 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

EXECUTIVE SESSION

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

Page 1 Item 1: MONTHLY FINANCIAL REPORT

CONSENT AGENDA

Page 13 Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the May 26, 2016 regular City Council meeting.

Page 19 Item 2: APPROVAL OF VOUCHERS

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

Total A/P Checks/Vouchers	#147033-147190	\$ 951,007.95
Electronic Wire Transfers	#721-727	\$ 172,913.97
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers:		\$1,123,921.92

Page 21 Item 3: DRAFT ORDINANCE NO. 16-080; RECLASSIFYING MUNICIPAL COURT JUDGE AS PART TIME APPOINTED POSITION

Motion 1 is to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-080 on first reading.

Motion 2 is to enact Draft Ordinance No. 16-080 repealing subsections (2), (3) and (4) from DMMC 2.28.030, to reclassify the position of Municipal Court Judge to a part-time (32 hour) appointed position, effective January 1, 2017.

Page 27 Item 4: AMENDMENTS TO ORDINANCE NO. 1648, REGARDING CITIZENS
ADVISORY COUNCIL APPLICANT REQUIREMENTS
Motion 1 is to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-093
on first reading.

Motion 2 is to enact Draft Ordinance No. 16-093 to amend Ordinance No. 1648
by adding additional requirements for applicants to the Citizens Advisory Council.

PUBLIC HEARING

Page 33 Item 1: 2017-2036 TRANSPORTATION IMPROVEMENT PLAN
Staff Presentation: Transportation & Engineering Services Manager
Brandon Carver

NEW BUSINESS

Page 53 Item 1: FRANCHISE AGREEMENTS WITH HIGHLINE WATER DISTRICT,
SOUTHWEST SUBURBAN SEWER DISTRICT AND MIDWAY SEWER
DISTRICT
Staff Presentation: Interim City Attorney Tim George

NEXT MEETING DATE

July 7, 2016 Regular City Council Meeting

ADJOURNMENT

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Monthly Financial Report

ATTACHMENTS:
1. City Council Monthly Financial Report

FOR AGENDA OF: June 23, 2016

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: June 14, 2016

- CLEARANCES:
- Legal N/A
 - Finance *pm*
 - Marina N/A
 - Economic Development N/A
 - Parks, Recreation & Senior Services N/A
 - Planning, Building & Public Works N/A
 - Police N/A
 - Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to provide an update on the city wide financial condition year to date through May 31, 2016.

Background

City Council has asked the Finance Department to provide a monthly update on the financial condition of the city. Attachment 1 provides the requested information. Please note the general fund revenues have been updated to EXCLUDE the One-Time Revenues and is consistent across all General Fund Revenue reporting.

Financial Impact

None.

Recommendation or Conclusion

None.

2
CITY COUNCIL MONTHLY FINANCIAL REPORT

MAY 2016

GENERAL FUND MONTHLY REPORT
REVENUES & EXPENDITURES
MAY

	2016 Budget Annual	2016 Actual Year to Date	%	2015 Actual Annual	2015 Actual Year to Date	%
REVENUES						
310 Taxes	12,514,977	5,596,488	44.7%	11,732,376	5,309,273	45.3%
320 Licenses & Permits	2,597,670	958,125	36.9%	2,048,118	990,405	48.4%
330 Intergovernmental	642,875	249,997	38.9%	680,664	222,270	32.7%
340 Charges Goods/Services	3,308,986	1,389,185	42.0%	2,938,642	1,169,694	39.8%
350 Fines & Foreitures	221,350	78,993	35.7%	237,702	109,671	46.1%
360 Misc Revenues	481,800	347,786	72.2%	369,181	146,478	39.7%
380 Other Financing Sources	-	2,793		24,570	1,953	7.9%
TOTAL	19,767,658	8,623,367	43.6%	18,031,253	7,949,744	44.1%

EXPENDITURES

021 City Council	80,227	31,918	39.8%	65,728	30,019	45.7%
022 Muni Court	893,013	396,616	44.4%	954,950	379,182	39.7%
023 City Manager	1,553,576	609,211	39.2%	1,490,849	617,847	41.4%
024 Financial & Tech Services	1,638,355	635,010	38.8%	1,397,379	562,902	40.3%
026 Legal	590,111	238,248	40.4%	578,925	246,100	42.5%
030 Police	8,556,161	3,237,578	37.8%	7,578,932	3,080,374	40.6%
040 Plan, Bldg & PW Admin	3,578,116	1,437,417	40.2%	3,350,194	1,348,487	40.3%
045 Recr, Sr. Serv & Rentals	1,920,881	770,145	40.1%	1,903,281	737,848	38.8%
050 NonDepartmental	133,872	71,866	53.7%	121,877	74,473	61.1%
597 Transfers Out	286,440	11,699	4.1%	-		
TOTAL	19,230,752	7,439,708	38.7%	17,442,115	7,077,232	40.6%

**REVENUES MORE THAN OR
(LESS THAN) EXPENDITURES**

	536,906	1,183,659		589,138	872,512
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May is 5 months of 12 41.7%

**Actual One-time Revenues Year to Date (in
Addition to the Above Revenues)**

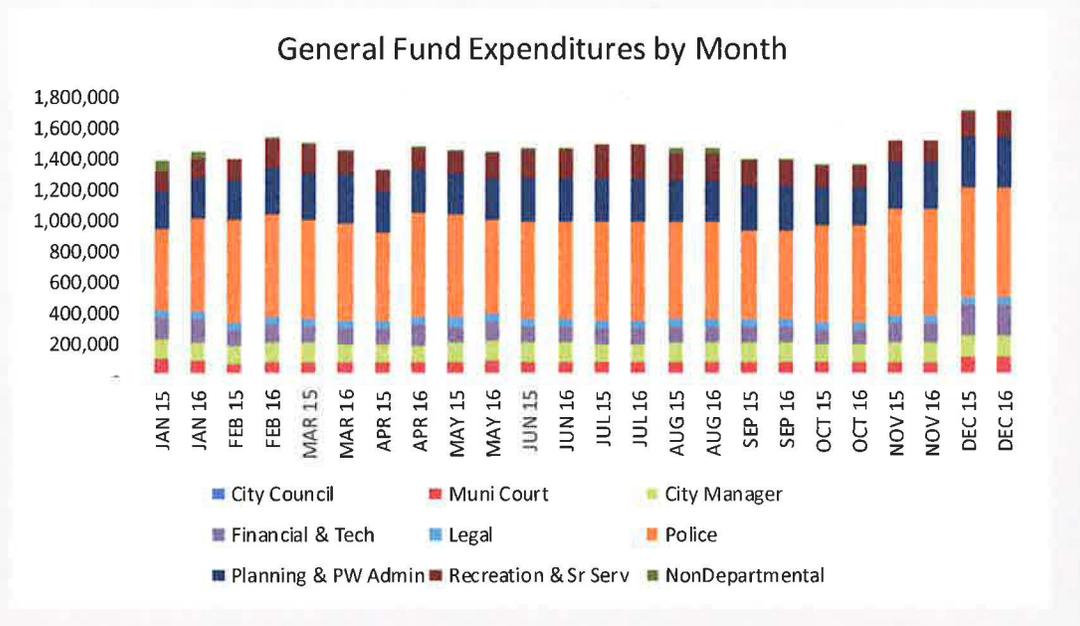
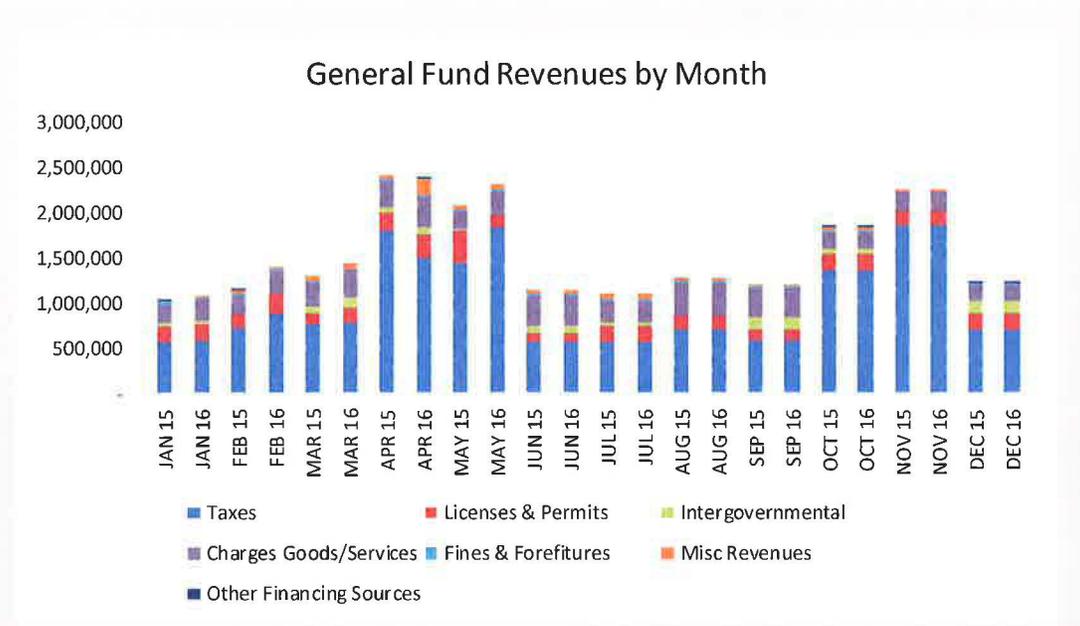
1,556,258

406,784

Looking at 2015 % to date provides an indication of "normal" seasonality of revenues and expenditures. Information can be skewed by One-Time Revenues for either year. Looking at 5 months of 12 (42%) gives a bench mark if activity occurred evenly throughout the year.

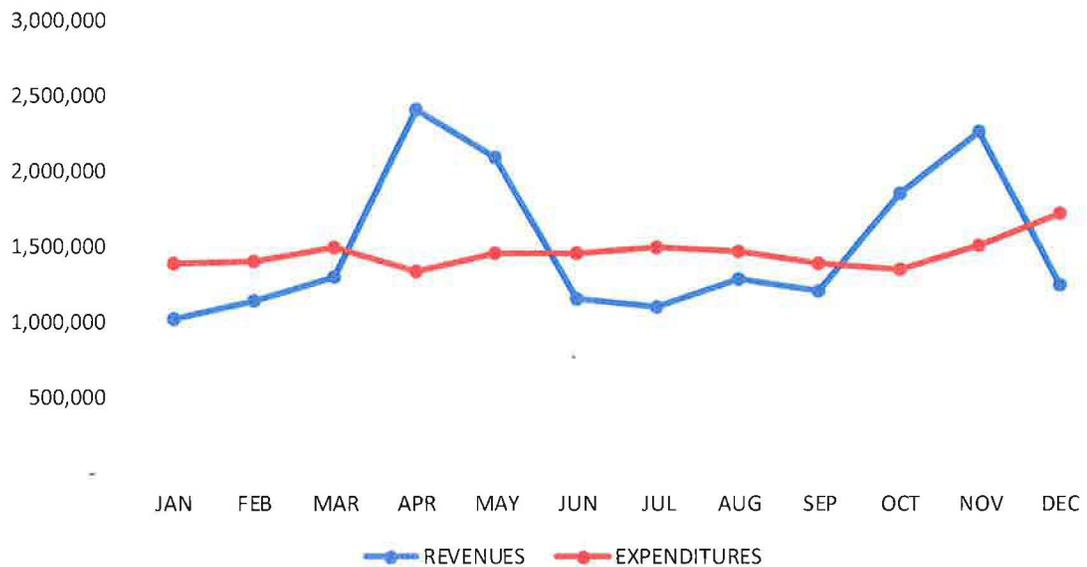
- The above revenues include **only ON-GOING revenues** and now EXCLUDE ONE-TIME revenues. See graphs below for monthly tax revenue information.

- Municipal Court expenses are running high due to the settlement of the court clerk union contract, extra wages paid to finalizing scanning of court records and settlement of credit card fees.
- Intergovernmental revenues generally come from the state quarterly (but not all in the same months). E.g. liquor tax sharing, city assistance, marijuana tax sharing, etc. So low % is expected.
- Misc. Revenues includes facility rentals, interest, etc.
- NonDepartmental includes annual pay-outs for organizations (AWC, Pollution Control, etc.)
- Police may need a supplemental budget as the Original Budget assumed Police gave up their Holiday Pay as part of furlough. This didn't happen so \$80K budget adjustment is likely.



- The above **graph INCLUDES only ON-GOING revenues** and now EXCLUDES ONE-TIME revenues.
- Permit and Charges revenues are higher due to several business park permits and fees. Actual revenues *for these line items* are now at 100% or more of 2016 revenue budget amounts.

2015 General Fund Monthly Activity



2016 General Fund Monthly Activity

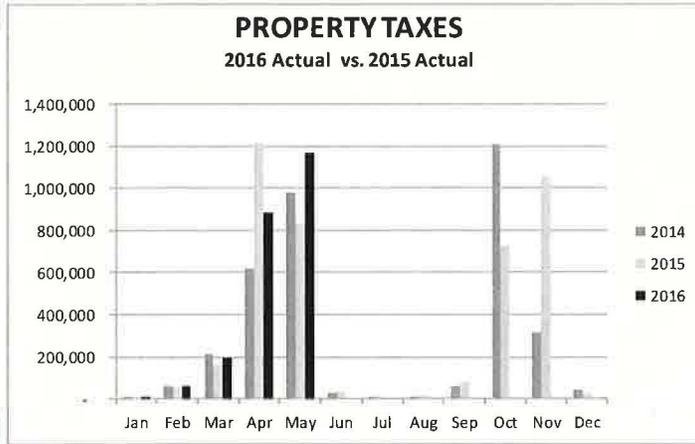


- May 2016 revenues are much higher than May expenditures. This is also a significant improvement over May of last year. May 2016 revenues are higher than normal due to construction project related permit and fee revenues. Also as Technology Services was moved to the General Fund (from separate internal service fund) then General Fund now has internal service revenue from other funds each month.
- May 2016's expenditures were \$1,433,511 which is \$20,221 less than May 2015.

2016 YTD Compared to 2015 YTD: **49,237** **2.2%**

	2016	2015	2014	% Mo Chg
Jan	9,718	7,766	11,423	25.1%
Feb	62,078	55,462	57,840	11.9%
Mar	192,691	159,802	215,499	20.6%
Apr	884,255	1,214,531	615,905	-27.2%
May	1,172,679	834,623	981,322	40.5%
Jun		34,134	26,089	
Jul		12,380	12,065	
Aug		15,762	7,950	
Sep		76,908	60,275	
Oct		723,002	1,207,885	
Nov		1,054,756	316,753	
Dec		29,206	40,485	
Totals	2,321,421	4,218,332	3,553,491	

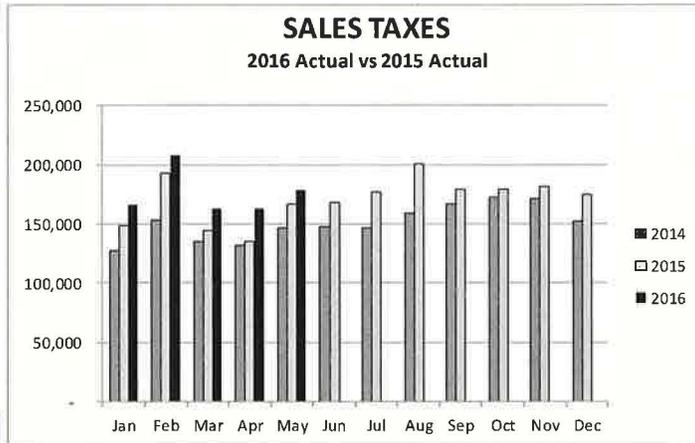
2016 YTD Compared to Annual Budget: **4,573,530** **50.8%**



2016 YTD Compared to 2015 YTD: **91,028** **11.6%**

	2016	2015	2014	% Mo Chg
Jan	166,482	148,542	126,879	12.1%
Feb	207,580	192,640	153,733	7.8%
Mar	162,512	144,525	134,800	12.4%
Apr	162,783	135,180	132,043	20.4%
May	179,133	166,575	146,468	7.5%
Jun		167,671	147,711	
Jul		176,608	147,093	
Aug		200,510	159,385	
Sep		179,594	166,522	
Oct		178,690	171,951	
Nov		181,241	171,692	
Dec		174,869	152,640	
Totals	878,490	2,046,645	1,810,917	

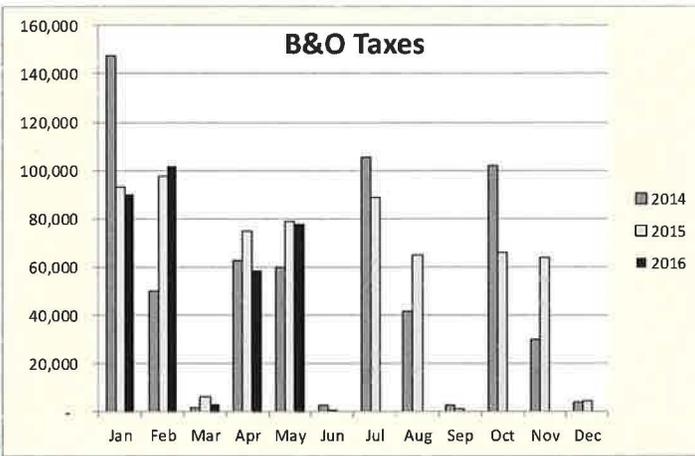
2016 YTD Compared to Annual Budget: **2,141,030** **41.0%**



2016 YTD Compared to 2015 YTD: **(20,026)** **-5.7%**

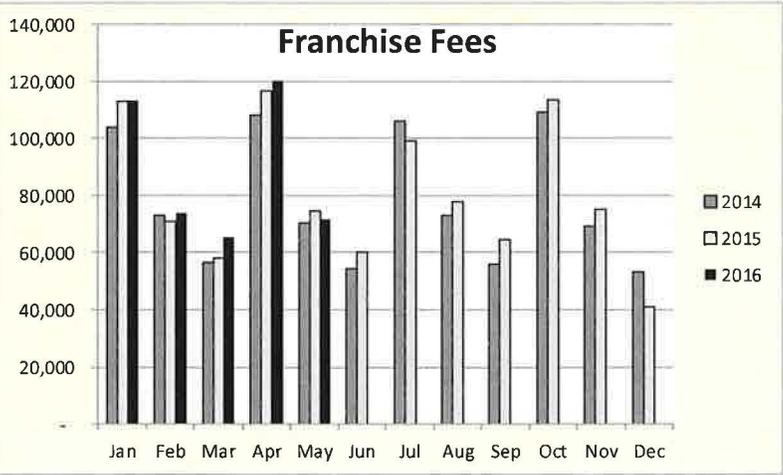
	2016	2015	2014	% Mo Chg
Jan	89,942	93,389	147,677	-3.7%
Feb	101,825	97,788	49,873	4.1%
Mar	3,106	6,095	1,493	-49.0%
Apr	58,292	75,027	62,741	-22.3%
May	78,035	78,927	59,921	-1.1%
Jun		745	2,971	
Jul		88,597	105,554	
Aug		64,797	41,690	
Sep		1,192	2,890	
Oct		66,238	102,251	
Nov		63,614	30,155	
Dec		4,682	4,108	
Totals	331,200	641,091	611,324	

2016 YTD Compared to Annual Budget: **640,000** **51.8%**

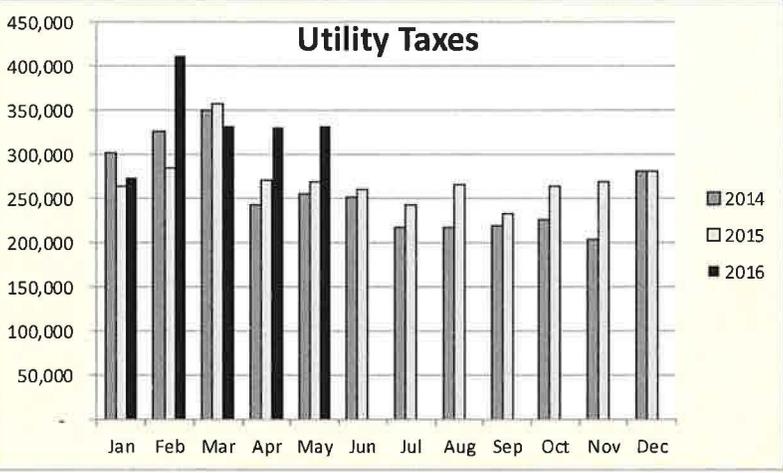


- All revenues sources shown above go to the General Fund.
- The Tax revenue shown in the above graphs EXCLUDE ONE-TIME REVENUES for all years.

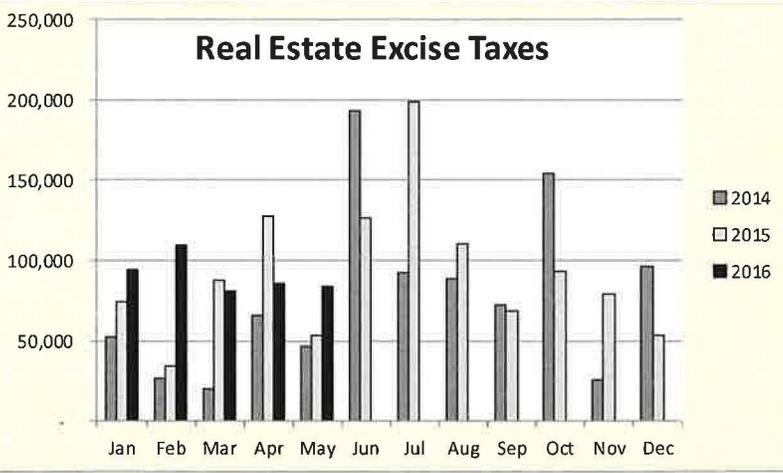
2016 YTD Compared to 2015 YTD:		11,383	2.6%	
	2016	2015	2014	% Mo Chg
Jan	113,463	112,750	104,055	0.6%
Feb	73,834	71,075	73,165	3.9%
Mar	65,347	57,924	56,436	12.8%
Apr	120,207	116,879	108,097	2.8%
May	71,583	74,423	70,303	-3.8%
Jun		60,470	54,540	
Jul		99,070	106,309	
Aug		77,663	73,166	
Sep		64,435	55,862	
Oct		113,761	109,105	
Nov		74,997	69,418	
Dec		40,908	53,544	
Totals	444,434	964,355	934,000	
2016 YTD Compared to Annual Budget:		996,000	44.6%	



2016 YTD Compared to 2015 YTD:		234,125	16.2%	
	2016	2015	2014	% Mo Chg
Jan	273,337	264,911	302,063	3.2%
Feb	410,967	284,340	326,082	44.5%
Mar	332,039	357,130	351,131	-7.0%
Apr	331,283	270,479	243,314	22.5%
May	333,168	269,809	254,925	23.5%
Jun		260,950	251,914	
Jul		243,353	217,888	
Aug		265,630	218,164	
Sep		233,833	219,620	
Oct		263,509	226,349	
Nov		269,275	203,122	
Dec		281,830	280,978	
Totals	1,680,794	3,265,049	3,095,550	
2016 YTD Compared to Annual Budget:		3,722,352	45.2%	



2016 YTD Compared to Annual Budget:		76,836	20.4%	
	2016	2015	2014	% Mo Chg
Jan	93,909	74,382	52,276	26.3%
Feb	109,153	33,884	26,826	222.1%
Mar	80,623	88,020	19,742	-8.4%
Apr	86,005	127,450	66,103	-32.5%
May	84,072	53,190	46,430	58.1%
Jun		127,038	193,059	
Jul		199,170	91,941	
Aug		110,322	88,753	
Sep		68,647	72,437	
Oct		93,478	154,557	
Nov		78,694	25,792	
Dec		53,220	96,222	
Totals	453,762	1,107,495	934,138	
2016 YTD Compared to Annual Budget:		984,520	46.1%	



- Real Estate Excise Taxes go to the Construction Fund and not the General Fund. All other revenues sources shown above go to the General Fund.
- The Tax revenue shown in the above graphs EXCLUDE ONE-TIME REVENUES for all years.

SPECIAL REVENUE FUNDS MONTHLY REPORT
MAY

	2016 Budget Annual	2016 Actual Year to Date	%	2015 Actual Annual	2015 Actual Year to Date	%
101 STREETS						
Begin Fund Balance	273,872	273,872		240,555	240,555	
Revenues	1,532,000	585,759	38%	1,254,492	425,091	34%
Expenditures	1,494,294	496,421	33%	1,221,175	445,631	36%
Net Activity	37,706	89,338		33,317	(20,540)	
Ending Fund Balance	311,578	363,210		273,872	220,015	
102 ARTERIAL PAVEMENT						
Begin Fund Balance	-	-		-	-	
Revenues	15,000	37,900	253%	-	-	
Expenditures	15,000		0%	-	-	
Net Activity	-	37,900		-	-	
Ending Fund Balance	-	37,900		-	-	
107 POLICE DRUG SEIZURE						
Begin Fund Balance	10,342	10,342		7,546	7,546	
Revenues	500	14	3%	25,640	23,634	92%
Expenditures	6,000		0%	22,844		0%
Net Activity	(5,500)	14		2,796	23,634	
Ending Fund Balance	4,842	10,356		10,342	31,180	
111 HOTEL/MOTEL TAX						
Begin Fund Balance	9,593	9,593		8,161	8,161	
Revenues	84,000	13,190	16%	27,678	8,580	31%
Expenditures	80,000	15,400	19%	26,246	7,913	30%
Net Activity	4,000	(2,210)		1,432	667	
Ending Fund Balance	13,593	7,383		9,593	8,828	
140 REDONDO ZONE						
Begin Fund Balance	22,064	22,064		-	-	
Revenues	53,750	12,142	23%	101,235	13,924	14%
Expenditures	58,597	29,226	50%	79,171	12,678	16%
Net Activity	(4,847)	(17,084)		22,064	1,246	
Ending Fund Balance	17,217	4,980		22,064	1,246	

- 2016 includes computer replacement and computer maintenance costs for parking systems. Interfund services cost (for Marina folks operating this area) is higher than last year. 2015 off season averaged about \$1,500/mo. In 2016 they average about \$2,250/month. This is an area of concern as parking revenues will need to be increased in order to cover operating costs and provide funding for area related capital improvements. With status quo, 2016 Revised Budget Revenue estimate is \$73K and Revised Budget Expense estimate is \$91K for a reduction in Fund 140 fund balance of \$18K.

SPECIAL REVENUE FUNDS MONTHLY REPORT
MAY

	2016 Budget <u>Annual</u>	2016 Actual <u>Year to Date</u>	%	2015 Actual <u>Annual</u>	2015 Actual <u>Year to Date</u>	%
142 AUTOMATION FEES						
Begin Fund Balance	22,985	22,985		-	-	
Revenues	100,000	67,515	68%	22,985	9,110	40%
Expenditures	96,726	47,516	49%	-	-	
Net Activity	<u>3,274</u>	<u>19,999</u>		<u>22,985</u>	<u>9,110</u>	
Ending Fund Balance	<u>26,259</u>	<u>42,984</u>		<u>22,985</u>	<u>9,110</u>	
180 ABATEMENT						
Begin Fund Balance	1,350	1,350		-	-	
Revenues	500	-	0%	1,350	744	55%
Expenditures	200	744	372%	-	-	
Net Activity	<u>300</u>	<u>(744)</u>		<u>1,350</u>	<u>744</u>	
Ending Fund Balance	<u>1,650</u>	<u>606</u>		<u>1,350</u>	<u>744</u>	
190 (ASE) AUTOMATED SPEED ENFORCEMENT						
Begin Fund Balance		-		-	-	
Revenues	356,000	176,015	49%	362,149	174,437	48%
Expenditures	411,914	81,838	20%	297,760	108,868	37%
Net Activity	<u>(55,914)</u>	<u>94,177</u>		<u>64,389</u>	<u>65,569</u>	
Ending Fund Balance	<u>(55,914)</u>	<u>94,177</u>		<u>64,389</u>	<u>65,569</u>	
199 (TBD) TRANSPORTATION BENEFIT DISTRICT						
Begin Fund Balance	48,160	48,160		-	-	
Revenues	880,000	272,693	31%	456,831	187,756	41%
Expenditures	434,200	183,225	42%	408,671	164,078	40%
Net Activity	<u>445,800</u>	<u>89,468</u>		<u>48,160</u>	<u>23,678</u>	
Ending Fund Balance	<u>493,960</u>	<u>137,628</u>		<u>48,160</u>	<u>23,678</u>	
May is 5 months of 12			<u>42%</u>			

Special Revenue funds are volatile by their nature for both revenue and spending patterns.

- The Automation fee revenues come from development activity and therefore are expected to fluctuate through the year. The fund is still on track to meet its revenue budget for the year.
- ASE is running a little ahead, but this revenue source declines in the summer when school is out.
- The TBD will need a supplemental budget adjustment for expenditures. The Original Budget for expenditures only included the first \$20 of car tab spending. The new, additional \$20 was included in revenues but not in the budget. Revenues for the new \$20 are started in April.

DEBT SERVICE FUNDS MONTHLY REPORT

MAY

	2016 Budget Annual	2016 Actual Year to Date	%	2015 Actual Annual	2015 Actual Year to Date	%
201 REET 1 ELIGIBLE DEBT SERVICE						
Begin Fund Balance		-			-	
Revenues	140,410	58,505	42%	132,659	119,452	90%
Expenditures	142,117	1,658	1%	133,023	8,803	7%
Net Activity	(1,707)	56,847		(364)	110,649	
Ending Fund Balance	(1,707)	56,847		(364)	110,649	
202 REET 2 ELIGIBLE DEBT SERVICE						
Begin Fund Balance		-			-	
Revenues	264,855	110,360	42%	252,459	252,370	100%
Expenditures	264,855	4,975	2%	252,371	102,989	41%
Net Activity	-	105,385		88	149,381	
Ending Fund Balance	-	105,385		88	149,381	

Expenditure activity reflects monthly charge for General Fund Administrative Services. In prior years Debt Service funds were not assessed their related costs for General Fund Admin Services. Semi-annual interest payments are made in June and December each year. The principal payment is made once a year in December.

MARINA FUND 401 OPERATIONS MONTHLY REPORT

(Budget Basis/Working Capital Basis)

MAY

	2016 Budget Annual	2016 Actual Year to Date	%	2015 Actual Annual	2015 Actual Year to Date	%
REVENUES						
374 Intergov't Grants				38,729	38,729	100.0%
340 Charges Goods & Services	1,209,023	50,680	4.2%	1,165,902	327,214	28.1%
<i>Fuel Sales</i>		194,358				
350 Fines & Foreitures	15,220	7,269	47.8%	17,716	5,152	29.1%
36X Moorage, Parking & Misc	2,874,307	1,166,113	40.6%	2,792,606	1,146,198	41.0%
369 Interfund Maint Services	25,000	16,685	66.7%	34,940		
TOTAL	4,123,550	1,435,105	34.8%	4,049,893	1,517,293	37.5%
<i>Fuel gallons sold</i>	<i>420,609</i>	<i>101,771</i>		<i>404,432</i>	<i>109,759</i>	
EXPENDITURES						
10 Salaries	651,693	233,805	35.9%	609,486	249,446	40.9%
20 Benefits	271,946	96,698	35.6%	247,773	103,728	41.9%
30 Supplies	1,118,218	65,929	5.9%	1,048,961	313,582	29.9%
<i>Fuel Purchases</i>		193,502				
40 Services	876,082	337,939	38.6%	817,501	309,883	37.9%
60 Capital	-	-		7,286	7,286	100.0%
90 Capital Transfers	250,000	1,846		-		
90 Debt Transfers	819,830	341,595	41.7%	821,216	342,173	41.7%
TOTAL	3,987,769	1,271,314	31.9%	3,552,223	1,326,098	37.3%
REVENUES MORE THAN OR (LESS THAN) EXPENDITURES	135,781	163,791		497,670	191,195	
Ending Cash & Investments		1,340,840			1,294,321	
Min Reserves - 20%		747,554				
Avail to Xfer to Dock Replace		343,286				
<i>May is 5 month of 12</i>		<i>41.7%</i>				
<i>Fuel Profits (using COGS)</i>		<i>36,100</i>			<i>29,998</i>	

- Marina is running slightly behind last year but is generally on-track for the year.

SWM FUND 450 OPERATIONS MONTHLY REPORT

(Budget Basis/Working Capital Basis)

MAY

	2016 Budget Annual	2016 Actual Year to Date	%	2015 Actual Annual	2015 Actual Year to Date	%
REVENUES						
374 Intergov't Grants						
340 Charges Goods & Services	3,264,518	1,983,975	60.8%	2,756,227	1,518,289	55.1%
360 Interest & Miscellaneous	2,000	3,646	182.3%	14,439	1,818	12.6%
TOTAL	<u>3,266,518</u>	<u>1,987,621</u>	60.8%	<u>2,770,666</u>	<u>1,520,107</u>	54.9%

	2016 Budget Annual	2016 Actual Year to Date	%	2015 Actual Annual	2015 Actual Year to Date	%
EXPENDITURES						
10 Salaries	799,230	334,424	41.8%	761,468	314,801	41.3%
20 Benefits	393,022	149,779	38.1%	342,924	136,253	39.7%
30 Supplies	75,300	24,709	32.8%	39,127	12,764	32.6%
40 Services	1,375,804	598,913	43.5%	1,077,055	483,483	44.9%
60 Capital		-		27,698	27,698	100.0%
90 Capital Transfers		-		108,498		0.0%
TOTAL	<u>2,643,356</u>	<u>1,107,825</u>	41.9%	<u>2,356,770</u>	<u>974,999</u>	41.4%

REVENUES MORE THAN OR (LESS THAN) EXPENDITURES	<u>623,162</u>	<u>879,796</u>		<u>413,896</u>	<u>545,108</u>	
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Ending Cash & Investments		2,448,266			<u>1,695,019</u>	
Min Reserves - 20% Revenues		<u>653,304</u>				
Waiting for CIP Xfer to Fund 451		<u>1,794,962</u>				

May is 5 months of 12 41.7%

- SWM is generally on-track for the year. Charges for Goods & Services come through the King County property tax billing system so April/May and October/November are peak revenue months for this fund.

INTERNAL SERVICE FUNDS MONTHLY REPORT

(Budget Basis/Working Capital Basis)

MAY

	2016 Budget Annual	2016 Actual Year to Date	%	2015 Actual Annual	2015 Actual Year to Date	%
500 EQUIPMENT RENTAL OPS						
Begin Fund Balance	43,756	239,158		198,523	198,523	
Revenues	602,215	242,553	40%	526,482	217,158	41%
Expenditures	545,245	176,291	32%	485,847	173,333	36%
Net Activity	56,970	66,262		40,635	43,825	
Ending Fund Balance	100,726	305,420		239,158	242,348	
501 EQUIPMENT RENTAL REPLACE						
Begin Fund Balance	1,424,750	1,618,468		1,628,405	1,628,405	
Revenues	865,334	363,071	42%	462,364	140,240	30%
Expenditures	851,860	436,519	51%	472,301	35,840	8%
Net Activity	13,474	(73,448)		(9,937)	104,400	
Ending Fund Balance	1,438,224	1,545,020		1,618,468	1,732,805	
506 FACILITY MAJOR REPAIRS						
Begin Fund Balance	65,423	53,339		166,401	166,401	
Revenues	75,830	31,753	42%	102,760	31,647	31%
Expenditures	79,000	1,483	2%	215,822	82,399	38%
Net Activity	(3,170)	30,270		(113,062)	(50,752)	
Ending Fund Balance	62,253	83,609		53,339	115,649	
511 COMPUTER REPLACEMENT						
Begin Fund Balance	126,766	271,177		317,436	317,436	
Revenues	401,207	188,083	47%	162,084	54,604	34%
Expenditures	262,540	114,778	44%	208,343	80,859	39%
Net Activity	138,667	73,305		(46,259)	(26,255)	
Ending Fund Balance	265,433	344,482		271,177	291,181	
520 SELF INSURANCE						
Begin Fund Balance	99,622	138,795		150,014	150,014	
Revenues	828,455	344,580	42%	637,551	265,591	42%
Expenditures	666,660	576,080	86%	648,770	604,735	93%
Net Activity	161,795	(231,500)		(11,219)	(339,144)	
Ending Fund Balance	261,417	(92,705)		138,795	(189,130)	
530 UNEMPLOY INSURANCE						
Begin Fund Balance	322,817	338,159		284,467	284,467	
Revenues	58,435	23,507	40%	56,143	23,172	41%
Expenditures	75,000	7,269	10%	2,451	2,451	100%
Net Activity	(16,565)	16,238		53,692	20,721	
Ending Fund Balance	306,252	354,397		338,159	305,188	

May is 5 months of 12

42%

- Fund 500 Equip Rental Ops Revenues are less due to interfund fuel sales which fluctuate.
- Fund 500 Equip Rental Ops Expenses are less due to vacant position and lower fuel costs.
- Fund 501 Equipment Replacement purchase was for Camel Flush Truck.

MINUTES

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

May 26, 2016 – 7:00 p.m.

CALL TO ORDER

Mayor Pina called the meeting to order at 7:01 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Mayor Pro Tem Pennington.

ROLL CALL

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

Councilmember Luisa Bangs was absent

Direction/Action

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

Staff present:

City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager/Economic Development Director Michael Matthias; Marina Maintenance Manager Scott Wilkins; Assistant City Attorney Tim George; Transportation & Engineering Services Manager Brandon Carver; Commander Bob Bohl; Prosecuting Attorney Matt Hutchins; Court Administrator Jennefer Johnson; Community Development Manager Denise Lathrop; Parks, Recreation & Senior Services Administrative Assistant Janet Best; Harbormaster Joe Dusenbury; Planning, Building and Public Works Director Dan Brewer; Municipal Court Judge Lisa Leone; Finance Director Donyele Mason ; Acting City Clerk Ellie Hooman.

CORRESPONDENCE

- Letter received from Nancy Bainbridge Rogers & Nicole De Leon, attorneys for the Redondo Square Shopping Center.

COMMENTS FROM THE PUBLIC

- Rikki Marohl, 22807 17th Avenue S; Des Moines Farmer's Market.
- Cheryl Johnson, 28748 Soundview Drive S; Budget cuts and more police officers.
- Bill Linscott, 22335 6th Avenue S; Communication and Marina paid parking.
- Rick Johnson, 28624 Redondo Beach Drive; Pine View Terrace and Puget View Terrace Mobile Home Park.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Mayor Pro Tem Pennington

- Tukwila named #1 most dangerous City in the nation.
 - City Manager Piasecki explained how crime statistics were compiled.

Councilmember Kaplan

- Recognized and thanked City Attorney Pat Bosmans for her years of service.

Councilmember Back

- SCORE Board Meeting.

Councilmember Nutting

- Senior Services Advisory Committee meeting:
 - Take Back Your Meds Program:
 - Normandy Park Police Department to have a drop off area.
 - Walgreens, Safeway & CVS also looking for drop off opportunities.
 - Food Bank numbers down:
 - Food and money donations always welcome.
 - Healthy Aging Seniors.
 - Senior Center wish list.
 - Next meeting July 28th.

Councilmember Musser

- Municipal Facilities Committee meeting:
 - Capital Budgeting.
 - Barnes Creek Trail:
 - Federal Grant.
 - Design Phase.
 - Open Law Enforcement positions nationwide.
 - Reach out to Office Seaberry to set up block watch program.
 - Applicants down 90% in the Seattle area.
- Human Services Committee:
 - Agencies helping most Des Moines residence.
- Eliminate plastic water bottles during Council meetings.
- Wished Yvonne Nutting a Happy Birthday.

PRESIDING OFFICER'S REPORT

- Seattle Southside Tourist Symposium:
 - Farmer's Market:
 - Wayne Corey and Rikki Marohl were each awarded the *Tourism Ambassador of the Year Award*.
- Seattle Southside Regional Tourism Authority 2016 Partnership Award presented to the City.
- Red Nose Day:
 - Funds raised keep children and young people healthy, safe and educated.
 - Mayor Pina handed out red noses to staff and photos were taken.
- Utility Franchise Ad Hoc Committee meeting.
- Sea Mar Grand Opening.
- Highline Forum.

ADMINISTRATION REPORT

Item 1: MONTHLY FINANCIAL REPORT

Finance Director Mason gave her monthly report to Council.

Item 2: LOCAL GOVERNMENT 101, PART 8: CAPITAL BUDGETING

Finance Director Mason gave a power point presentation to Council.

- S. 200th Street (from Des Moines Memorial Drive to Pacific Highway) closed for construction.
- Information received from owners of the property regarding Pine View Terrace and Puget View Mobile Home Park.
- AWC Annual Business Meeting June 23rd.

Direction/Action

Motion made by Mayor Pina to have City Manager Piasecki represent Council at the AWC Annual Business Meeting in Everett; seconded by Councilmember Musser.

The motion passed 6-0.

- Highline Forum:
 - 509 Funding.
 - Construction to hopefully start in mid-2019.
 - 10 Year construction schedule.
- Sound Transit:
 - Update on ST3.
 - Accelerate link from 240th to Federal Way Transit Center.
- Noted Retirement of City Attorney Pat Bosmans.
 - Thanked her for her commitment to the City.
 - Presented plaque and gave standing ovation.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers through May 18, 2016 included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#146768-146952	\$1,195,428.63
Electronic Wire Transfers	#708-711	\$ 11,786.91
Payroll Checks	#18794-18799	\$ 5,488.49
Payroll Direct Deposit	#200001-200159	\$ 288,385.97
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers:		\$1,501,090.00

Item 2: TASK ORDER ASSIGNMENT FOR DESIGN/PERMITTING OF THE BARNES CREEK/KDM ROAD CULVERT PROJECT

Motion is to approve the Task Order Assignment with Tetra Tech, Inc. that will provide for design and permitting services associated with the Barnes Creek/Kent-Des Moines Road Culvert Project in the amount of \$340,729.00 and further authorize the City Manager or his designee to sign said Task Order Assignment, substantially in the form as submitted

Direction/Action

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

OLD BUSINESS

Item 1:

AUTOMATED RED LIGHT RUNNING ENFORCEMENT PROFESSIONAL SERVICES CONTRACT WITH ATS

Staff Presentation: Transportation and Engineering Services
Manager Brandon Carver

Commander Bohl updated Council.

Direction/Action

Motion made by Councilmember Kaplan to authorize the City Manager to enter into a contract Amendment/Addendum with American Traffic Solutions (ATS) for an additional 5 years to expand our Photo Enforcement Program to include red light running at the following approaches: Southbound and Eastbound approaches at SR-99 (Pacific Hwy S)/South 216th Street, Southbound and Westbound approaches at SR-99 (Pacific Hwy S)/SR-516 (KDM), Northbound and Southbound approaches at SR-509 (MVD)/7th Place S – S 216th Street, substantially in the form and terms of the existing ATS Contract; seconded by Mayor Pro Tem Pennington.

The motion passed 6-0.

Motion made by Councilmember Kaplan to direct administration to bring forward a budget amendment for additional 2016 expenditure authority in support of the Automated Red Light Running Enforcement Program; seconded by Mayor Pro Tem Pennington.

The motion passed 6-0.

PUBLIC HEARING

Item 1:

PUBLIC HEARING TO CONSIDER DRAFT ORDINANCE 16-027 AMENDING ALLOWED USES AND DEVELOPMENT REGULATIONS FOR THE W-C WOODMONT COMMERCIAL ZONE

Staff Presentation: Community Development Manager
Denise Lathrop

Mayor Pina opened the public hearing at 8:27 p.m.

Community Development Manager Lathrop gave a power point presentation to Council

Mayor Pina called for those that signed up to speak.

- Susan White, 28742 Redondo Beach Drive S; Would like a development that doesn't put pressure on the Police Department.
- Nicole De Leon; 524 Second Avenue; Gerrity Group Supports proposed project.

- Matt Maury; 27261 Eights Avenue S; He would like to see more information to neighborhood.
- Henry Steinmetz, 917 S 258th; Wonder if Council is considering overall impact to City.
- Candice Urquhart, 25665 Marine View Drive; She would like project to be owner occupied.
- Cheryl Johnson, 28748 Soundview Drive S; She would like project to be owner occupied.
- John Schindler, 27021 12th Avenue S; Agrees with all previous comments.
- Doreen Harper, 26625 16th Avenue S; Residential property on 16th Avenue S.

Mayor Pina called 3 times if anyone else wished to speak; seeing none he asked Council if they had any questions.

Mayor Pina closed the public hearing at 9:25 p.m.

Direction/Action

Motion made by Councilmember Musser to move Draft Ordinance No. 16-027 to a second reading on a date to be determined; seconded by Mayor Pro Tem Pennington.

The motion passed 6-0.

Mayor Pina postponed New Business Item 1 to a later Council meeting.

NEW BUSINESS

Item 1: LOCAL GOVERNMENT 101, PART 7(b); CRIMINAL JUSTICE SYSTEM:
COURT, PROSECUTION AND PUBLIC DEFENSE
Staff Presentation: Court, Prosecution and Legal Staff

NEXT MEETING DATE

June 2, 2016 Regular City Council Meeting

ADJOURNMENT

Motion made by Councilmember Kaplan to adjourn; seconded by Councilmember Musser.
The motion passed 6-0.

The meeting was adjourned at 9:40 p.m.

Respectfully Submitted,
Ellie Hooman
Acting City Clerk

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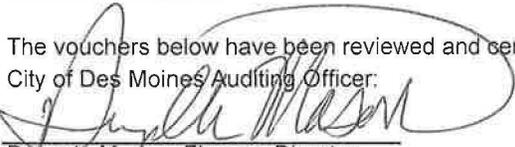
**CITY OF DES MOINES
 Voucher Certification Approval
 23-Jun-16**

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 **Jun 23, 2016** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers through Jun 16, 2016 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:


 Duhyele Mason, Finance Director

	# From	# To	Amounts
Claims Vouchers:			
Total A/P Checks/Vouchers	147033 ✓	147190 ✓	951,007.95 ✓
Electronic Wire Transfers	721 -✓	727 ✓	172,913.97 ✓
Total claims paid			1,123,921.92
Payroll Vouchers			
Payroll Checks		-	
Direct Deposit		-	
Payroll Checks		-	
Direct Deposit		-	
Total Paychecks/Direct Deposits paid			0.00
Total checks and wires for A/P & Payroll			1,123,921.92

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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. 16-080
reclassifying Municipal Court Judge as part-time
appointed position

ATTACHMENTS:

1. Draft Ordinance No. 16-080
2. Repeal of Subsections (2), (3), and (4) in
DMMC 2.28.030 – In Track Changes

FOR AGENDA OF: June 23, 2016

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: June 15, 2016

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL DM

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of Draft Ordinance No. 16-080 repealing DMMC 2.28.030 (2), (3), and (4), thereby reclassifying the position of Municipal Court Judge to a part-time (32 hour) appointed position. The following motions will appear on the consent calendar:

Suggested Motions

FIRST MOTION: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-080 on first reading.”

SECOND MOTION: “I move to enact Draft Ordinance No. 16-080 repealing subsections (2), (3) and (4) from DMMC 2.28.030, to reclassify the position of Municipal Court Judge to a part-time (32 hour) appointed position, effective January 1, 2017.”

Background

Judge Lisa Leone was recently appointed by the City Manager to fill the unexpired term of Judge Veronica Galvan. The appointment runs through December of 2017. She is currently under contract for 32 hours per week. DMMC 2.28.030 mandates that the City’s municipal court judge be an elected, full-time

position. RCW 3.50.055 defines a full-time equivalent position as “thirty-five or more hours per week”. Under state law, a “full-time” equivalent position must be elected.

Discussion

Prior to 2010, the Municipal Court Judge position was considered a part-time position (34 hours/week) and was appointed every four years by the City Manager, subject to confirmation by the City Council. In 2010, data was provided by the Administrative Office of the Courts that indicated that the workload of the Judge position was more than the equivalent of one full-time position. Additionally, the City of Des Moines qualified for salary assistance from the State of Washington if the position was moved to full time. Based on this information, the City Council amended chapter 2.28 DMMC to reclassify the Judge position as full-time, which made the position subject to election every four years.

Since 2010, the court has instituted a number of measures that have streamlined processes and that have resulted in a more efficient court. A few examples are the hiring of a probation officer and using technology in a number of ways to promote efficiencies. As a result, the current Municipal Court Judge has been under contract for 32 hours per week since her appointment. This schedule has provided her with enough working hours to accomplish her duties. As the current Judge is on contract for 32 hours per week, and is therefore not considered “full-time” under the law, this Draft Ordinance has been prepared to align the Municipal Code with the current practice.

Alternatives

If no action is taken, the Municipal Court Judge position would remain full-time and an elected position, with the next election scheduled for the November 2017 ballot.

Financial Impact

The City currently receives salary assistance from the State of Washington (Trial Court Improvement Funding) for the judicial position roughly in the amount of \$20,000/year. This funding is contingent on the judicial position being an elected position. If the position is no longer elected, the City will lose that funding starting in 2017.

Recommendation or Conclusion

Finance, Legal and Administration recommend approving this Draft Ordinance.

CITY ATTORNEY'S FIRST DRAFT 06/08/2016

DRAFT ORDINANCE NO. 16-080

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, repealing DMMC 2.28.030(2), (3), and (4) to reinstate the part-time Municipal Court Judge position and setting an effective date.

WHEREAS, the City Council intends to retain the Municipal Court of the City of Des Moines to provide greater flexibility, consistency, and accountability in adjudicating enforcement of the Des Moines Municipal Code, and

WHEREAS, the position of Municipal Judge for the Municipal Court of the City of Des Moines is currently an elected full-time position pursuant to authorizations and provisions of RCW 3.50.050 and as provided in Ordinance No. 1482 enacted by the City Council on March 25, 2010, and

WHEREAS, based on efficiencies implemented in the Municipal Court, the judicial position is no longer needed to be full-time, and therefore no longer required to be an elected position under state law, and

WHEREAS, the City Council finds that in the interest of compliance with state law, employment agreements and current practice, the City of Des Moines should amend Ordinance No. 1482 to reclassify the Municipal Court Judge position as a part-time appointed position; now, therefore,

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

Sec. 1. DMMC 2.28.030(2), (3), and (4), and subsections (2), (3) and (4) of section 1 of Ordinance No. 1482 are repealed, effective January 1, 2017.

Sec. 2. 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 2 of 2

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

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2016 and signed in authentication thereof this ____ day of _____, 2016.

M A Y O R

APPROVED AS TO FORM:

Interim City Attorney

ATTEST:

City Clerk

Published: _____

**REPEAL OF SUBSECTIONS (2), (3), AND (4) IN DMMC 2.28.030
IN TRACK CHANGES**

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

Sec. 1. DMMC 2.28.030(2), (3), and (4), and subsections (2), (3) and (4) of section 1 of Ordinance No. 1482 are repealed, effective January 1, 2017.

Municipal Court Judge—Appointment. The Municipal Court Judge holding office on January 1, 1985, shall continue to hold office until January -1, 1986. On or before December 1, 1985, the City Manager shall appoint a successor Municipal Court Judge, subject to confirmation by the City Council, to take office on January 1, 1986. Subsequent appointments shall be made every fourth year in accordance with this section. The Municipal Court Judge shall discharge the office in accordance with the laws of the state.

~~———— (2) — Effective January 1, 2010 the Municipal Court Judge shall be a full-time position as defined by RCW 3.50.055. The position of Municipal Judge shall be filled by election for the term commencing on January 1, 2014, and every four years thereafter. The Municipal Judge shall be elected in the same manner as other elective City officials are elected to the office. The elected Judge shall be qualified to hold the position of Judge of the Municipal Court as provided in RCW 3.50.040, as presently constituted or as may be subsequently amended. The term of the Municipal Judge shall be for four (4) years. The City Manager shall not appoint a Municipal Judge pursuant to paragraph (1) of this section for a term beyond December 31, 2013. Nothing in this section shall limit the City Manager's authority to fill the position of Municipal Judge pursuant to paragraph (3) or (4) of this section.~~

~~———— (3) — Any vacancy in the Municipal Court due to a death, disability, or resignation of a Municipal Court Judge shall be filled by the City Manager for the remainder of the unexpired term. The appointment shall be subject to confirmation of the City Council. — The appointed Judge shall be~~

~~qualified to hold the position of Judge of the Municipal Court as provided in RCW 3.50.040, as presently constituted or as may be subsequently amended.~~

~~(4) A Municipal Court Judge shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of the office. Any vacancy in the Municipal Court due to removal of the Municipal Court Judge shall be filled by the City Manager, for the remainder of the unexpired term. The appointment shall be subject to confirmation by the City Council. The appointed Judge shall be qualified to hold the position of Judge of the Municipal Court as provided in RCW 3.50.040, as presently constituted or as may be subsequently amended.~~

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendments to Ordinance No. 1648,
Regarding Citizens Advisory Council Applicant
Requirements

ATTACHMENTS:

1. Draft Ordinance No. 16-093

FOR AGENDA OF: June 23, 2016

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: June 16, 2016

CLEARANCES:

- Legal 26
 Economic Development N/A
 Finance N/A
 Marina N/A
 Parks, Recreation & Senior Services N/A
 Planning, Building & Public Works N/A
 Police N/A
 Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation

The purpose of this agenda item is to amend Ordinance No. 1648 (currently uncodified) to add requirements for applicants to the Citizens Advisory Council.

Suggested Motions

FIRST MOTION: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-093 on first reading.”

SECOND MOTION: “I move to enact Draft Ordinance No. 16-093 to amend Ordinance No. 1648 by adding additional requirements for applicants to the Citizens Advisory Council.”

Background

Ordinance No. 1648 was enacted by the City Council on April 28, 2016, creating a Citizens Advisory Council. The Ordinance outlined composition of the Council, the length of terms for its members, its duties, how often it meets, and how it reports to the City Council.

Discussion

Additional criteria have been added to require that members of the Citizens Advisory Council be owners or renters of property in Des Moines, be at least 21 years of age, and be eligible to live in the United States.

Alternatives

Council may choose to adopt Draft Ordinance No. 16-093 as submitted, adopt it with amendments, or choose not to adopt it at all.

Financial Impact

None.

Recommendation

It is recommended that the Council enact Draft Ordinance No. 16-093.

CITY ATTORNEY'S FIRST DRAFT 06/16/2016**DRAFT ORDINANCE NO. 16-093**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the Citizens Advisory Council and amending Ordinance No. 1648 (uncodified) to add additional requirements for Citizen Advisory Council applicants.

WHEREAS, the Des Moines City Council enacted Ordinance No. 1648 (uncodified) on April 28, 2016 forming a Citizens Advisory Council to create an environment in which residents, business owners, and Marina tenants are afforded an opportunity to participate in City government decisions in an advisory role, and

WHEREAS, it is the intent of the City Council to engage its citizens and neighborhoods as broadly as possible in the issues and concerns that directly affect them, and

WHEREAS, the City Council finds that amendments to the Citizen Advisory Council composition requirements are appropriate and necessary; now therefore,

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

Sec. 1. Section 5 of Ordinance No. 1648 (uncodified) is amended to read as follows:

Citizens Advisory Council composition.

(1) There shall be twelve regular members of the Citizens Advisory Council, one each from the City's nine neighborhood planning areas, two Des Moines business owners, and one Marina tenant.

(2) There shall be one alternate member from each of the City's neighborhood planning areas who will serve in the absence of his or her neighborhood planning area regular member, one alternate Des Moines business owner and one alternate Marina tenant.

(3) Regular members and alternate members representing neighborhood planning areas must be

Ordinance No. _____
Page 2 of 3

residents of Des Moines who own or rent property in Des Moines and have lived in their neighborhood planning area for at least one year, a business owner who has owned and operated said business in Des Moines for at least one year, or a Marina tenant for at least one year.

(4) All regular members and alternate members must be at least twenty-one (21) years of age and eligible to live in the United States.

Sec. 2. 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 other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 3 Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its final passage by the Des Moines City Council in accordance with law.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2016 and signed in authentication thereof this _____ day of _____, 2016.

M A Y O R

APPROVED AS TO FORM:

Interim City Attorney

Ordinance No. _____
Page 3 of 3

ATTEST:

City Clerk

Published: _____

Effective Date: _____

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing
Transportation Improvement Plan
(2017-2036)

AGENDA OF: June 23, 2016

DEPT. OF ORIGIN: Planning, Building & Public
Works

DATE SUBMITTED: June 15, 2016

ATTACHMENTS:

1. Draft Resolution No. 16-077
2. Draft Transportation Improvement Plan
(2017-2036)
3. Criteria for Prioritizing Projects

CLEARANCES:

- Legal TG
 Finance Am
 Marina N/A
 Parks, Recreation & Senior Services N/A
 Planning, Building & Public Works DSB
 Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation:

The purpose of this public hearing is provide an update to the City's Transportation Improvement Program (TIP) and for the Council to approve Draft Resolution No. 16-077 (Attachment 1) adopting the proposed Transportation Improvement Program for the City of Des Moines for the years 2017-2036.

Suggested Motion:

"I move to approve Draft Resolution No. 16-077 adopting the 2017-2036 Transportation Improvement Plan for the City of Des Moines."

Background:

Each year the City of Des Moines, and all cities and counties in Washington, submit a Transportation Improvement Program (TIP) to the State. This document is useful for agencies to plan and prioritize transportation system improvements. The purpose of these plans is to provide a planning tool for the individual agencies, and to also provide a consistent method of coordinating interagency needs and funding requirements on a regional and state wide basis.

The Transportation Improvement Plan is provided as Attachment 2. The format is similar to the State form on which the projects are listed along with a brief description of the proposed improvements. In the middle of the form is an estimated project schedule along with preliminary planning level cost

estimates for the projects. The costs are broken down into three categories, engineering (PE), right-of-way (RW) and construction (CN). The proposed year in which each phase is planned to occur is also shown.

The completed TIP is sent to utility companies as well as adjacent cities for their information, and for project coordination planning. Some cities choose to list high priority projects that are not within their city limits, or projects that will be managed by other agencies. The City of Des Moines Comprehensive Transportation Plan (CTP) lists projects that are outside of its boundaries.

Discussion:

Staff updated the previous TIP with the most current project funding information and expenditure schedule, and is forwarding this Draft 2017-2036 TIP (Attachment 2) to the full Council for public hearing and approval.

The PS&T Committee was furnished a copy of the proposed TIP on March 3, 2016 and April 7, 2016.

Criteria that is helpful when considering the prioritization of projects can be found in the City's Comprehensive Transportation Plan. This is provided as [Attachment 3](#).

A few projects were removed from last year's TIP due to their completion or anticipated completion in 2016.

These are listed below along with the current priority from the 2016 – 2035 TIP:

- #2 – Redondo Boardwalk Repairs
- #4 – Sign Change Out Program
- #5 – South 216th Segment 1a
- #21 – Boardwalk Pile Corrosion Project
- #51 – South 268th Street Sidewalk Improvement Project

As a result of discussions from the PS&T Committee meetings on March 3, 2016 and April 7, 2016, the following projects were elevated in priority:

- | | |
|--|-----------------|
| Marine View Drive/South 240 th Intersection Improvements | From #18 to #9 |
| South 240 th Street Improvements – Segment 2 (16 th to MVD) | From #19 to #10 |
| South 240 th Street Improvements – Segment 1 (City limits to 16 th) | From #20 to #11 |

The Barnes Creek Trail Project was re-prioritized below the three elevated projects listed above.

Some additional project identification language to better define was added to the following three projects:

- #17 Downtown Des Moines Improvements
- #43 30th Avenue South Over-crossing
- #44 Redondo Beach Drive Sidewalk Project

Alternatives:

Proposed projects can be moved to different years or taken off the Plan. Other proposed projects can be added to the Plan. Priority numbers can be changed. The City is required to file an adopted plan with the Secretary of Transportation no later than July 31, 2016.

Financial Impact:

Although this plan does not commit the City to any expenditures, it does allow the City to make application for many types of grants or other funds. Frequently, project loans or grants require that the project be on a plan adopted by the City. Furthermore, projects using Federal funds are specifically required to be identified on the City's TIP.

Recommendation/Conclusion:

Staff recommends that the City Council approve Draft Resolution No. 16-077 (refer to Attachment 1) which covers the Transportation Improvement Program for the City of Des Moines for the years 2017-2036.

Concurrence:

The Legal, Finance, and Planning, Building, and Public Works Departments concur.

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ENGINEERING'S FIRST DRAFT 05/31/2016**DRAFT RESOLUTION NO. 16-077**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, adopting a Transportation Improvement Plan for the City of Des Moines for the years 2017 through 2036.

WHEREAS, in accordance with the provisions of RCW 35.77.010, a public hearing was held on June 23, 2016 by the Des Moines City Council to consider the adoption of a Transportation Improvement Plan, and all persons wishing to be heard were heard, and

WHEREAS, based on the information presented at such public hearing the City Council finds it to be in the public interest to adopt the Transportation Improvement Plan attached to this Resolution; now therefore,

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

Sec. 1. The City Council adopts the Transportation Improvement Plan for the City of Des Moines for the years 2017 through 2036, which is attached to this Resolution as Attachment "A" and by this reference incorporated herein.

Sec. 2. The program adopted by this Resolution shall be reviewed annually at a public hearing, at which time such program may be amended, revised, or extended.

Sec. 3. The City Clerk is directed to file two certified copies of this Resolution and Exhibit with the Washington State Department of Transportation (WSDOT), Olympia, Washington, within thirty (30) days of the date of adoption of this Resolution.

ADOPTED BY the City Council of the City of Des Moines, Washington this 23rd day of June, 2016 and signed in authentication thereof this 23rd day of June, 2016.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

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Transportation Improvement Plan

EXHIBIT A

Agency: City of Des Moines, WA
 County No.: 17 County Name: King County
 City No.: 0325 MPO/RTPO: PSRC

From: 2017 To: 2036
 Hearing Date: 06/23/16 Adoption Date: _____
 Amend Date: _____ Resolution Number: _____

Functional Classification	Proposed Priority No.	City Project Number	Project Identification	Coordination with other City Project (Numbers)	Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Project Cost in Thousands of Dollars						Local Agency Expenditure Schedule (Year)						Federally Funded Projects Only	
										Fund Source Information						2017	2018	2019	2020-2022	2023-2026	2027-2036	Envir. Type	R/W Required Date (mm/yy)
										Federal Funding		State Funding		Local Funds	Total Funds								
										Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds										
00	1	PRES.-1.0	Pavement Preservation Program Citywide Maintain and preserve the City's roadway surfaces through pavement rehabilitation measures such as overlays/patching, crack sealing and other preventative maintenance measures.	PRES.-5.0 TRAF.-3.0 TRAF.-4.0	07	S		C S G W O P T	PE RW CN					4800	4800	240	240	240	720	960	2400		
														24000	24000	1200	1200	1200	3600	4800	12000		
										0	0	28800	28800	1440	1440	1440	4320	5760	14400				
00	2	TRAF.-2.0	Traffic Signal Program Citywide Replace and upgrade the City's Traffic Signal Systems to be compliant with MUTCD updates. This program is primarily funded through the City's Street Fund.	TRAF. -5.1	12	S		S W T C G P	PE RW CN					20	20	1	1	1	3	4	10		
														200	200	10	10	10	30	40	100		
										0	0	220	220	11	11	11	33	44	110				
14	3	TIF-10.0	Des Moines Memorial Drive & S. 200th St. Intersection Improvements from: DMMD to S. 200th St. Widen to provide left turn lanes on all legs, and right turn lane on east leg. Rebuild traffic signal and provide channelization improvements. The improvements would be done in partnership with Sea Tac.	S-3.0 SeaTac ST-065)	05 12 06	P		C S G T W P	PE RW CN			OTHER	150	50	200				200			CE	Yes
												OTHER	80	20	100				100				
												OTHER	920	280	1200				1200				
										0	1150	350	1500	0	0	0	300	1200	0				
16	4	S-26.0	24th Ave. S./28th Ave. S. Road Improvement 24th Avenue South from: S. 208th St. to S. 200th St. Coordinate with City of SeaTac on the construction of a new Principal Arterial roadway.	TIF-2.0 (SeaTac ST-131) (SeaTac Priority 2)	01 05 06 12 32	P		C S G P T W	PE RW CN					100	100		100				CE	SeaTac	
														0	0	100	100	0	0	0	0		
										0	0	100	100	0	100	0	0	0	0	0	0		
00	5	TRAF.-5.0	Traffic Safety Improvement Program Citywide Respond to capital needs associated with traffic and pedestrian safety. These funds would be primarily focused on capital projects near existing schools and other traffic safety related concerns.	TRAF. -5.1	03 06 12	P		C G P S T W	PE RW CN					140	140	20	10	8	18	24	60		
														935	935	200	210	100	75	100	250		
										0	0	1075	1075	220	220	108	93	124	310				
00	6	PRES.-5.0	Sidewalk/ADA Compliance Program Citywide Installation of pedestrian improvements.	PRES.-1.0	12 32	P		C G S P T W	PE RW CN					40	40	2	2	2	6	8	20		
														460	460	18	18	18	54	72	180		
										0	0	500	500	20	20	20	60	80	200				
00	7	TRAF.-4.0	Guardrail Program Citywide Install new guardrail and upgrade existing installations.	PRES.-1.0	03 12 06	P		C G P S T W	PE RW CN					20	20		2		4	4	10		
														330	330		23		46	66	115		
										0	0	350	350	0	25	0	50	70	125				
00	8	S-25.0	Sound Transit - Link Light Rail from: S. 216th St. to S. 272nd St. Coordination on Link Light Rail Alignment		23	P			PE RW CN					210	210	30	30	30	60	60		ST	
														120	120				60	60			
										0	0	330	330	30	30	30	120	120	0				

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EXHIBIT A

Agency: City of Des Moines, WA
 County No.: 17 County Name: King County
 City No.: 0325 MPO/RTPO: PSRC

From: 2017 To: 2036
 Hearing Date: 06/23/16 Adoption Date: _____
 Amend Date: _____ Resolution Number: _____

Functional Classification	Proposed Priority No.	City Project Number	Project Identification	Coordination with other City Project (Numbers)	Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Project Cost in Thousands of Dollars						Local Agency Expenditure Schedule (Year)						Federally Funded Projects Only					
										Fund Source Information						2017	2018	2019	2020-2022	2023-2026	2027-2036	Envir. Type	R/W Required Date (mm/yy)				
										Federal Funding		State Funding		Local Funds	Total Funds												
										Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds														
16	9	TIF-14.0	Marine View Dr and S. 240th St. Intersection Project from: _____ to: _____ Reconstruct roadway to improve horizontal alignment. Provide pedestrian facilities, and widen approaches. Install roundabout or traffic signal if warranted.	S-21.2	12 03 32	P	0.05	C G P R W S T W	PE RW CN			OTHER TIB TIB	80 50 1500	80 50 400	160 100 1900	160		100	1300								
										0	1630	530	2160	160	100	1300	0	0	0								
16	10	S-21.2	South 240th St. Improvements (Segment 2) South 240th Street from: 16th Ave. S. to: Marine View Drive Reconstruct roadway including two travel lanes, bicycle lanes, curb, gutter and sidewalks.	TIF-4.3 TIF-4.5 S-21.1 TIF-14.0	05 06 12 32	P	1.02	C S G P T W O	PE RW CN			OTHER	2000	250 250	250 0 2250				250								
										0	2000	500	2500	0	0	0	2500	0	0								
16	11	S-21.1	South 240th St. Improvements (Segment 1) South 240th Street from: East City Limits to: 16th Ave .S. Reconstruct roadway including two travel lanes, bicycle lanes, curb, gutter and sidewalks.	TIF-4.3 TIF-4.5 TIF-19.0 S-21.2	05 06 12 32	P	1.02	C S G P T W O	PE RW CN			OTHER	2000	500 1000	500 0 3000				500								
										0	2000	1500	3500	0	0	0	3500	0	0								
00	12	TRAIL-2.0	Barnes Creek Nature Trail Following SR 509 Right-of-Way from: Highline College to: Des Moines Creek Trail Construct shared use path/trail along old SR509 row (just west of 16th Ave S.) This trail w/connect to DM Creek Trail thru Des Moines Creek Business Park link.	TRAIL-1.0 © TIF-6.0	01 32 13	P	1.20	C W T S P G	PE RW CN	CMAQ STP	378 1650		410 250	788 1900	50	50	1500	1600					CE	Yes 1/13			
										2028	0	660	2688	50	1550	1600	0	0	0								
17	13	PRNIP-S2.0	S. 224th St. Improvements Pacific Ridge NIP S2 from: Pacific Highway South to: 30th Ave. S. Reconstruct roadway. Complete curb, gutter, and sidewalk improvements	PRNIP-S3.0 S-22.0	03 12 32 32	P		S W T C G P	PE RW CN				450	0 0 450	450	450											
										0	0	450	450	450	0	0	0	0	0	0							
00	14	TRAF-7.0	Redondo Area Street Lights Neighborhood streets in the lower Redondo area from: S. 281st St to: South City Limits Install conduit and street lighting in local road areas currently without lighting	PL-1.0	12 31	P			PE RW CN				70	70 0 0	70			70									
										0	0	70	70	0	0	70	0	0	0	0	0						
17	15	S-5.0	S. 223rd/Cliff Ave Street Improvement Cliff Ave/South 223rd Street from: Cliff Ave to: 24th Ave. S. Reconstruct to neighborhood collector standards incl. bike lanes, curbs, gutters and sidewalks. Improve sight distance. Provide pedestrian connection to Marina from 223rd/Cliff.		05 06 12 32	P	1.02	C S G P T W	PE RW CN			OTHER OTHER	300 4000	200 4000	500 0 8000												
										0	4300	4200	8500	0	0	0	0	0	8500								
00	16	S-29.0	South 236th Lane South 236th Lane from: SR-99 to: Highline College Expand roadway for eastbound travel as well as sidewalk, curb, and gutter on both sides, work with Kent on SR-99/236th Ln traffic signal. (Developed by others)					C G S P T W	PE RW CN			OTHER OTHER OTHER	200 200 1600	200 200 1600	200	200	200	1800						ST			
										0	2000	0	2000	0	200	200	1800	0	0								

EXHIBIT A

Agency: City of Des Moines, WA
 County No.: 17 County Name: King County
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										Fund Source Information						2017	2018	2019	2020-2022	2023-2026	2027-2036	Envir. Type	R/W Required Date (mm/yy)
										Federal Funding		State Funding		Local Funds	Total Funds								
										Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds										
14	26	INT-7.0	Pacific Highway S. and S. 240th St. Intersection Improvements from: _____ to: _____ Widen to provide dual left turn pocket for eastbound approach, revise signal timing. Coordinate with the City of Kent.	S-21.1 (KENT)	05 P			S W T R W C N	PE RW CN			OTHER 500	100	600					600				
					06							OTHER 500		500					500				
					12							OTHER 3000		3000					3000				
												0	4000	100	4100	0	0	0	0	4100	0		
17	27	TIF-6.0	16th Ave.S./18th Ave. S. Road Improvement Following along old SR 509 Right-of-Way from: S. 220th St. to: S. 216th St. Construct new neighborhood collector alignment along 16/18th Ave.S. corridor, incl. curb/gutter. May be shared use path constructed along R/W so pedestrian/bicycle facilities may be away from roadway alignment.	TRAIL-2.0 S-16.0	01 P	0.25		C S G P T W	PE RW CN			OTHER 300	300	600					600				
					05							OTHER 2200	500	2700					2700				
					12							0	2500	800	3300	0	0	0	0	3300	0		
19	28	TRAF.-3.0	Neighborhood Traffic Calming Program Citywide Respond to traffic calming concerns.	PRES.-1.0	12 P			C P S G T W	PE RW CN				200	200	10	10	10	30	40	100			
													800	800	40	40	40	120	160	400			
												0	0	1000	1000	50	50	50	150	200	500		
00	29	PL-2.0	Downtown Circulation Study from: _____ to: _____ Develop a plan to maximize multi-modal use, pedestrian access and traffic operations.	PL-1.0 PL-3.0	12 P				PE RW CN				100	100				100					
					31							0	0	100	100	0	0	0	100	0	0		
00	30	PL-3.0	Parking Management Plan Downtown from: _____ to: _____ Develop a parking management plan strategy and apply program and actions.	PL-1.0 PL-2.0	12 P				PE RW CN				100	100				100					
					31							0	0	100	100	0	0	0	100	0	0		
14	31	TIF-1.3	S. 216th St. Improvement Project (Segment 3) South 216th Street from: 18th Ave. S. to: 11th Ave. S. Widen to provide center turn lane, bike lanes, curb, gutter & sidewalks. Partially funded through development.	TIF-1.2 TIF-1.4 ITS-3.0	05 P	0.59		C G P S T W	PE RW CN			OTHER 420	220	640		270	370						
					06							OTHER 2900	1450	4350			230	1500					
					12							0	3320	1900	5220	0	270	3450	1500	0	0		
16	32	TIF-3.0	24th Ave. S. Improvement Project (Segment 1) 24th Avenue South from: S. 216th St. to: Kent-Des Moines Road Sidewalk, curb, gutter & drainage improvements. Provide 2-way left turn lane.	TIF-2.0 INT-1.0	05 P	0.87		C S G P T W	PE RW CN			OTHER 600	400	1000					1000				
					06							OTHER 250	250	500					500				
					12							OTHER 3000	1300	4300					4300				
					32							0	3850	1950	5800	0	0	0	0	5800	0		
17	33	S-30.0	Wooten Park Access and Parking Improvements North of Redondo Way South from: Redondo Way South to: South 282nd St Increase parking with a new parking lot east of Wooten Park	INT-5.0	06 P	0.10		C G P S T W	PE RW CN				150	150				50	100				
					12								1500	1500					1500				
					32							0	0	1650	1650	0	0	0	50	1600	0		
14	34	S-1.0	Des Moines Memorial Drive Improvement Des Moines Memorial Drive from: S. 208th St. to: Marine View Drive Install bike lanes, curb, gutter, drainage & sidewalks. Add a lane to approach to Marine View Dr. & left turn pockets where feasible.	INT-3.0 INT-4.0 TIF-11.0	05 P	0.91		C P S T W	PE RW CN			OTHER 250	500	750					750				
					12							OTHER 200	150	350					350				
					32							OTHER 3100	800	3900					3900				
												0	3550	1450	5000	0	0	0	0	5000	0		

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CRITERIA FOR PRIORITIZING PROJECTS

In developing the annual six-year Transportation Improvement Plan (TIP) for the City, project prioritization is needed to help identify when best to fund and implement the projects since funding is limited. Criteria were established to help prioritize the projects and implementation based on several goals for the Des Moines transportation system, as noted in Table 8-2.

Table 8-2. Criteria for Project Prioritization

Criteria	Measurement
Mobility	
Traffic Mobility	Improves corridor and signal LOS operation
Regional Mobility	Vehicle capacity improvements on major regional routes
System Preservation	Improves existing or substandard roadways
Safety	
Traffic Safety	Improvements that address HAL (based on collision history) location
Emergency Response	Reduces travel time to fire demand zones based on percent response in <= 7 minutes
Environment	
Environmental Preservation	Protects open spaces and minimizes increases to paved areas
Neighborhood Protection	Supports protection of residential areas and neighborhood streets
Multimodal	
Transit Mobility	Supports transit operation on primary transit corridors
Pedestrian Mobility	Improvements that benefit pedestrians based on Accessibility
Bicycle Mobility	Improvements that provide bicycle facilities
Connectedness-Accessibility	Completes missing links to improve access
Implementation	
Cost Effectiveness	Maximizes PM peak usage per 1000 dollar of investment
Funding	Level of funding commitment for project
Project Readiness	Degree the project is ready to be implemented
Economic Development	Supports Land Use Vision

Using these criteria, the recommended projects will need to be evaluated and ranked based on how well each could meet the criteria. High priority projects for Des Moines are those that meet multiple criteria in enhancing travel, mobility for all modes of travel and that will meet the near-term requirements of development and growth. Opportunities for funding can help to boost the priority of a project – allowing the City to take advantage of funding sources and development contributions to the completion of a key project.

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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: Franchise Agreements with Highline Water District, Southwest Suburban Sewer District, and Midway Sewer District

FOR AGENDA OF: June 23, 2016

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: June 16, 2016

1. Draft Ordinance No. 16-074 Franchise Agreement with Highline Water District
2. Draft Ordinance No. 16-075 Franchise Agreement with Southwest Suburban Sewer District
3. Draft Ordinance No. 16-076 Franchise Agreement with Midway Sewer District

CLEARANCES:

- Legal TG
 Finance DM
 Marina N/A
 Parks, Recreation & Senior Services N/A
 Planning, Building & Public Works DJB
 Police N/A
 Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of Franchise Agreements with Highline Water District, Southwest Suburban Sewer District, and Midway Sewer District.

Suggested Motions

Motion 1A: I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-074 on first reading.

Motion 1B: I move to enact Draft Ordinance No. 16-074 granting a non-exclusive franchise to Highline Water District to operate a water utility in the City's right-of-way subject to the terms and conditions set forth in the mutually negotiated Franchise Agreement.

Motion 2A: I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-075 on first reading.

Motion 2B: I move to enact Draft Ordinance No. 16-075 granting a non-exclusive franchise to Southwest Suburban Sewer District to operate a sewer utility in the City's right-of-way subject to the terms and conditions set forth in the mutually negotiated Franchise Agreement.

Motion 3A: I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-076 on first reading.

Motion 3B: I move to enact Draft Ordinance No. 16-076 granting a non-exclusive franchise to Midway Sewer District to operate a sewer utility in the City's right-of-way subject to the terms and conditions set forth in the mutually negotiated Franchise Agreement.

Background

A franchise is the right of a public utility to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the city streets in a manner not generally available to the public as a common right. The legislature has granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

The previous franchise agreements with Highline, Southwest Suburban, and Midway have all expired. The City initiated franchise negotiations in February of 2016 by inviting the District Commissioners and key staff of all three districts to a Council meeting to discuss establishing a process for negotiations and to outline issues of importance to each side. After that public meeting, representatives from the Districts and the City have met on a number of occasions and ultimately have come to agreement on the Draft Ordinances presented tonight. The Draft Ordinances have been reviewed and approved by the City Council Ad Hoc Franchise Committee.

Discussion

The key terms of the franchise agreements are detailed below. The terms of the agreements are largely identical for both the water district and the sewer districts, however, when there is a difference it will be noted.

1. **Franchise Term:** The term of the Agreements is for 10 years with the possibility of a single 5 year renewal. The Agreements will automatically renew unless either party gives notice prior to 180 days from the expiration date. There is no automatic renewal after year 15 and the Agreements will have to be renegotiated. This would place the expiration of the Agreements in the year 2026 or 2031 if no party objects to a renewal. The 10 to 15 year term provides certainty with regards to operations and revenue income for the City as well as the opportunity to potentially renegotiate the Agreements relatively soon if issues arise. A common length for a utility franchise agreement can be in the neighborhood of 25-30 years.
2. **Relocation:** For the most part, the proposed language reflects current practice with the exception of cost sharing on utility relocations. The Agreements require the City to pay a portion of some relocations under certain circumstances. If the age of the District Facility is 10 years old or less, the City and the District split the cost of the relocation, except that if the District Facility is considered a Major Facility (as defined in the Agreements), then the City and the District split the cost regardless of the age of the facility. There are some conditions when the cost sharing would not apply including relocations required by a State or Federal Agency, declarations of

emergency, and District Facilities located on bridges, or on, over, and under stream culverts. Additionally, the Agreements require collaboration amongst the parties in order to avoid the necessity of relocation whenever possible.

3. **Right of Way Management, Planning, and District Operations:** The proposed language reflects current practice and provides more definitive expectations on right-of-way use permit application review times.
4. **Indemnification and Insurance:** The Agreements provide that each party is responsible for their own actions. The Districts are required to maintain \$5,000,000 in insurance coverage. The indemnification and insurance language has been reviewed and approved by the City's insurance provider (Washington Cities Insurance Authority).
5. **Franchise Fee:** The Districts will each pay the City a one-time franchise fee of \$5,000. This flat fee is consistent with RCW 35.31.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations over the last several months.
6. **Franchise Payment:** The Agreements require the Districts to make bi-monthly Franchise Payments in the amount of 6% of the Districts "revenue" during the term of the franchise. This payment is in consideration of the rights and benefits the Districts receive under the Agreement. The definition of "revenue" is limited to income received from the sale of metered water or sewer services to customers within the City. It does not include fees, costs, or charges outside of the sale of water/sewer services.

In consideration of the payment, the City has agreed not to impose a utility tax on the Districts during the term of the Agreements as well as to not assume the Districts. Additionally, if the franchise payment is challenged in court by a third party and that party prevails, the City has the option to impose a 6% excise tax on the Districts in order to protect the City's interests and to accomplish the intent of the Agreement.

7. **Abandonment:** The Parties have agreed that the standard practice will be to abandon underground District facilities in-place whenever practical, however the City has the ultimate discretion to require their removal. The proposed language is an accurate reflection of current practice and also protects the City's authority to require their removal if needed.
8. **Vacation** – The proposed language is an accurate reflection of current practice and does not restrict the City's authority to vacate a right of way. The Agreement requires the City to notify the Districts of a vacation so that the District can obtain an easement if one is needed.
9. **Fire Suppression Costs** – This section only applies to the Highline Water District Agreement. There are conflicting opinions regarding whether a City is responsible for the percentage of the cost that a water district spends on fire suppression. Generally this cost is estimated to be about 5.2% of the districts gross revenue. Currently, Highline charges their ratepayers for this cost and does not bill the City. The negotiated language allows this arrangement to continue but also provides that if the District bills the City, the City has the option to terminate the franchise. This

language protects the City's ability to impose a utility tax if the franchise payment is negated by a bill for fire suppression costs.

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

Alternatives

1. Adopt the Draft Ordinances as written.
2. Adopt the Draft Ordinances with amendments. Amendments would need to be approved by the Districts.
3. Decline to adopt the Draft Ordinances and direct staff to continue negotiations with the Districts.

Financial Impact

The annual estimated revenue amount for the City from these three Agreements is \$500,000. If approved by all three districts by July 31, the anticipated 2016 revenues would be for utility bills for service starting September 1, 2016. Since the assessment period is two months (September and October) and the utilities have 30 days to remit the franchise payment, the first franchise payment is expected by November 1, 2016. The payment for November and December will be due by January 31, 2017 and if payment is received by that date, then 2016's revenues will reflect four months of the franchise payment. As this time period is past the summer peak water use and since only the estimated annual amounts have been calculated, the actual amount of revenue estimated is likely to be lower than the following estimate ($4/12 \times 500,000 = \$165,000$). In addition, another \$15,000 is due for reimbursement of negotiation costs.

Total estimated amount for 2016 is therefore \$180,000. \$500,000 is the amount which will be used in the 2017-2021 Financial Forecast for these three utility districts going forward on an annual basis.

Recommendation or Conclusion

Legal recommends adopting the Draft Ordinances as written.

Concurrence

Planning, Building, and Public Works, Finance, and Administration concur.

CITY ATTORNEY'S FIRST DRAFT 06/16/2016**DRAFT ORDINANCE NO. 16-074**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting Highline Water District a non-exclusive franchise to construct, maintain, operate, replace and repair a water system within public rights-of-way of the City of Des Moines, Washington, and fixing a time when the same shall become effective.

WHEREAS, Highline Water District, a Washington special purpose municipal corporation ("District"), owns water facilities ("Facilities") located in the City of Des Moines, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined, and

WHEREAS, RCW 57.08.005(3) authorizes the District to conduct water throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District, and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water facilities, and

WHEREAS, the City and the District have prepared a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way; now, therefore,

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

Sec. 1. Definitions. Where used in this Franchise (the "Franchise") these terms have the following meanings:

"City" means the City of Des Moines, a Washington municipal corporation, and its respective successors and assigns.

"Director" means the Director of the City's Planning, Building and Public Works Department, or the Director's designee.

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"District" means the Highline Water District, a Washington municipal corporation, and its respective successors and assigns.

"Facility" or "Facilities" means tanks, reservoirs, water treatment facilities, meters, pipes, mains, services, valves, blow offs, vaults, fire suppression water facilities, risers, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lines, service lines located in the Franchise Area as defined below, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a water utility system, whether the same be located over, on or underground.

"Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved in the District's service area within the present corporate boundaries of the City (as depicted in Exhibit B, attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues and alleys. The Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties.

"Ordinance" means this Ordinance No. _____, which sets forth the terms and conditions of this Franchise.

"Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

"Revenue" means income received by the District from the sale of metered water to direct retail customers whose properties receiving such service from the District's water system are located within the City. Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and

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costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); income to recover the cost of fire suppression facilities and to pay for the provision of fire suppression services; loans; income from legal settlements not related to water sales to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; water system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

Sec. 2. Franchise.

(1) In addition to the authority granted by State law to the District to locate, operate and maintain its Facilities in public roads and streets, the City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water utility functions as defined in Title 57 RCW beginning on the Effective Date of this Franchise; provided the City's grant of the right to use the Franchise Area to the District as provided herein for its Facilities shall not be construed to require the District to provide such Facilities to the City.

(2) Nothing contained in this Ordinance is to be construed as granting permission to District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

(3) In addition to the rights granted to the District to undertake and perform activities within the Franchise Area as provided herein, District shall have the right to discharge District water supply to and into the City's storm water system while performing water system flushing and other District

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activities, provided any District water to be discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system.

(4) At all times during the term of this Franchise, District shall fully comply with all applicable federal and state laws and regulations and required permits, including, but not limited to, RCW 39.04.180 for construction trench safety systems, chapter 19.122 RCW for utility damage prevention, the State Environmental Policy Act, the State of Washington Pollution Control Law, and the Federal Clean Water Act.

Sec. 3. Non-interference of Facilities.

(1) District's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian, bicycle, and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City of Des Moines. Nothing herein shall preclude District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided District receives prior City approval, which shall not be unreasonably withheld, and, provided further, District shall have the right to effect temporary road closures in the event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval of such road closures as soon as reasonably possible.

(2) Whenever it is necessary for District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards, as issued by the City's Planning, Building and Public Works Department, as nearly as reasonably possible to its condition prior to any such excavation, installation, construction, relocation, maintenance or repair, at no expense to the City; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the Director, which

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permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the streets and right-of-ways.

(3) If the City determines that the District has failed to restore the right-of-way in accordance with the conditions set forth in this Franchise, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this section. The rights granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

(4) The District shall, at no expense to the City, expeditiously repair all existing Facilities that it owns, operates and maintains within the Franchise Area, including any damage caused directly or indirectly by its Facilities. The District shall also coordinate and manage the repair of service lines in the Franchise Area connecting its system to users.

(5) Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. A Professional Land Surveyor (PLS) shall be responsible for perpetuating and documenting existing monuments in compliance with the Application Permit to Remove or Destroy a Survey Monument in accordance with WAC 332-120. Following approval by the Public Land Survey Office, copies of the approved permits shall be forwarded to the City. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

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Sec. 4. Relocation of Facilities.

(1) Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of City-owned utilities, storm drainage lines, lighting, signalization, sidewalk improvements, pedestrian and bicycle amenities, or other public street improvements and such project requires the relocation of the District's then-existing Facilities within such Franchise Area, the City shall:

(a) Pursuant to RCW 35.21.905, or as amended, consult with the District in the predesign phase of any such project in order to coordinate the project's design with District Facilities within such project's area; and

(b) Provide the District, at least three hundred sixty (360) days prior to the advertisement for bid of construction of such project, written notice that a project is expected to require the relocation of District Facilities, together with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for the District's Facilities; and

(c) Coordinate and work diligently with the District to minimize conflicts between existing Facilities and the project improvements where possible, and to avoid having the District relocate their facilities, whenever possible. The District acknowledges that there may be situations and circumstances where no other feasible alternatives are available.

(2) After receipt of such notice and such plans and specifications, District shall relocate such Facilities within the Franchise Area so as to accommodate such street and city utility improvement project; provided, however, District may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time evaluate such alternatives and advise the District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so

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requested by the City, District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. If the City reasonably determines that there is no other feasible alternative, the City shall provide the District with further written notice to that effect, and the District shall then relocate its Facilities by its own forces, by separate public works contract or by participating in the City's public works project in accordance with section 4(7). The City shall cooperate with the District to designate a substitute location for its Facilities within the Franchise Area. The City will establish a date by which Facilities will be relocated, which date will be not less than one hundred eighty (180) days after further written notice to the District as to the Facility to be relocated. District must finish relocation of each such Facility by the date so established.

(3) The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

(a) If the relocation occurs within ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%).

(b) If the relocation occurs more than ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the relocation shall be at the District's sole cost.

(c) However, if the City requires the relocation of Major Facilities defined as water mains of twelve (12) inch diameter or greater (excluding asbestos cement water mains), supply stations, pump stations or vault structures ("Major Facilities" or "Major Facility") to accommodate the completion of or as a result of a City project, where such facility cannot reasonably be supported, disconnected, relocated or removed, then the City shall pay fifty percent (50%) of the cost of the relocation of the Major Facility and the District shall pay the remaining fifty percent (50%) without limitation on the age of the

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facility; provided, the City and District agree to give full and fair consideration to any lower-cost alternatives to relocating the Major Facility meeting the minimum operational requirements of the Parties, and the City and the District shall each pay fifty percent (50%) of the lower-cost alternative.

(d) For the purposes of this section 4, the date of the Facility's acceptance by the District Board of Commissioners, or the date of final contract payment for the facility's installation (whichever occurs first), shall determine the age of the Facility.

(e) Whenever any State or Federal Agency with legal authority within the Franchise Area requires the relocation of District Facilities, the relocation shall be at the District's sole cost. This provision does not limit the District's rights to seek reimbursement for the costs of such relocation from the State or Federal Agency requiring the relocation.

(f) Subsections (a) and (c) of this section 4(3) shall not apply to:

(i) Relocations of District facilities required as part of a formal declaration of emergency as defined by RCW 39.04.280(3) by the City, which is ratified by Resolution of the City Council. In such cases, relocation, if necessary, shall be at the District's sole cost; and

(ii) Relocation of District facilities located on, over, or under bridges, and culverts conveying creeks and streams (identified as Des Moines Creek, Barnes Creek, Massey Creek, McSorley Creek, Woodmont Creek, Redondo Creek, Cold Creek), where relocation of such facilities, if necessary, shall be at the District's sole cost.

(4) Whenever the City is undertaking a road or City-owned utility project or improvement, the City will not use its authority to require the District to relocate water facilities [excluding water services and hydrants] for third party franchise utilities (private utilities) on City-initiated aerial-to-underground conversion projects. If conflicts between the aerial-to-

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underground joint-trench and the District Facilities cannot be resolved, and relocation of District Facility's is necessary, the District shall have the right as a pre-condition of such relocation to require payment to the District for any and all costs and expenses incurred by the District in the relocation of such District Facilities. On City-initiated projects requiring aerial-to-aerial relocation of third party franchise utilities (private utilities), the District shall relocate that portion of its Facilities which are in direct conflict with the new locations of the third party franchise utility facilities, such as utility poles, or participate in securing the necessary easements where no reasonable alternative location for the third party franchise utility facilities exists within the then existing right-of-way.

(5) For the purpose of this section 4, a project or improvement is considered to be caused by the City (as described in section 4(1) above) if the project is City-initiated and is part of the City's annually adopted Capital Improvement Project (CIP) Program, and can include projects or improvements where a third party has made an in lieu payment for a portion of the City's capital improvement project, provided, the City is responsible for the majority of the cost of the project or improvement, which, if applicable, includes any grant funding received by the City from any federal or state agency. A project or improvement is not considered to be caused by the City if the project or improvement is constructed by the City on behalf of a third party, where the third party is responsible for the majority of the project or improvement cost, and makes payment to the City in lieu of performing the project or improvement.

(6) Whenever any person or entity, other than the City, requires the relocation of District Facilities to accommodate the work of such person or entity within the Franchise Area [excluding State and Federal Agencies with legal authority within the Franchise Area], the City agrees not to use its authority to require the District to relocate the existing facilities. The District shall have the right as a pre-condition of such relocation to require such person or entity to:

(a) Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense

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incurred by the District in the relocation of District Facilities;
 and

(b) Protect, defend, indemnify and save the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

(7) If a City project requires the relocation of then existing Facilities within the Franchise Area, the District shall have the right by interlocal agreement with the City to include the relocation of any Facilities as required by the City as part of the City's public works project. Such interlocal agreement shall include and provide for, but not be limited to, the following terms and conditions:

(a) The inclusion of the District's work as part of the City's project;

(b) The District to provide plans and specifications of the District's work to the City for inclusion as a separate bid schedule in the City project, whether such District plans and specifications are prepared by the District at the District's expense, or the City prepares the plans and specifications for the District's work at the District's expense;

(c) The City bidding the project, including the District's work by separate bid schedule, and the District's approval of the contractor's bid for the District's work in the separate bid schedule, or, alternatively, the District's rejection of the contractor's bid for the District work and the District's right to perform the District's work through a District contractor, provided that in so doing the City's project is not unreasonably delayed;

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(d) The City's contractor to install both the City work and the District work, the City's obligation to pay the City's contractor for both the City work and the District work, and the District's obligation to reimburse the City for the cost of the District work performed by the City contractor; and

(e) The District's obligation to reimburse the City for District project administration and inspection fees and costs based on a time and materials basis, provided the City and the District may negotiate a lump sum payment on a per project basis, or a percentage of the total District project construction cost, and provided the District shall not be required to pay for any City-issued permits related to the City work and the District work.

(8) The Parties expressly agree that this section 4 shall not survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Sec. 5. Right-of-Way management.

(1) Excavation. Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in City right-of-way. Except for emergencies or routine maintenance, no District excavation work shall commence within any City right-of-way without a permit, except as otherwise provided in this Franchise and applicable City Ordinance. All work shall be done to the City's reasonable satisfaction.

(2) Restoration after construction. The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to City standards as nearly as reasonably possible to its condition prior to any such work. The District agrees to promptly complete all restoration work and to promptly repair any damage to the right-of-way caused by such work at its sole cost and expense. If it is determined the District has failed to restore the right-of-way in accordance with this Franchise and other applicable City regulations, the City shall provide the

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District with written notice including a description of the actions the City believes necessary to restore the right-of-way.

(3) Bonding requirement. The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's right-of-way.

(4) Emergency work, permit waiver. In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District's Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise; provided the District shall notify the City as soon as reasonably possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City Ordinance.

(5) City work zones. The District shall not be required to obtain a City right-of-way permit to undertake utility work when the District has included its work as part of a City public works project in accordance with section 4(7).

(6) Complete permit applications. If the District is required to obtain a City right-of-way permit to undertake utility work within City right-of-way, the City shall issue a permit within fourteen (14) calendar days of receiving a complete application for such permit from the District.

(7) City invoices. The City shall invoice the District for all City fees and charges relating to the issuance of any City right-of-way permit to the District, including inspection fees and charges, on a monthly basis, and the City's final fees and charges within thirty (30) days of the completion of any District work in City right-of-way subject to a City permit, and the City's final acceptance of any such District work.

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Sec. 6. Planning coordination.

(1) The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents as follows:

(a) For the District's service area within the City limits, the District will participate in a cooperative effort with the City to develop City's Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

(b) The District will participate in a cooperative effort with the City to ensure that the Utilities Element of City's Comprehensive Plan is accurate as it relates to the District's operations and is updated to ensure continued relevance at reasonable intervals.

(c) The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding twenty (20) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

(d) The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of District's Comprehensive Water Comprehensive Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

(2) District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

(a) For the purpose of planning, the District and the City shall provide each other with a copy of their respective

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current adopted Capital Improvement Plan annually and upon request by the other Party.

(b) By February 1st of each year, District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

(c) By February 1st of each year, City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

(d) The District shall meet with the City, and other franchisees and users of the right-of-way, as necessary, to schedule and coordinate construction activities.

(e) All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages.

(f) The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

(g) Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records in electronic format as available that show the location of its facilities within rights-of-way.

Sec. 7. Indemnification.

(1) District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or

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negligent acts, failures and/or omissions of District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted District in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

(2) City shall indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise or in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

(3) In the event any such claim or demand be presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other Party, the Party shall promptly notify the other Party thereof, and the notified Party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

(4) Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of City and District, their officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes

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the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

Sec. 8. Default. If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to District. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided a good faith dispute does not exist concerning such compliance.

In addition to other remedies provided herein, if the District is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

Sec. 9. Non-exclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from constructing, altering, maintaining, or using the Franchise

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Area or affect the jurisdiction of the City over the same or any part thereof.

Sec. 10. Jurisdiction. This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the Franchise Area. It is not a warranty of title or of interest in City road rights-of-way.

Sec. 11. Franchise term. This Franchise shall have a term of ten (10) years from its Effective Date as defined in section 36 herein, provided this Franchise shall be automatically extended for one additional five (5) year period unless either Party, at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term (collectively, the "Term").

Sec. 12. Franchise fee. As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City a one-time franchise fee ("Franchise Fee") of Five Thousand Dollars (\$5,000.00). The Franchise Fee shall be paid by the District to the City within thirty (30) days of the Effective Date of the Franchise.

Sec. 13. Non-assumption. In consideration of the District's payment of the Franchise Fee and Franchise payment to the City as provided in sections 12 and 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over all or part of the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt pursuant to RCW 35.13A.060 or as such statute may be amended or superseded to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located

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within or without the City's corporate limits during the Term of this Franchise.

Sec. 14. Franchise payment.

(1) In consideration of the rights granted the District under this Franchise, the District shall pay to the City a franchise payment ("Franchise payment") in the amount of six percent (6.0%) of the District's Revenue during the Term of this Franchise, beginning the first day of the first month occurring at least thirty (30) days after the Effective Date of this Franchise, subject to the provisions of section 14(2) herein.

(2) Franchise payments shall be paid to the City in bi-monthly installments due and payable within thirty (30) days following the end of the bi-monthly period.

(3) Should the District be prevented by judicial or legislative action from paying any or all of the Franchise payments, the District shall be excused from paying that portion of the Franchise payment. Should a court of competent jurisdiction declare the Franchise payment invalid, in whole or in part, then the District's obligation to pay the Franchise payments to the City under this section shall be terminated in accordance with and to the degree required to comply with such court action, provided, the Parties agree to meet to discuss alternatives and amendments to this Franchise to retain the essential purposes of this section. If the Parties are unable to agree on appropriate amendments to this Franchise, the City shall have the right to void section 14(4) of this Agreement and may impose an Excise Tax on the District's Revenue; provided, if any such Excise Tax exceeds six percent (6%), the District shall have the right to terminate this Franchise and shall have the right to bring an action to challenge the legal validity of any such Excise Tax.

(4) In consideration of the District's payment of a Franchise payment to the City as provided in section 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear any legal authority it may have to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or

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any other tax (collectively "Excise Tax") upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise.

(5) If a court of competent jurisdiction determines the City may not agree to forbear its statutory authority to impose an Excise Tax upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise, or may not agree to limit any such Excise Tax on the District's revenues, gross receipts, or gross income, and thereafter the City imposes an Excise Tax on the District, the District shall have the cumulative rights and options, at its sole election, to (1) terminate this Franchise and the payment of Franchise payments to the City, or (2) elect not to terminate this Franchise and may elect to pay any such Excise Tax, provided the District's Franchise payments herein to the City shall be credited against any such Excise Tax the City may impose.

(6) The District shall have the right to recover the Franchise payments from the District's ratepayers residing within the City and may identify the Franchise payments as a separate billing item on utility customer billings.

(7) The District agrees while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise payment set forth herein.

(8) If the District determines to bill the City for fire suppression water facilities as defined in RCW 70.315.020 (1) during the term of this Franchise, the City shall have the right, at its sole discretion, to terminate this Franchise, including the right to receive Franchise payments from the District.

(9) If the District fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

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Sec. 15. Compliance with codes and regulations.

(1) The rights, privileges and authority herein granted are subject to and governed by this Ordinance and all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this Ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public or deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and City rules and regulations, including the City public works policies and pre-approved plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

(2) If any territory served by District is annexed to the City after the Effective Date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise payment for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next bi-monthly billing period and paid to the City at the same time as the fee for the Franchise Area is paid for that bi-monthly billing period.

Sec. 16. Location of Facilities and equipment. With the exception of components that are traditionally installed above ground such as fire hydrants, blow offs, vault lids, risers, pump stations, generators, electrical control panels, power meters, telephone connections, automated reading equipment and appurtenances, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed

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underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's land use and zoning code and applicable development pre-approved plans.

Sec. 17. Record of installations and service. With respect to excavations by District and the City within the Franchise Area, District and the City shall each comply with its respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

Upon written request of the City, District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its improvements located within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As-built drawings of the location of any Facilities placed by District in the Franchise Area, shall be made available to the City within twenty (20) working days of request.

Sec. 18. Shared use of excavations.

(1) District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Areas

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informed of its intent to undertake such construction work. District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

(2) If at any time, or from time to time, either District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(a) No statutes, laws, regulations, ordinances or District policies prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

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

(c) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

Sec. 19. Insurance.

(1) The District shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage is a condition precedent to the effectiveness of this Franchise.

(2) The insurance shall be maintained in full force and effect at the District's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Franchise shall terminate as of the date of the termination of insurance coverage. The District shall provide the City annually with original certificates evidencing insurance as required by this Agreement.

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(3) The coverage provided by the District's insurance policies shall be primary to any insurance maintained by the City, except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the District's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the District's premiums.

(4) The District shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The District's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The District shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the District's work relating to the Franchise is not intended to include review of the adequacy of the District's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The District shall provide reasonable and appropriate access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

Sec. 20. Abandonment and/or removal of District Facilities. The Parties agree that the standard practice will be to abandon underground District Facilities in-place whenever practical, subject to the following conditions:

(1) The District shall continue to own and be responsible for any such facilities abandoned within the Franchise Area.

(2) The City shall have the right to require the District to remove any Facilities abandoned within the Franchise Area if the City reasonably determines the removal of the abandoned

Ordinance No. _____
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Facility is required to facilitate the construction or installation of a City project within the Franchise Area and the City determines there is no other reasonable or feasible alternative to the removal of the Facility. The City will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District's expense, remove such abandoned Facilities by their own forces or by participating in the City's public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

(3) Within one hundred and eighty days (180) of the District's permanent cessation of use of its Facilities as determined by the District, or any portion thereof, the District shall provide the City with record drawings showing the location of the Facilities to be abandoned.

(4) District Facilities that are abandoned in-place shall be abandoned pursuant to City Standards, to the satisfaction of the Planning, Building and Public Works Director.

(5) The Parties expressly agree that this section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Sec. 21. Vacation of Franchise Area. If the City processes an application and/or determines to vacate any right-of-way which is part of the Franchise Area, the City may, after giving thirty (30) days written notice to the District, terminate this Franchise with respect to any City road or rights-of-way vacated. However, should the District notify the City that an easement is required for existing Facilities within the proposed vacation area, the City shall require the applicant for a vacation to prepare and provide to the District the necessary easement documentation, at no cost to the District. The City shall withhold approval of such vacation until the District has notified the City that the necessary easement documentation has been secured, or

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provisions otherwise made acceptable to the District to maintain the viability and use of existing Facilities.

Sec. 22. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon the District, and no right, privilege, license or authorization granted to the District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval.

Sec. 23. Reservation of rights. The City reserves the right, upon thirty (30) days written notice to the District, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, or federal statute, ordinance, rule or regulation. Unless mandated by state or federal law, if any term or condition of this Franchise and any term or condition of any City code, ordinance, resolution, or regulation are in conflict, the terms of this Franchise shall control.

Sec. 24. Notice. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by e-mail with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by email, it shall be deemed

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given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: City Clerk
 City of Des Moines
 21630 11th Ave. S.
 Des Moines, WA 98198
 Phone: (206) 878-4595
 Fax: (870) 6540

To District : General Manager
 Highline Water District
 23828 30th Ave. S.
 Kent, WA 98032
 Phone: (206) 824-0375
 Fax: (206) 824-0806

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner required by this section to the other Party.

Sec. 25. Severability. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

Sec. 26. Non-Waiver. The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

Sec. 27. Non-Discrimination clause. In all hiring or employment made possible or resulting from this Franchise, the Parties agree there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation,

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age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Franchise on the grounds of sex, sexual orientation, age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification.

Sec. 28. Alternate dispute resolution. If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties may submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

Sec. 29. Attorney fees. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's or the District's right to indemnification under section 7 of this Agreement.

Sec. 30. Governing law/venue. This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Agreement shall only be filed in King County Superior Court, King County, Washington.

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Sec. 31. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Sec. 32. Amendment. This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, section 7 "Indemnity" above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

(1) References this Franchise; and

(2) States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with subsections (1) and (2) referenced immediately above, the provisions of this Franchise shall control.

Sec. 33. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this Ordinance to the District as set forth in this Ordinance. District shall have thirty (30) days from the receipt of the certified copy of this Ordinance to accept in writing the terms of the Franchise granted to the District by this Ordinance and file with the City

Ordinance No. _____
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Clerk the Statement of Acceptance, attached hereto as Exhibit "A," and incorporated by reference.

Sec. 34. District Acceptance of Franchise. District shall have no rights under this Franchise nor shall District be bound by the terms and conditions of this Franchise unless District shall, within thirty (30) days after the effective date of the ordinance, file with the City its written acceptance of this Franchise.

Sec. 35. Effective date of Ordinance. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Sec. 36. Effective date of Franchise. The terms and conditions of this Ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this Ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective date") of the Franchise.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2016 and signed in authentication thereof this _____ day of _____, 2016.

M A Y O R

APPROVED AS TO FORM:

Interim City Attorney

ATTEST:

City Clerk

Published: _____

EXHIBIT A

ORDINANCE NO. _____

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Highline Water District hereby declares on behalf of Highline Water District the acceptance of the nonexclusive franchise to Highline Water District approved by the Des Moines City Council on _____, _____, 2016, by the adoption of Des Moines City Ordinance No. _____.

DATED this _____ day of _____, 2016.

HIGHLINE WATER DISTRICT

By: _____
Its: _____

EXHIBIT B

ORDINANCE NO. _____

DEPICTION OF CITY CORPORATE BOUNDARIES

Normandy Park
Burien

88



Des Moines
City Limits



SeaTac

King County

PUGET SOUND

Des Moines

Kent

King County

Federal Way



Exhibit B



Development Services Division
21630 11th Ave S
Suite D
Des Moines, WA 98198
PHONE: (206) 878-4595
FAX: (206) 870-1626
WEB: www.dcmoineswa.gov

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. ____, Adopted _____, 2016.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance grants Highline Water District a non-exclusive franchise to construct, maintain, operate, replace and repair a water system within public rights-of-way of the City of Des Moines, Washington, and fixes a time when the same shall become effective.

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

Bonnie Wilkins, CMC
City Clerk

Published: _____

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CITY ATTORNEY'S FIRST DRAFT 06/16/2016**DRAFT ORDINANCE NO. 16-075**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting Southwest Suburban Sewer District a non-exclusive franchise to construct, maintain, operate, replace and repair a sewer system within public rights-of-way of the City of Des Moines, Washington, and fixing a time when the same shall become effective.

WHEREAS, Southwest Suburban Sewer District, a Washington special purpose municipal corporation ("District"), owns sewer facilities ("Facilities") located in the City of Des Moines, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined, and

WHEREAS, RCW 57.08.005(5) authorizes the District to conduct sewage throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District, and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated sewer facilities, and

WHEREAS, the City and the District have prepared a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way; now, therefore,

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

Sec. 1. Definitions. Where used in this Franchise (the "Franchise") these terms have the following meanings:

"City" means the City of Des Moines, a Washington municipal corporation, and its respective successors and assigns.

"Director" means the Director of the City's Planning, Building and Public Works Department, or the Director's designee.

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"District" means the Southwest Suburban Sewer District, a Washington municipal corporation, and its respective successors and assigns.

"Facility" or "Facilities" means meters, pipes, mains, services, valves, vaults, risers, generators, electrical control panels, power meters, telephone connections, meter stations, pump stations, lift stations, lines, wastewater treatment plants and facilities and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a wastewater utility system, whether the same be located over or underground.

"Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved in the District's service area within the present corporate boundaries of the City (as depicted in Exhibit B, attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues and alleys. The Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties.

"Ordinance" means this Ordinance No. _____, which sets forth the terms and conditions of this Franchise.

"Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

"Revenue" means income received by the District from the provision of sewer service to direct retail customers whose properties receiving such service from the District's sewer system are located within the City. Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); loans; income from legal settlements not related to the provision

of sewer service to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; sewer system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

Sec. 2. Franchise.

(1) In addition to the authority granted by State law to the District to locate, operate and maintain its Facilities in public roads and streets, the City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its sewer utility functions as defined in Title 57 RCW beginning on the Effective Date of this Franchise; provided the City's grant of the right to use the Franchise Area to the District as provided herein for its Facilities shall not be construed to require the District to provide such Facilities to the City.

(2) Nothing contained in this Ordinance is to be construed as granting permission to District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

(3) At all times during the term of this Franchise, District shall fully comply with all applicable federal and state laws and regulations and required permits, including, but not limited to, RCW 39.04.180 for construction trench safety systems, chapter 19.122 RCW for utility damage prevention, the State Environmental Policy Act, the State of Washington Pollution Control Law, and the Federal Clean Water Act.

Sec. 3. Non-interference of Facilities.

(1) District's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian, bicycle, and vehicular traffic and ingress or egress to or from the abutting

property and in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City of Des Moines. Nothing herein shall preclude District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided District receives prior City approval, which shall not be unreasonably withheld, and, provided further, District shall have the right to effect temporary road closures in the event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval of such road closures as soon as reasonably possible.

(2) Whenever it is necessary for District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards, as issued by the City's Planning, Building and Public Works Department, as nearly as reasonably possible to its condition prior to any such excavation, installation, construction, relocation, maintenance or repair, at no expense to the City; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the Director, which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the streets and right-of-ways.

(3) If the City determines that the District has failed to restore the right-of-way in accordance with the conditions set forth in this Franchise, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this section. The rights granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

(4) The District shall, at no expense to the City, expeditiously repair all existing Facilities that it owns, operates and maintains within the Franchise Area, including any damage caused directly or indirectly by its Facilities. The

District shall also coordinate and manage the repair of service lines in the Franchise Area connecting its system to users.

(5) Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. A Professional Land Surveyor (PLS) shall be responsible for perpetuating and documenting existing monuments in compliance with the Application Permit to Remove or Destroy a Survey Monument in accordance with WAC 332-120. Following approval by the Public Land Survey Office, copies of the approved permits shall be forwarded to the City. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

Sec. 4. Relocation of Facilities.

(1) Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of City-owned utilities, storm drainage lines, lighting, signalization, sidewalk improvements, pedestrian and bicycle amenities, or other public street improvements and such project requires the relocation of the District's then-existing Facilities within such Franchise Area, the City shall:

(a) Pursuant to RCW 35.21.905, or as amended, consult with the District in the predesign phase of any such project in order to coordinate the project's design with District Facilities within such project's area; and

(b) Provide the District, at least three hundred sixty (360) days prior to the advertisement for bid of construction of such project, written notice that a project is expected to require the relocation of District Facilities, together with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for the District's Facilities; and

(c) Coordinate and work diligently with the District to minimize conflicts between existing Facilities and the

project improvements where possible, and to avoid having the District relocate their facilities, whenever possible. The District acknowledges that there may be situations and circumstances where no other feasible alternatives are available.

(2) After receipt of such notice and such plans and specifications, District shall relocate such Facilities within the Franchise Area so as to accommodate such street and city utility improvement project; provided, however, District may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time evaluate such alternatives and advise the District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so requested by the City, District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. If the City reasonably determines that there is no other feasible alternative, the City shall provide the District with further written notice to that effect, and the District shall then relocate its Facilities by its own forces, by separate public works contract or by participating in the City's public works project in accordance with section 4(7). The City shall cooperate with the District to designate a substitute location for its Facilities within the Franchise Area. The City will establish a date by which Facilities will be relocated, which date will be not less than one hundred eighty (180) days after further written notice to the District as to the Facility to be relocated. District must finish relocation of each such Facility by the date so established.

(3) The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

(a) If the relocation occurs within ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%).

(b) If the relocation occurs more than ten (10) years after the District or a third party on the District's behalf

constructed such Facility, then the relocation shall be at the District's sole cost.

(c) However, if the City requires the relocation of Major Facilities defined as gravity sewer of twelve (12) inch diameter or greater, lift stations and pump stations and related force mains, siphon lines and boxes, or vault structures ("Major Facilities" or "Major Facility") to accommodate the completion of or as a result of a City project, where such facility cannot reasonably be supported, disconnected, relocated or removed, then the City shall pay fifty percent (50%) of the cost of the relocation of the Major Facility and the District shall pay the remaining fifty percent (50%) without limitation on the age of the facility; provided, the City and District agree to give full and fair consideration to any lower-cost alternatives to relocating the Major Facility meeting the minimum operational requirements of the Parties, and the City and the District shall each pay fifty percent (50%) of the lower-cost alternative.

(d) For the purposes of this section 4, the date of the Facility's acceptance by the District Board of Commissioners, or the date of final contract payment for the facility's installation (whichever occurs first), shall determine the age of the Facility.

(e) Whenever any State or Federal Agency with legal authority within the Franchise Area requires the relocation of District Facilities, the relocation shall be at the District's sole cost. This provision does not limit the District's rights to seek reimbursement for the costs of such relocation from the State or Federal Agency requiring the relocation.

(f) Subsections (a) and (c) of this section 4(3) shall not apply to:

(i) Relocations of District facilities required as part of a formal declaration of emergency as defined by RCW 39.04.280(3) by the City, which is ratified by Resolution of the City Council. In such cases, relocation, if necessary, shall be at the District's sole cost; and

(ii) Relocation of District facilities located on, over, or under bridges, and culverts conveying creeks and streams (identified as Des Moines Creek, Barnes Creek, Massey

Creek, McSorley Creek, Woodmont Creek, Redondo Creek, Cold Creek), where relocation of such facilities, if necessary, shall be at the District's sole cost.

(4) Whenever the City is undertaking a road or City-owned utility project or improvement, the City will not use its authority to require the District to relocate sewer facilities [excluding sewer services] for third party franchise utilities (private utilities) on City-initiated aerial-to-underground conversion projects. If conflicts between the aerial-to-underground joint-trench and the District Facilities cannot be resolved, and relocation of District Facility's is necessary, the District shall have the right as a pre-condition of such relocation to require payment to the District for any and all costs and expenses incurred by the District in the relocation of such District Facilities. On City-initiated projects requiring aerial-to-aerial relocation of third party franchise utilities (private utilities), the District shall relocate that portion of its Facilities which are in direct conflict with the new locations of the third party franchise utility facilities, such as utility poles, or participate in securing the necessary easements where no reasonable alternative location for the third party franchise utility facilities exists within the then existing right-of-way.

(5) For the purpose of this section 4, a project or improvement is considered to be caused by the City (as described in section 4(1) above) if the project is City-initiated and is part of the City's annually adopted Capital Improvement Project (CIP) Program, and can include projects or improvements where a third party has made an in lieu payment for a portion of the City's capital improvement project, provided, the City is responsible for the majority of the cost of the project or improvement, which, if applicable, includes any grant funding received by the City from any federal or state agency. A project or improvement is not considered to be caused by the City if the project or improvement is constructed by the City on behalf of a third party, where the third party is responsible for the majority of the project or improvement cost, and makes payment to the City in lieu of performing the project or improvement.

(6) Whenever any person or entity, other than the City, requires the relocation of District Facilities to accommodate the work of such person or entity within the Franchise Area [excluding

State and Federal Agencies with legal authority within the Franchise Area], the City agrees not to use its authority to require the District to relocate the existing facilities. The District shall have the right as a pre-condition of such relocation to require such person or entity to:

(a) Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense incurred by the District in the relocation of District Facilities; and

(b) Protect, defend, indemnify and save the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

(7) If a City project requires the relocation of then existing Facilities within the Franchise Area, the District shall have the right by interlocal agreement with the City to include the relocation of any Facilities as required by the City as part of the City's public works project. Such interlocal agreement shall include and provide for, but not be limited to, the following terms and conditions:

(a) The inclusion of the District's work as part of the City's project;

(b) The District to provide plans and specifications of the District's work to the City for inclusion as a separate bid schedule in the City project, whether such District plans and specifications are prepared by the District at the District's expense, or the City prepares the plans and specifications for the District's work at the District's expense;

(c) The City bidding the project, including the District's work by separate bid schedule, and the District's approval of the contractor's bid for the District's work in the separate bid schedule, or, alternatively, the District's rejection

of the contractor's bid for the District work and the District's right to perform the District's work through a District contractor, provided that in so doing the City's project is not unreasonably delayed;

(d) The City's contractor to install both the City work and the District work, the City's obligation to pay the City's contractor for both the City work and the District work, and the District's obligation to reimburse the City for the cost of the District work performed by the City contractor; and

(e) The District's obligation to reimburse the City for District project administration and inspection fees and costs based on a time and materials basis, provided the City and the District may negotiate a lump sum payment on a per project basis, or a percentage of the total District project construction cost, and provided the District shall not be required to pay for any City-issued permits related to the City work and the District work.

(f) The Parties expressly agree that this section 4 shall not survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Sec. 5. Right-of-Way management.

(1) Excavation. Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in City right-of-way. Except for emergencies or routine maintenance, no District excavation work shall commence within any City right-of-way without a permit, except as otherwise provided in this Franchise and applicable City Ordinance. All work shall be done to the City's reasonable satisfaction.

(2) Restoration after construction. The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to City standards as nearly as reasonably possible to its condition prior to any such work. The District agrees to promptly complete all restoration work and to promptly repair any damage to the right-of-way caused by such work at its sole cost and expense. If it is determined the District has failed

to restore the right-of-way in accordance with this Franchise and other applicable City regulations, the City shall provide the District with written notice including a description of the actions the City believes necessary to restore the right-of-way.

(3) Bonding requirement. The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's right-of-way.

(4) Emergency work, permit waiver. In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District's Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise; provided the District shall notify the City as soon as reasonably possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City Ordinance.

(5) City work zones. The District shall not be required to obtain a City right-of-way permit to undertake utility work when the District has included its work as part of a City public works project in accordance with section 4(7).

(6) Complete permit applications. If the District is required to obtain a City right-of-way permit to undertake utility work within City right-of-way, the City shall issue a permit within fourteen (14) calendar days of receiving a complete application for such permit from the District.

(7) City invoices. The City shall invoice the District for all City fees and charges relating to the issuance of any City right-of-way permit to the District, including inspection fees and charges, on a monthly basis, and the City's final fees and charges within thirty (30) days of the completion of any District work in City right-of-way subject to a City permit, and the City's final acceptance of any such District work.

Sec. 6. Planning coordination.

(1) The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents as follows:

(a) For the District's service area within the City limits, the District will participate in a cooperative effort with the City to develop City's Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

(b) The District will participate in a cooperative effort with the City to ensure that the Utilities Element of City's Comprehensive Plan is accurate as it relates to the District's operations and is updated to ensure continued relevance at reasonable intervals.

(c) The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding twenty (20) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

(d) The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of District's Comprehensive Sewer Comprehensive Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

(2) District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

(a) For the purpose of planning, the District and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan annually and upon request by the other Party.

(b) By February 1st of each year, District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

(c) By February 1st of each year, City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

(d) The District shall meet with the City, and other franchisees and users of the right-of-way, as necessary, to schedule and coordinate construction activities.

(e) All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages.

(f) The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

(g) Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records in electronic format as available that show the location of its facilities within rights-of-way.

Sec. 7. Indemnification.

(1) District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted District in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence

or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

(2) City shall indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise or in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

(3) In the event any such claim or demand be presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other Party, the Party shall promptly notify the other Party thereof, and the notified Party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

(4) Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of City and District, their officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

Sec. 8. Default. If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of said thirty (30) day

period, the City may act to remedy the violation and may charge the costs and expenses of such action to District. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided a good faith dispute does not exist concerning such compliance.

In addition to other remedies provided herein, if the District is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

Sec. 9. Non-exclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from constructing, altering, maintaining, or using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Sec. 10. Jurisdiction. This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the Franchise Area. It is not a warranty of title or of interest in City road rights-of-way.

Sec. 11. Franchise term. This Franchise shall have a term of ten (10) years from its Effective Date as defined in section 36 herein, provided this Franchise shall be automatically extended for one additional five (5) year period unless either

Party, at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term (collectively, the "Term").

Sec. 12. Franchise fee. As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City a one-time franchise fee ("Franchise Fee") of Five Thousand Dollars (\$5,000.00). The Franchise Fee shall be paid by the District to the City within thirty (30) days of the Effective Date of the Franchise.

Sec. 13. Non-assumption. In consideration of the District's payment of the Franchise Fee and Franchise payment to the City as provided in sections 12 and 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over all or part of the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt pursuant to RCW 35.13A.060 or as such statute may be amended or superseded to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the Term of this Franchise.

Sec. 14. Franchise payment.

(1) In consideration of the rights granted the District under this Franchise, the District shall pay to the City a franchise payment ("Franchise payment") in the amount of six percent (6.0%) of the District's Revenue during the Term of this Franchise, beginning the first day of the first month occurring at least thirty (30) days after the Effective Date of this Franchise, subject to the provisions of section 14(2) herein.

(2) Franchise payments shall be paid to the City in bi-monthly installments due and payable within thirty (30) days following the end of the bi-monthly period.

(3) Should the District be prevented by judicial or legislative action from paying any or all of the Franchise payments, the District shall be excused from paying that portion of the Franchise payment. Should a court of competent jurisdiction declare the Franchise payment invalid, in whole or in part, then the District's obligation to pay the Franchise payments to the City under this section shall be terminated in accordance with and to the degree required to comply with such court action, provided, the Parties agree to meet to discuss alternatives and amendments to this Franchise to retain the essential purposes of this section. If the Parties are unable to agree on appropriate amendments to this Franchise, the City shall have the right to void section 14(4). of this Agreement and may impose an Excise Tax on the District's Revenue; provided, if any such Excise Tax exceeds six percent (6%), the District shall have the right to terminate this Franchise and shall have the right to bring an action to challenge the legal validity of any such Excise Tax.

(4) In consideration of the District's payment of a Franchise payment to the City as provided in section 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear any legal authority it may have to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or any other tax (collectively "Excise Tax") upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise.

(5) If a court of competent jurisdiction determines the City may not agree to forbear its statutory authority to impose an Excise Tax upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise, or may not agree to limit any such Excise Tax on the District's revenues, gross receipts, or gross income, and thereafter the City imposes an Excise Tax on the District, the District shall have the cumulative rights and options, at its sole election, to (1) terminate this Franchise and the payment of Franchise payments to the City, or (2) elect not to terminate this Franchise and may elect to pay any such Excise Tax, provided the District's Franchise payments herein to the City shall be credited against any such Excise Tax the City may impose.

(6) The District shall have the right to recover the Franchise payments from the District's ratepayers residing within

the City and may identify the Franchise payments as a separate billing item on utility customer billings.

(7) The District agrees while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise payment set forth herein.

(8) If the District fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

Sec. 15. Compliance with codes and regulations.

(1) The rights, privileges and authority herein granted are subject to and governed by this Ordinance and all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this Ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public or deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and City rules and regulations, including the City public works policies and pre-approved plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

(2) If any territory served by District is annexed to the City after the Effective Date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise payment for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next bi-monthly billing period and paid to the

City at the same time as the fee for the Franchise Area is paid for that bi-monthly billing period.

Sec. 16. Location of Facilities and equipment. With the exception of components that are traditionally installed above ground such as vault lids, risers, vacuum relief apparatus, pump stations, generators, electrical control panels, power meters, telephone connections, automated reading equipment and appurtenances, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's land use and zoning code and applicable development pre-approved plans.

Sec. 17. Record of installations and service. With respect to excavations by District and the City within the Franchise Area, District and the City shall each comply with its respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

Upon written request of the City, District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its improvements located within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As-built drawings of the location of any Facilities placed by District in the Franchise Area, shall be made available to the City within twenty (20) working days of request.

Sec. 18. Shared use of excavations.

(1) District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

(2) If at any time, or from time to time, either District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(a) No statutes, laws, regulations, ordinances or District policies prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

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

(c) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

Sec. 19. Insurance.

(1) The District shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage is a condition precedent to the effectiveness of this Franchise.

(2) The insurance shall be maintained in full force and effect at the District's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Franchise shall terminate as of the date of the termination of

insurance coverage. The District shall provide the City annually with original certificates evidencing insurance as required by this Agreement.

(3) The coverage provided by the District's insurance policies shall be primary to any insurance maintained by the City, except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the District's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the District's premiums.

(4) The District shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The District's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The District shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the District's work relating to the Franchise is not intended to include review of the adequacy of the District's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The District shall provide reasonable and appropriate access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

Sec. 20. Abandonment and/or removal of District Facilities. The Parties agree that the standard practice will be to abandon underground District Facilities in-place whenever practical, subject to the following conditions:

(1) The District shall continue to own and be responsible for any such facilities abandoned within the Franchise Area.

(2) The City shall have the right to require the District to remove any Facilities abandoned within the Franchise Area if

the City reasonably determines the removal of the abandoned Facility is required to facilitate the construction or installation of a City project within the Franchise Area and the City determines there is no other reasonable or feasible alternative to the removal of the Facility. The City will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District's expense, remove such abandoned Facilities by their own forces or by participating in the City's public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

(3) Within one hundred and eighty days (180) of the District's permanent cessation of use of its Facilities as determined by the District, or any portion thereof, the District shall provide the City with record drawings showing the location of the Facilities to be abandoned.

(4) District Facilities that are abandoned in-place shall be abandoned pursuant to City Standards, to the satisfaction of the Planning, Building and Public Works Director.

(5) The Parties expressly agree that this section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Sec. 21. Vacation of Franchise Area. If the City processes an application and/or determines to vacate any right-of-way which is part of the Franchise Area, the City may, after giving thirty (30) days written notice to the District, terminate this Franchise with respect to any City road or rights-of-way vacated. However, should the District notify the City that an easement is required for existing Facilities within the proposed vacation area, the City shall require the applicant for a vacation to prepare and provide to the District the necessary easement documentation, at no cost to the District. The City shall withhold approval of such vacation until the District has notified the City that the necessary easement documentation has been secured, or provisions otherwise made acceptable to the District to maintain the viability and use of existing Facilities.

Sec. 22. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon the District, and no right, privilege, license or authorization granted to the District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval.

Sec. 23. Reservation of rights. . The City reserves the right, upon thirty (30) days written notice to the District, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, or federal statute, ordinance, rule or regulation. Unless mandated by state or federal law, if any term or condition of this Franchise and any term or condition of any City code, ordinance, resolution, or regulation are in conflict, the terms of this Franchise shall control.

Sec. 24. Notice. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by e-mail with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by email, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

Ordinance No. _____

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To City: City Clerk
 City of Des Moines
 21630 11th Ave. S.
 Des Moines, WA 98198
 Phone: (206) 878-4595
 Fax: (206) 870-6540

To District: General Manager
 Southwest Suburban Sewer District
 431 SW Ambaum Blvd.
 Burien, WA 98166
 Phone: (206) 244-9575
 Fax: (206) 433-8546

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner required by this section to the other Party.

Sec. 25. Severability. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

Sec. 26. Non-Waiver. The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

Sec. 27. Non-Discrimination clause. In all hiring or employment made possible or resulting from this Franchise, the Parties agree there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Franchise on

the grounds of sex, sexual orientation, age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification.

Sec. 28. Alternate dispute resolution. If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties may submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

Sec. 29. Attorney fees. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's or the District's right to indemnification under section 7 of this Agreement.

Sec. 30. Governing law/venue. This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Agreement shall only be filed in King County Superior Court, King County, Washington.

Sec. 31. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Sec. 32. Amendment. This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing,

this Franchise (including, without limitation, section 7 "Indemnity" above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

(1) References this Franchise; and

(2) States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with subsections (1) and (2) referenced immediately above, the provisions of this Franchise shall control.

Sec. 33. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this Ordinance to the District as set forth in this Ordinance. District shall have thirty (30) days from the receipt of the certified copy of this Ordinance to accept in writing the terms of the Franchise granted to the District by this Ordinance and file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit "A," and incorporated by reference.

Sec. 34. District Acceptance of Franchise. District shall have no rights under this Franchise nor shall District be bound by the terms and conditions of this Franchise unless District shall, within thirty (30) days after the effective date of the ordinance, file with the City its written acceptance of this Franchise.

Sec. 35. Effective date of Ordinance. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Ordinance No. _____
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Sec. 36. Effective date of Franchise. The terms and conditions of this Ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this Ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2016 and signed in authentication thereof this _____ day of _____, 2016.

M A Y O R

APPROVED AS TO FORM:

Interim City Attorney

ATTEST:

City Clerk

Published: _____

EXHIBIT A

ORDINANCE NO. _____

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Southwest Suburban Sewer District hereby declares on behalf of Southwest Suburban Sewer District the acceptance of the nonexclusive franchise to Southwest Suburban Sewer District approved by the Des Moines City Council on _____, _____, 2016, by the adoption of Des Moines City Ordinance No. _____.

DATED this _____ day of _____, 2016.

SOUTHWEST SUBURBAN SEWER DISTRICT

By _____

Its _____

EXHIBIT B

ORDINANCE No. _____

DEPICTION OF CITY CORPORATE BOUNDARIES

Normandy Park

Burien

120

Angle Lake



Des Moines City Limits

SeaTac

King County

Des Moines

PUGET SOUND

Kent

King County

Federal Way

Star Lake

Exhibit B



Development Services Division
21630 11th Ave S
Suite D
Des Moines, WA 98198
PHONE: (206) 878-4595
FAX: (206) 870-7626
WEB: www.desmoineswa.gov

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. _____, Adopted _____, 2016.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance grants Southwest Suburban Sewer District a non-exclusive franchise to construct, maintain, operate, replace and repair a sewer system within public rights-of-way of the City of Des Moines, Washington, and fixes a time when the same shall become effective.

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

Bonnie Wilkins, CMC
City Clerk

Published: _____

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CITY ATTORNEY'S FIRST DRAFT 06/16/2016

DRAFT ORDINANCE NO. 16-076

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting Midway Sewer District a non-exclusive franchise to construct, maintain, operate, replace and repair a sewer system within public rights-of-way of the City of Des Moines, Washington, and fixing a time when the same shall become effective.

WHEREAS, Midway Sewer District, a Washington special purpose municipal corporation ("District"), owns sewer facilities ("Facilities") located in the City of Des Moines, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined, and

WHEREAS, RCW 57.08.005(5) authorizes the District to conduct sewage throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District, and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated sewer facilities, and

WHEREAS, the City and the District have prepared a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way; now, therefore,

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

Sec. 1. Definitions. Where used in this Franchise (the "Franchise") these terms have the following meanings:

"City" means the City of Des Moines, a Washington municipal corporation, and its respective successors and assigns.

"Director" means the Director of the City's Planning, Building and Public Works Department, or the Director's designee.

"District" means the Midway Sewer District, a Washington municipal corporation, and its respective successors and assigns.

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"Facility" or "Facilities" means meters, pipes, mains, services, valves, vaults, risers, generators, electrical control panels, power meters, telephone connections, meter stations, pump stations, lift stations, lines, wastewater treatment plants and facilities and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a wastewater utility system, whether the same be located over or underground.

"Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved in the District's service area within the present corporate boundaries of the City (as depicted in Exhibit B, attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues and alleys. The Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties.

"Ordinance" means this Ordinance No. _____, which sets forth the terms and conditions of this Franchise.

"Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

"Revenue" means income received by the District from the provision of sewer service to direct retail customers whose properties receiving such service from the District's sewer system are located within the City. Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); loans; income from legal settlements not related to the provision of sewer service to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus

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equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; sewer system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

Sec. 2. Franchise.

(1) In addition to the authority granted by State law to the District to locate, operate and maintain its Facilities in public roads and streets, the City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its sewer utility functions as defined in Title 57 RCW beginning on the Effective Date of this Franchise; provided the City's grant of the right to use the Franchise Area to the District as provided herein for its Facilities shall not be construed to require the District to provide such Facilities to the City.

(2) Nothing contained in this Ordinance is to be construed as granting permission to District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

(3) At all times during the term of this Franchise, District shall fully comply with all applicable federal and state laws and regulations and required permits, including, but not limited to, RCW 39.04.180 for construction trench safety systems, chapter 19.122 RCW for utility damage prevention, the State Environmental Policy Act, the State of Washington Pollution Control Law, and the Federal Clean Water Act.

Sec. 3. Non-interference of Facilities.

(1) District's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian, bicycle, and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations

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of the City of Des Moines. Nothing herein shall preclude District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided District receives prior City approval, which shall not be unreasonably withheld, and, provided further, District shall have the right to effect temporary road closures in the event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval of such road closures as soon as reasonably possible.

(2) Whenever it is necessary for District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards, as issued by the City's Planning, Building and Public Works Department, as nearly as reasonably possible to its condition prior to any such excavation, installation, construction, relocation, maintenance or repair, at no expense to the City; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the Director, which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the streets and right-of-ways.

(3) If the City determines that the District has failed to restore the right-of-way in accordance with the conditions set forth in this Franchise, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this section. The rights granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

(4) The District shall, at no expense to the City, expeditiously repair all existing Facilities that it owns, operates and maintains within the Franchise Area, including any damage caused directly or indirectly by its Facilities. The District shall also coordinate and manage the repair of service

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lines in the Franchise Area connecting its system to users.

(5) Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. A Professional Land Surveyor (PLS) shall be responsible for perpetuating and documenting existing monuments in compliance with the Application Permit to Remove or Destroy a Survey Monument in accordance with WAC 332-120. Following approval by the Public Land Survey Office, copies of the approved permits shall be forwarded to the City. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

Sec. 4. Relocation of Facilities.

(1) Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of City-owned utilities, storm drainage lines, lighting, signalization, sidewalk improvements, pedestrian and bicycle amenities, or other public street improvements and such project requires the relocation of the District's then-existing Facilities within such Franchise Area, the City shall:

(a) Pursuant to RCW 35.21.905, or as amended, consult with the District in the predesign phase of any such project in order to coordinate the project's design with District Facilities within such project's area; and

(b) Provide the District, at least three hundred sixty (360) days prior to the advertisement for bid of construction of such project, written notice that a project is expected to require the relocation of District Facilities, together with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for the District's Facilities; and

(c) Coordinate and work diligently with the District to minimize conflicts between existing Facilities and the

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project improvements where possible, and to avoid having the District relocate their facilities, whenever possible. The District acknowledges that there may be situations and circumstances where no other feasible alternatives are available.

(2) After receipt of such notice and such plans and specifications, District shall relocate such Facilities within the Franchise Area so as to accommodate such street and city utility improvement project; provided, however, District may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time evaluate such alternatives and advise the District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so requested by the City, District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. If the City reasonably determines that there is no other feasible alternative, the City shall provide the District with further written notice to that effect, and the District shall then relocate its Facilities by its own forces, by separate public works contract or by participating in the City's public works project in accordance with section 4(7). The City shall cooperate with the District to designate a substitute location for its Facilities within the Franchise Area. The City will establish a date by which Facilities will be relocated, which date will be not less than one hundred eighty (180) days after further written notice to the District as to the Facility to be relocated. District must finish relocation of each such Facility by the date so established.

(3) The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

(a) If the relocation occurs within ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%).

(b) If the relocation occurs more than ten (10) years after the District or a third party on the District's behalf

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constructed such Facility, then the relocation shall be at the District's sole cost.

(c) However, if the City requires the relocation of Major Facilities defined as gravity sewer of twelve (12) inch diameter or greater, lift stations and pump stations and related force mains, siphon lines and boxes, or vault structures ("Major Facilities" or "Major Facility") to accommodate the completion of or as a result of a City project, where such facility cannot reasonably be supported, disconnected, relocated or removed, then the City shall pay fifty percent (50%) of the cost of the relocation of the Major Facility and the District shall pay the remaining fifty percent (50%) without limitation on the age of the facility; provided, the City and District agree to give full and fair consideration to any lower-cost alternatives to relocating the Major Facility meeting the minimum operational requirements of the Parties, and the City and the District shall each pay fifty percent (50%) of the lower-cost alternative.

(d) For the purposes of this section 4, the date of the Facility's acceptance by the District Board of Commissioners, or the date of final contract payment for the Facility's installation (whichever occurs first), shall determine the age of the Facility.

(e) Whenever any State or Federal Agency with legal authority within the Franchise Area requires the relocation of District Facilities, the relocation shall be at the District's sole cost. This provision does not limit the District's rights to seek reimbursement for the costs of such relocation from the State or Federal Agency requiring the relocation.

(f) Subsections (a) and (c) of this section 4(3) shall not apply to:

(i) Relocations of District facilities required as part of a formal declaration of emergency as defined by RCW 39.04.280 (3) by the City, which is ratified by Resolution of the City Council. In such cases, relocation, if necessary, shall be at the District's sole cost; and

(ii) Relocation of District facilities located on, over, or under bridges, and culverts conveying creeks and streams (identified as Des Moines Creek, Barnes Creek, Massey

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Creek, McSorley Creek, Woodmont Creek, Redondo Creek, Cold Creek), where relocation of such facilities, if necessary, shall be at the District's sole cost.

(4) Whenever the City is undertaking a road or City-owned utility project or improvement, the City will not use its authority to require the District to relocate sewer facilities [excluding sewer services] for third party franchise utilities (private utilities) on City-initiated aerial-to-underground conversion projects. If conflicts between the aerial-to-underground joint-trench and the District Facilities cannot be resolved, and relocation of District Facility's is necessary, the District shall have the right as a pre-condition of such relocation to require payment to the District for any and all costs and expenses incurred by the District in the relocation of such District Facilities. On City-initiated projects requiring aerial-to-aerial relocation of third party franchise utilities (private utilities), the District shall relocate that portion of its Facilities which are in direct conflict with the new locations of the third party franchise utility facilities, such as utility poles, or participate in securing the necessary easements where no reasonable alternative location for the third party franchise utility facilities exists within the then existing right-of-way.

(5) For the purpose of this section 4, a project or improvement is considered to be caused by the City (as described in section 4(1) above) if the project is City-initiated and is part of the City's annually adopted Capital Improvement Project (CIP) Program, and can include projects or improvements where a third party has made an in lieu payment for a portion of the City's capital improvement project, provided, the City is responsible for the majority of the cost of the project or improvement, which, if applicable, includes any grant funding received by the City from any federal or state agency. A project or improvement is not considered to be caused by the City if the project or improvement is constructed by the City on behalf of a third party, where the third party is responsible for the majority of the project or improvement cost, and makes payment to the City in lieu of performing the project or improvement.

(6) Whenever any person or entity, other than the City, requires the relocation of District Facilities to accommodate the work of such person or entity within the Franchise Area [excluding

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State and Federal Agencies with legal authority within the Franchise Area], the City agrees not to use its authority to require the District to relocate the existing facilities. The District shall have the right as a pre-condition of such relocation to require such person or entity to:

(a) Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense incurred by the District in the relocation of District Facilities; and

(b) Protect, defend, indemnify and save the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

(7) If a City project requires the relocation of then existing Facilities within the Franchise Area, the District shall have the right by interlocal agreement with the City to include the relocation of any Facilities as required by the City as part of the City's public works project. Such interlocal agreement shall include and provide for, but not be limited to, the following terms and conditions:

(a) The inclusion of the District's work as part of the City's project;

(b) The District to provide plans and specifications of the District's work to the City for inclusion as a separate bid schedule in the City project, whether such District plans and specifications are prepared by the District at the District's expense, or the City prepares the plans and specifications for the District's work at the District's expense;

(c) The City bidding the project, including the District's work by separate bid schedule, and the District's approval of the contractor's bid for the District's work in the

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separate bid schedule, or, alternatively, the District's rejection of the contractor's bid for the District work and the District's right to perform the District's work through a District contractor, provided that in so doing the City's project is not unreasonably delayed;

(d) The City's contractor to install both the City work and the District work, the City's obligation to pay the City's contractor for both the City work and the District work, and the District's obligation to reimburse the City for the cost of the District work performed by the City contractor; and

(e) The District's obligation to reimburse the City for District project administration and inspection fees and costs based on a time and materials basis, provided the City and the District may negotiate a lump sum payment on a per project basis, or a percentage of the total District project construction cost, and provided the District shall not be required to pay for any City-issued permits related to the City work and the District work.

(8) The Parties expressly agree that this section 4 shall not survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Sec. 5. Right-of-Way management.

(1) Excavation. Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in City right-of-way. Except for emergencies or routine maintenance, no District excavation work shall commence within any City right-of-way without a permit, except as otherwise provided in this Franchise and applicable City Ordinance. All work shall be done to the City's reasonable satisfaction.

(2) Restoration after construction. The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to City standards as nearly as reasonably possible to its condition prior to any such work. The District agrees to promptly complete all restoration work and to promptly

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repair any damage to the right-of-way caused by such work at its sole cost and expense. If it is determined the District has failed to restore the right-of-way in accordance with this Franchise and other applicable City regulations, the City shall provide the District with written notice including a description of the actions the City believes necessary to restore the right-of-way.

(3) Bonding requirement. The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's right-of-way.

(4) Emergency work, permit waiver. In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District's Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise; provided the District shall notify the City as soon as reasonably possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City Ordinance.

(5) City work zones. The District shall not be required to obtain a City right-of-way permit to undertake utility work when the District has included its work as part of a City public works project in accordance with section 4(7).

(6) Complete permit applications. If the District is required to obtain a City right-of-way permit to undertake utility work within City right-of-way, the City shall issue a permit within fourteen (14) calendar days of receiving a complete application for such permit from the District.

(7) City invoices. The City shall invoice the District for all City fees and charges relating to the issuance of any City right-of-way permit to the District, including inspection fees and charges, on a monthly basis, and the City's final fees and charges within thirty (30) days of the completion of any District work in City right-of-way subject to a City permit, and the City's final acceptance of any such District work.

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Sec. 6. Planning coordination.

(1) The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents as follows:

(a) For the District's service area within the City limits, the District will participate in a cooperative effort with the City to develop City's Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

(b) The District will participate in a cooperative effort with the City to ensure that the Utilities Element of City's Comprehensive Plan is accurate as it relates to the District's operations and is updated to ensure continued relevance at reasonable intervals.

(c) The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding twenty (20) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

(d) The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of District's Comprehensive Sewer Comprehensive Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

(2) District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

(a) For the purpose of planning, the District and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan annually and upon request by the other Party.

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(b) By February 1st of each year, District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

(c) By February 1st of each year, City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

(d) The District shall meet with the City, and other franchisees and users of the right-of-way, as necessary, to schedule and coordinate construction activities.

(e) All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages.

(f) The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

(g) Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records in electronic format as available that show the location of its facilities within rights-of-way.

Sec. 7. Indemnification.

(1) District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted District in this

Ordinance No. _____
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Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

(2) City shall indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise or in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

(3) In the event any such claim or demand be presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other Party, the Party shall promptly notify the other Party thereof, and the notified Party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

(4) Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of City and District, their officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

Sec. 8. Default. If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written

Ordinance No. _____
 Page 15 of 27

order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to District. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided a good faith dispute does not exist concerning such compliance.

In addition to other remedies provided herein, if the District is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

Sec. 9. Non-exclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from constructing, altering, maintaining, or using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Sec. 10. Jurisdiction. This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the

Ordinance No. _____
Page 16 of 27 _____

Franchise Area. It is not a warranty of title or of interest in City road rights-of-way.

Sec. 11. Franchise term. This Franchise shall have a term of ten (10) years from its Effective Date as defined in section 36 herein, provided this Franchise shall be automatically extended for one additional five (5) year period unless either Party, at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term (collectively, the "Term").

Sec. 12. Franchise fee. As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City a one-time franchise fee ("Franchise Fee") of Five Thousand Dollars (\$5,000.00). The Franchise Fee shall be paid by the District to the City within thirty (30) days of the Effective Date of the Franchise.

Sec. 13. Non-assumption. In consideration of the District's payment of the Franchise Fee and Franchise payment to the City as provided in sections 12 and 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over all or part of the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt pursuant to RCW 35.13A.060 or as such statute may be amended or superseded to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the Term of this Franchise.

Sec. 14. Franchise payment.

(1) In consideration of the rights granted the District under this Franchise, the District shall pay to the City a Franchise payment ("Franchise payment") in the amount of six percent (6.0%) of the District's Revenue during the Term of this

Ordinance No. _____
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Franchise, beginning the first day of the first month occurring at least thirty (30) days after the Effective Date of this Franchise, subject to the provisions of section 14(2) herein.

(2) Franchise payments shall be paid to the City in bi-monthly installments due and payable within thirty (30) days following the end of the bi-monthly period.

(3) Should the District be prevented by judicial or legislative action from paying any or all of the Franchise payments, the District shall be excused from paying that portion of the Franchise payment. Should a court of competent jurisdiction declare the Franchise payment invalid, in whole or in part, then the District's obligation to pay the Franchise payments to the City under this section shall be terminated in accordance with and to the degree required to comply with such court action, provided, the Parties agree to meet to discuss alternatives and amendments to this Franchise to retain the essential purposes of this section. If the Parties are unable to agree on appropriate amendments to this Franchise, the City shall have the right to void section 14(4) of this Agreement and may impose an Excise Tax on the District's Revenue; provided, if any such Excise Tax exceeds six percent (6%), the District shall have the right to terminate this Franchise and shall have the right to bring an action to challenge the legal validity of any such Excise Tax.

(4) In consideration of the District's payment of a Franchise payment to the City as provided in section 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear any legal authority it may have to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or any other tax (collectively "Excise Tax") upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise.

(5) If a court of competent jurisdiction determines the City may not agree to forbear its statutory authority to impose an Excise Tax upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise, or may not agree to limit any such Excise Tax on the District's revenues, gross receipts, or gross income, and thereafter the City imposes an Excise Tax on the District, the District shall have the

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cumulative rights and options, at its sole election, to (1) terminate this Franchise and the payment of Franchise payments to the City, or (2) elect not to terminate this Franchise and may elect to pay any such Excise Tax, provided the District's Franchise payments herein to the City shall be credited against any such Excise Tax the City may impose.

(6) The District shall have the right to recover the Franchise payments from the District's ratepayers residing within the City and may identify the Franchise payments as a separate billing item on utility customer billings.

(7) The District agrees while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise payment set forth herein.

(8) If the District fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

Sec. 15. Compliance with codes and regulations.

(1) The rights, privileges and authority herein granted are subject to and governed by this Ordinance and all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this Ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public or deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and City rules and regulations, including the City public works policies and pre-approved plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

(2) If any territory served by District is annexed to the City after the Effective Date of this Franchise, this Franchise

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shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise payment for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next bi-monthly billing period and paid to the City at the same time as the fee for the Franchise Area is paid for that bi-monthly billing period.

Sec. 16. Location of facilities and equipment. With the exception of components that are traditionally installed above ground such as vault lids, risers, vacuum relief apparatus, pump stations, generators, electrical control panels, power meters, telephone connections, automated reading equipment and appurtenances, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's land use and zoning code and applicable development pre-approved plans.

Sec. 17. Record of installations and service. With respect to excavations by District and the City within the Franchise Area, District and the City shall each comply with its respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

Upon written request of the City, District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its improvements located within the Franchise

Ordinance No. _____
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Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As-built drawings of the location of any Facilities placed by District in the Franchise Area, shall be made available to the City within twenty (20) working days of request.

Sec. 18. Shared use of excavations.

(1) District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

(2) If at any time, or from time to time, either District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(a) No statutes, laws, regulations, ordinances or District policies prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

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

(c) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

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Sec. 19. Insurance.

(1) The District shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage is a condition precedent to the effectiveness of this Franchise.

(2) The insurance shall be maintained in full force and effect at the District's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Franchise shall terminate as of the date of the termination of insurance coverage. The District shall provide the City annually with original certificates evidencing insurance as required by this Agreement.

(3) The coverage provided by the District's insurance policies shall be primary to any insurance maintained by the City, except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the District's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the District's premiums.

(4) The District shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The District's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The District shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the District's work relating to the Franchise is not intended to include review of the adequacy of the District's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The District shall provide reasonable and appropriate access for the City and its inspectors

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to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

Sec. 20. Abandonment and/or removal of District Facilities. The Parties agree that the standard practice will be to abandon underground District Facilities in-place whenever practical, subject to the following conditions:

(1) The District shall continue to own and be responsible for any such facilities abandoned within the Franchise Area.

(2) The City shall have the right to require the District to remove any Facilities abandoned within the Franchise Area if the City reasonably determines the removal of the abandoned Facility is required to facilitate the construction or installation of a City project within the Franchise Area and the City determines there is no other reasonable or feasible alternative to the removal of the Facility. The City will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District's expense, remove such abandoned Facilities by their own forces or by participating in the City's public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

(3) Within one hundred and eighty days (180) of the District's permanent cessation of use of its Facilities as determined by the District, or any portion thereof, the District shall provide the City with record drawings showing the location of the Facilities to be abandoned.

(4) District Facilities that are abandoned in-place shall be abandoned pursuant to City Standards, to the satisfaction of the Planning, Building and Public Works Director.

(5) The Parties expressly agree that this section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

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Sec. 21. Vacation of Franchise Area. If the City processes an application and/or determines to vacate any right-of-way which is part of the Franchise Area, the City may, after giving thirty (30) days written notice to the District, terminate this Franchise with respect to any City road or rights-of-way vacated. However, should the District notify the City that an easement is required for existing Facilities within the proposed vacation area, the City shall require the applicant for a vacation to prepare and provide to the District the necessary easement documentation, at no cost to the District. The City shall withhold approval of such vacation until the District has notified the City that the necessary easement documentation has been secured, or provisions otherwise made acceptable to the District to maintain the viability and use of existing Facilities.

Sec. 22. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon the District, and no right, privilege, license or authorization granted to the District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval.

Sec. 23. Reservation of rights. The City reserves the right, upon thirty (30) days written notice to the District, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, or federal statute, ordinance, rule or regulation. Unless mandated by state or federal law, if any term or condition of this Franchise and any term or condition of any City code, ordinance, resolution, or regulation are in conflict, the terms of this Franchise shall control.

Sec. 24. Notice. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United

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States Mail, certified, registered, or express mail with postage prepaid, or if sent by e-mail with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by email, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: City Clerk
 City of Des Moines
 21630 11th Ave. S.
 Des Moines, WA 98198
 Phone: (206) 878-4595
 Fax: (206) 870-6540

To District : General Manager
 Midway Sewer District
 PO Box 3487
 Kent, WA 98089
 Phone: (206) 824-0375
 Fax: (206) 824-0806

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner required by this section to the other Party.

Sec. 25. Severability. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

Sec. 26. Non-Waiver. The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing

Ordinance No. _____
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waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

Sec. 27. Non-Discrimination clause. In all hiring or employment made possible or resulting from this Franchise, the Parties agree there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Franchise on the grounds of sex, sexual orientation, age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification.

Sec. 28. Alternate dispute resolution. If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties may submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

Sec. 29. Attorney fees. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's or the District's right to indemnification under section 7 of this Agreement.

Ordinance No. _____
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Sec. 30. Governing Law/Venue. This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Agreement shall only be filed in King County Superior Court, King County, Washington.

Sec. 31. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Sec. 32. Amendment. This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, section 7 "Indemnity" above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

(1) References this Franchise; and

(2) States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with subsections (1) and (2) referenced immediately above, the provisions of this Franchise shall control.

Sec. 33. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this Ordinance to the District as set forth in this Ordinance. District shall have thirty (30) days from the receipt of the certified copy

Ordinance No. _____
Page 27 of 27 _____

of this Ordinance to accept in writing the terms of the Franchise granted to the District by this Ordinance and file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit "A," and incorporated by reference.

Sec. 34. District acceptance of Franchise. District shall have no rights under this Franchise nor shall District be bound by the terms and conditions of this Franchise unless District shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of this Franchise.

Sec. 35. Effective date of Ordinance. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Sec. 36. Effective date of Franchise. The terms and conditions of this Ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this Ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2016 and signed in authentication thereof this _____ day of _____, 2016.

M A Y O R

APPROVED AS TO FORM:

Interim City Attorney

ATTEST:

City Clerk

Published: _____

EXHIBIT A

ORDINANCE NO. _____

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Midway Sewer District hereby declares on behalf of Midway Sewer District the acceptance of the nonexclusive franchise to Midway Sewer District approved by the Des Moines City Council on _____, _____, 2016, by the adoption of Des Moines City Ordinance No. _____.

DATED this _____ day of _____, 2016.

MIDWAY SEWER DISTRICT:

By: _____

Its: _____

EXHIBIT B

ORDINANCE NO. _____

DEPICTION OF CITY CORPORATE BOUNDARIES

Normandy Park
Burien

S 192ND ST 152



Des Moines
City Limits

SeaTac

PUGET
SOUND

Des
Moines

Kent

King
County

Federal
Way

Exhibit B



Development
Services Division
21630 11th Ave S
Suite D
Des Moines, WA 98198
PHONE: (206) 878-4595
FAX: (206) 376-7626
WEB: www.dcsmoinctwa.gov

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. _____, Adopted _____, 2016.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance grants Midway Sewer District a non-exclusive franchise to construct, maintain, operate, replace and repair a sewer system within public rights-of-way of the City of Des Moines, Washington, and fixes a time when the same shall become effective.

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

Bonnie Wilkins, CMC
City Clerk

Published: _____

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