

**AGENDA**

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

**January 24, 2019 – 7:00 p.m.**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CORRESPONDENCE**

**COMMENTS FROM THE PUBLIC – 20 minutes**

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

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

**PRESIDING OFFICER’S REPORT**

Item 1: K9 DEZ TO CITY COUNCIL

**ADMINISTRATION REPORT**

**CONSENT CALENDAR**

Page 5 Item 1: CHILDREN’S DENTAL HEALTH MONTH PROCLAMATION  
Motion is to approve the Proclamation recognizing February as Children’s Dental Health Month

Page 9 Item 2: 2019-2020 RECYCLING PROGRAM GRANT FUNDING  
Motion is to accept the Seattle-King County Department of Public Health LHWMP Grant and the King County Solid Waste Division WR/R Grant and authorize the City Manager to sign the grant documents substantially in the form as attached.

Page 37 Item 3: 2019 CONSULTANT CONTRACT: BHC CONSULTANTS, LLC  
Motion is to approve the Contract with BHC Consultants, to provide professional inspection and plan review services for the year 2019 up to a total of \$50,000, an authorize the City Manager to sign the Contract substantially in the form submitted.

- Page 55      Item 4:      ARTS COMMISSION APPOINTMENT  
Motion is to confirm the Mayoral appointment of Sarah Vogel to an unexpired term on the City of Des Moines Arts Commission effective immediately and expiring on December 31, 2020.
- Page 59      Item 5:      DES MOINES/KING COUNTY CONSERVATION FUTURES VAN GASKEN FUNDS  
Motion is to accept the funding award of \$594,000 to assist with the purchase of Van Gasken Waterfront property and authorize the City Manager to sign Amendment F to the Conservation Futures Interlocal Agreement between the City and King County, substantially in the form as attached.
- Page 79      Item 6:      CONSULTANT SERVICE CONTRACT ADDENDUM #2 WITH THE LA STUDIO AT BLUELINE FOR BIDDING AND CONSTRUCTION ADMINISTRATION SERVICES FOR DES MOINES PLAY AREAS  
Motion is to approve the Consultant Services Contract Addendum #2 with the LA Studio at Blueline for bidding and construction administration services for Des Moines Play Areas in the amount of \$32,500.00 bringing the contract total to a new not to exceed amount of \$197,500.00, and additionally authorize the City Manager to sign the Consultant Services Contract Addendum substantially in the form as submitted.
- Page 119     Item 7:      LEASE AGREEMENT WITH REDONDO SQUARE GRF2, LLC FOR THE OPERATION OF A DES MOINES POLICE DEPARTMENT SUBSTATION AT REDONDO SQUARE  
Motion is to approve the lease agreement between the City of Des Moines and Redondo Square GRF2, LLC and to authorize the City Manager to sign the agreement substantially in the form as submitted.
- Page 171     Item 8:      2019 LEGISLATIVE PRIORITIES AND INTERGOVERNMENTAL POLICES AND POSITIONS  
Motion is to adopt the 2019 Legislative Priorities and Intergovernmental Polices and Positions as submitted.
- Page 181     Item 9:      CONSULTANT SERVICES AGREEMENT WITH AVENU MUNISERVICES TO PERFORM AN AUDIT OF UTILITY TAX PAYMENTS AND/OR UTILITY FRANCHISE FEES  
Motion is to approve the consultant services agreement with Avenu MuniServices to perform an audit of Utility Tax Payments and/or Utility franchise Fees and to authorize the City Manager to sign the consultant services agreement substantially in the form as attached.

Page 193      Item 10:      CITYWIDE ARTERIAL TRAFFIC CALMING PROJECT – EQUIPMENT PURCHASE  
Motion is to approve the equipment purchase with Traffic Safety Supply for twelve solar powered driver speed radar feedback signs, in the amount of \$80,201.00, and further authorize the City Manager to sign and Purchase Order substantially in the form as submitted.

Page 201      Item 11:      SOUTH 216<sup>TH</sup> STREET – SEGMENT 3: CONSTRUCTION CONTRACT AWARD AND CONSULTANT ON-CALL AGREEMENT TASK ASSIGNMENT FOR CONSTRUCTION SERVICES  
Motion 1 is to direct staff to bring forward a budget amendment to the 2019 - 2024 Capital Improvement Plan and the 2019 Capital Budget to include the South 216th Street -Segment 3 Project, associated project modifications to: S 223rd Walkway Improvements, Marina Dynamic Messaging Signs, Arterial Street Paving, North Hill Elementary Walkway Improvements 24th Ave Sidewalk (223rd - Kent Des Moines Rd), and Founders' Lodge Improvements as shown in Attachment 1, and include such amendment in the next available budget amendment ordinance.

Motion 2 is to approve the Public Works Contract with Ceccanti Inc. (Contractor), for the South 216th Street -Segment 3 Project, in the amount of \$6,102,221.00, not award Ceccanti Inc.'s Proposal Additive Bid-Temporary Traffic Control in the amount of \$152,000.00, authorize a construction project contingency in the amount of \$600,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

Motion 3 is to approve the 2018-2019 On-call General Civil Engineering Services Task Order #2018-06 with KPG Inc. for Construction Administration and Inspection Services for the South 216th Street - Segment 3 Project in the amount of \$636,775.53, and further authorize the City Manager to sign said Task Order substantially in the form as Submitted.

Page 295      Item 12:      APPROVAL OF VOUCHERS  
Motion is to approve for payment vouchers and payroll transfers through January 14, 2019 included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#156376-156492	\$ 403,018.40
Electronic Wire Transfers	# 1170-1175	\$ 515,755.35
Payroll Checks	# 19116-19124	\$ 7,353.51
Payroll Direct Deposit	# 30001-30173	\$ 348,148.38
Total Checks and Wires for A/P and Payroll:		\$1,274,275.64

**NEW BUSINESS**

Page 297      Item 1:

DRAFT ORDINANCE 17-070 SMALL CELL FACILITIES  
FRANCHISE AGREEMENT WITH SEATTLE SMSA LIMITED  
PARTNERSHIP d/b/a VERIZON, FIRST READING  
Staff Presentation:                      City Attorney Tim George

**EXECUTIVE SESSION**

**NEXT MEETING DATE**

February 7, 2019 City Council Study Session

**ADJOURNMENT**

# AGENDA ITEM

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

SUBJECT: Children’s Dental Health Month  
Proclamation

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 16, 2019

ATTACHMENTS:  
1. Proclamation

CLEARANCES:

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

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

- Legal \_\_\_\_\_
- Finance \_\_\_\_\_
- Courts \_\_\_\_\_
- Police \_\_\_\_\_
- City Clerk PRW

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

**Purpose and Recommendation**

The purpose of this agenda item is to recognize February as Children’s Dental Health Month.

**Suggested Motion**

**Motion 1:** “I move to approve the Proclamation recognizing February as Children’s Dental Health Month.

**Background**

As part of the University of Washington, School of Dentistry, the Center for Pediatric Dentistry is dedicated to encouraging good oral health for all children, including those with special needs such as autism or Down syndrome, and those enrolled in or eligible for Medicaid. The University of Washington is encouraging local cities to recognize February as Children's Dental Health Month. The American Dental Association has long dedicated February as National Children's Dental Health Month to help share information on the importance of good oral health on a child's overall health.

In our region, Medicaid covers nearly all dental expenses for children, including allowing children to be enrolled even if the parent is undocumented – all to help ensure that children can receive the care they need. Currently, in King County, nearly 50% of children enrolled in Medicaid do not access the available care. It has been shown that good oral health directly affects a child's nutrition, ability to concentrate and learn, and that it impacts the number of school or day-care days missed.

This proclamation can help increase awareness among all parents and those engaged in child-oriented programs that good dental practices beginning as soon as a child has teeth are important, and that resources are available in the community to make accessing services available to all children, regardless of income, background and whether the child has special needs.



# City of Des Moines

ADMINISTRATION  
21630 11TH AVENUE SOUTH, SUITE A  
DES MOINES, IOWA 50319-6398  
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



## Proclamation

**WHEREAS**, our communities future depends, to a large measure, on the good health of our children and families; and

**WHEREAS**, good oral health can be achieved in part through good dental habits learned early and reinforced throughout life; and

**WHEREAS**, good oral health contributes to better nutrition, greater ability to concentrate, and improved school attendance; and

**WHEREAS**, the City of Des Moines has demonstrated a strong commitment to all children in our community through many early childhood and school programs; and

**WHEREAS**, National Children's Dental Health Month is celebrated each February in order to raise awareness about the importance of good oral health; now therefore

**THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS**

### ***FEBRUARY AS CHILDREN'S DENTAL HEALTH MONTH***

**AND** encourages all our residents of our community to join in this special observance.

**SIGNED** this 24<sup>th</sup> day of January, 2019.

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Matt Pina, Mayor

*The Waterland City*

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# A G E N D A I T E M

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

SUBJECT: 2019-2020 Recycling Program Grant Funding

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: January 17, 2019

ATTACHMENTS:

1. Seattle & King County Department of Public Health Local Hazardous Waste Management Program (LHWMP) 2019 - 2020 Grant No. 3749 EHS
2. King County Solid Waste Division Waste Reduction and Recycling (WR/R) 2019-2020 Grant No. 6059974

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DJB

- Legal *TG*
- Finance \_\_\_\_\_
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

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

**Purpose and Recommendation**

The purpose of this agenda item is to provide information to enable the City Council to take action on the acceptance of two grants for the City’s Recycling Program for the service period of 2019-2020. The first grant is the 2019-2020 Seattle-King County Department of Public Health Local Hazardous Waste Management Program (LHWMP) Grant (Attachment 1). The second grant is for the 2019-2020 King County Solid Waste Division Waste Reduction and Recycling (WR/R) Grant (Attachment 2).

**Suggested Motion**

**Motion 1:** I move to accept the Seattle-King County Department of Public Health LHWMP Grant and the King County Solid Waste Division WR/R Grant and authorize the City Manager to sign the grant documents substantially in the form as attached.

## **Background**

### **Grants**

The subject grants will fund, in part, the City's semi-annual Household Waste Collection and Recycling Events for 2019 and 2020. The Washington State Department of Ecology's Coordinated Prevention Grant (CPG) funds the remainder of the program. The current CPG grant is effective through June 2019.

### **Professional Services Contract**

Related to these grants is the City's Professional Services Contract with Olympic Environmental Resources (OER) for the 2018-2019 recycling program. No additional action is needed to keep this Professional Services Contract current. OER provides staffing and management for the Spring and Fall Household Collection and Recycling Events at the Des Moines Marina. These are popular events among Des Moines residents as they provide a local site to recycle materials, including some that are not accepted by the curbside recycling program. The Spring and Fall 2018 events attracted 422 and 349 carloads of recyclable materials respectively.

### **Discussion**

The City uses grant funds to sponsor recycling and collection events for Des Moines residents businesses. For the 2019-2020 Recycling Program, the City will sponsor two residential recycling collection events per year (i.e. the Fall and Spring events). A portion of the WR/R grant funds will be allocated for the purchase of products made from recycled materials, such as park benches or solid waste container surrounds.

This agenda item seeks City Council approval of the 2019-2020 LHWMP contract and the 2019-2020 WR/R contract. The LHWMP grant will allocate \$27,568.50 for household recycling collection events in 2019-2020. The WR/R grant will allocate \$40,853.00 for household recycling collection events for 2019-2020. The City Council is required to review all Interlocal Agreements between the City and other public agencies.

If the City Council accepts the LHWMP and WR/R grants for 2019 and 2020, the City will continue to reduce the amount of hazardous and non-hazardous materials going into the local waste stream at no additional cost to the City. Action/acceptance of these grants must be submitted to the grantor agencies by January/February 2019 in order to secure grant funds and to schedule the Spring 2019 residential recycling event.

**Household Collection and Recycling Events** – For almost 20 years, the City has used grant monies to sponsor semi-annual Household Waste Collection and Recycling Events. The Spring and Fall Events have proven to be exceptionally popular among Des Moines residents because they provide a local site to recycle materials that are not accepted by the curbside recycling program. Residents are able to recycle tires, lead acid and alkaline batteries, cardboard, reusable household goods and clothing, porcelain toilets and sinks, appliances and scrap metal, bulky wood, electronic equipment and mattresses and box springs. Additional/substitute items continue to be explored as the number and type of materials collected curbside have increased under the solid waste contract that began collection on November 1, 2011.

### **Alternatives**

1. The City Council may accept the 2019-2020 LHWMP Grant No. 3749 EHS between the City of Des Moines and the Seattle-King County Department of Public Health; and the 2019-2020 WR/R Grant No. 6059974 between the City of Des Moines and the King County Solid Waste Division.
2. The City Council may not accept the 2019-2020 LHWMP Grant No. 3749 EHS between the City of Des Moines and the Seattle-King County Department of Public Health; and the 2019-2020 WR/R Grant No. 6059974 between the City of Des Moines and the King County Solid Waste Division and forego LHWMP and/or WR/R grant funds.
3. The City Council may continue this Agenda Item and request that staff provides additional information on the LHWMP and WR/R grant programs. Continuance of this item may result in loss of grant funds for the 2019-2020 grant cycle.

**Financial Impact**

If the City Council accepts the LHWMP and WR/R grants, there will be no fiscal impact to the City related to Contract Numbers 3749 EHS and 6059974. However, if the City Council does not accept the LHWMP and WR/R grants, then the City will need to use General Fund monies to maintain the City's recycling program.

**Recommendation**

Staff recommends that the City Council choose Alternative 1, thereby accepting the 2019-2020 Seattle-King County Department of Public Health LHWMP Grant, and the 2019-2020 King County Solid Waste Division Grant substantially in the form as submitted.

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<b>Public Health</b> Seattle & King County 		<b>COMMUNITY SERVICES          AGREEMENT –          OTHER GOVERNMENT</b>		<b>PHSKC Agreement #</b>  3749 EHS	
This Agreement is between King County and the Recipient identified below. The County department overseeing the work to be performed in this Agreement is the Department of Public Health (PHSKC).					
<b>RECIPIENT NAME</b> City of Des Moines			<b>RECIPIENT FEDERAL TAX ID#</b> 91-6016496		
<b>RECIPIENT ADDRESS</b> 21630 11th Ave. S, Suite "D", Des Moines, WA 98198			<b>RECIPIENT CONTACT &amp; EMAIL ADDRESS</b> Michael Matthias; mmatthias@desmoineswa.gov		
<b>PHSKC DIVISION</b> EHS		<b>PROJECT TITLE</b> Local Hazardous Waste Management Program			
<b>AGREEMENT START DATE</b> Jan 01 2019		<b>AGREEMENT END DATE</b> Dec 31 2020		<b>AGREEMENT MAXIMUM AMOUNT</b> \$27,568.50	
<b>FUNDING DETAILS</b>					
<u>Funding Source</u> King County Local Hazardous Waste Fund		<u>PHSKC Contract#</u> NA		<u>Amount</u> \$27,568.50	
<u>Effective Dates</u> Jan 01 2019 TO Dec 31 2020					
<b>FUNDING SUMMARY</b> FEDERAL: \$0.00		COUNTY: \$27,568.50		STATE: \$0.00	
OTHER: \$0.00					
<b>IS THE RECIPIENT A SUBRECIPIENT FOR PURPOSES OF THIS AGREEMENT? No</b>					
<b>EXHIBITS. The following Exhibits are attached and are incorporated into this Agreement by reference:</b> Exhibit A-Scope of Work; Exhibit B-Budget; Exhibit C-Invoice template.					
In consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually agree that the Recipient shall provide services and comply with the requirements set forth in this Agreement. The parties signing below represent that they have read and understand this Agreement, and have the authority to execute this Agreement. Furthermore, in addition to agreeing to the terms and conditions provided herein, by signing this Agreement, the Recipient certifies that it has read and understands the Agreement requirements on the PHSKC website ( <a href="http://www.kingcounty.gov/health/contracts">http://www.kingcounty.gov/health/contracts</a> ), and agrees to comply with all of the Agreement terms and conditions detailed on that site, including EEO/Nondiscrimination, HIPAA, Insurance, and Credentialing, as applicable.					
<b>RECIPIENT SIGNATURE</b>		<b>PRINTED NAME AND TITLE</b>		<b>DATE SIGNED</b>	
<b>PHSKC SIGNATURE</b>		<b>PRINTED NAME AND TITLE</b>		<b>DATE SIGNED</b>	

Approved as to Form: OFFICE OF THE KING COUNTY PROSECUTING ATTORNEY  
 (This form is available in alternate formats for people with disabilities upon request.)

## KING COUNTY TERMS AND CONDITIONS

### 1. Agreement Term and Termination

- A. This Agreement shall commence on the Agreement Start Date and shall terminate on the Agreement End Date as specified on page 1 of this Agreement, unless extended or terminated earlier, pursuant to the terms and conditions of the Agreement.
- B. This Agreement may be terminated by the County or the Recipient without cause, in whole or in part, prior to the Agreement End Date, by providing the other party thirty (30) days advance written notice of the termination. The Agreement may be suspended by the County without cause, in whole or in part, prior to the date specified in Subsection 1.A. above, by providing the Recipient thirty (30) days advance written notice of the suspension.
- C. The County may terminate or suspend this Agreement, in whole or in part, upon seven (7) days advance written notice in the event: (1) the Recipient materially breaches any duty, obligation, or service required pursuant to this Agreement, or (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible. If the Agreement is terminated by the County pursuant to this Subsection 1.C. (1), the Recipient shall be liable for damages, including any additional costs of procurement of similar services from another source.

If the termination results from acts or omissions of the Recipient, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Recipient shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Recipient by the County.

- D. If County or other expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Subsection 1.A., the County may, upon written notification to the Recipient, terminate or suspend this Agreement in whole or in part.

If the Agreement is terminated or suspended as provided in this Section: (1) the County will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination or suspension; and (2) in the case of termination the Recipient shall be released from any obligation to provide such further services pursuant to the Agreement ; and (3) in the case of suspension the Recipient shall be released from any obligation to provide services during the period of suspension and until such time as the County provides written authorization to resume services..

Funding or obligation under this Agreement beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Agreement. Should such appropriation not be approved, this Agreement will terminate at the close of the current appropriation year.

- E. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either party may have in the event that the obligations, terms, and conditions set forth in this Agreement are breached by the other party.

### 2. Compensation and Method of Payment

- A. The County shall reimburse the Recipient for satisfactory completion of the services and requirements specified in this Agreement, payable upon receipt and approval by the County of a signed invoice in substantially the form of the attached Invoice Exhibit, which complies with the attached Budget Exhibit.
- B. The Recipient shall submit an invoice and all accompanying reports as specified in the attached exhibits not more than 60 working days after the close of each indicated reporting period. The County shall make payment to the Recipient not more than 30 days after a complete and accurate invoice is received.

- C. The Recipient shall submit its final invoice and all outstanding reports within 90 days of the date this Agreement terminates. If the Recipient's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Recipient of the amounts set forth in said invoice or any subsequent invoice.
- D. When a budget is attached hereto as an exhibit, the Recipient shall apply the funds received from the County under this Agreement in accordance with said budget. The Agreement may contain separate budgets for separate program components. The Recipient shall request prior approval from the County for an amendment to this Agreement when the cumulative amount of transfers among the budget categories is expected to exceed 10% of the Agreement amount in any Agreement budget. Supporting documents necessary to explain fully the nature and purpose of the amendment must accompany each request for an amendment. Cumulative transfers between budget categories of 10% or less need not be incorporated by written amendment; however, the County must be informed immediately in writing of each such change.
- E. Should, in the sole discretion of the County, the Recipient not timely expend funds allocated under this Agreement, the County may recapture and reprogram any such under-expenditures unilaterally and without the need for further amendment of this Agreement. The County may unilaterally make changes to the funding source without the need for an amendment. The Recipient shall be notified in writing of any changes in the fund source or the recapturing or reprogramming of under expenditures.
- F. If travel costs are contained in the attached budget, reimbursement of Recipient travel, lodging, and meal expenses are limited to the eligible costs based on the following rates and criteria.
  - 1. The mileage rate allowed by King County shall not exceed the current Internal Revenue Service (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during work hours. Parking shall be the actual cost. When rental vehicles are authorized, government rates shall be requested. If the Recipient does not request government rates, the Recipient shall be personally responsible for the difference. Please reference the federal web site for current rates: <http://www.gsa.gov>.
  - 2. Reimbursement for meals shall be limited to the per diem rates established by federal travel requisitions for the host city in the Code of Federal Regulations, 41 CFR § 301, App.A. Please reference <http://www.gsa.gov> for the current host city per diem rates.
  - 3. Accommodation rates shall not exceed the federal lodging limit plus host city taxes. The Recipient shall always request government rates.
  - 4. Air travel shall be by coach class at the lowest possible price available at the time the County requests a particular trip. In general, a trip is associated with a particular work activity of limited duration and only one round-trip ticket, per person, shall be billed per trip. Any air travel occurring as part of a federal grant must be in accordance with the Fly America Act.

### **3. Internal Control and Accounting System**

The Recipient shall establish and maintain a system of accounting and internal controls which complies with applicable generally accepted government accounting standards (GAGAS).

### **4. Debarment and Suspension Certification**

Entities that are debarred, suspended, or proposed for debarment by the U.S. Government are excluded from receiving federal funds and contracting with the County. The Recipient, by signature to this Agreement, certifies that the Recipient is not presently debarred, suspended, or proposed for debarment by any Federal department or agency. The Recipient also agrees that it will not enter

into a sub-agreement with a Recipient that is debarred, suspended, or proposed for debarment. The Recipient agrees to notify King County in the event it, or a sub-awardee, is debarred, suspended, or proposed for debarment by any Federal department or agency.

**5. Maintenance of Records/Evaluations and Inspections**

- A. The Recipient shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all Agreement funds and compliance with this Agreement.
- B. In accordance with the nondiscrimination and equal employment opportunity requirements set forth in Section 13. below, the Recipient shall maintain the following:
  - 1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Agreement; and
  - 2. Records, including written quotes, bids, estimates or proposals submitted to the Recipient by all businesses seeking to participate on this Agreement, and any other information necessary to document the actual use of and payments to sub-awardees and suppliers in this Agreement, including employment records.

The County may visit the site of the work and the Recipient's office to review the foregoing records. The Recipient shall provide every assistance requested by the County during such visits. In all other respects, the Recipient shall make the foregoing records available to the County for inspection and copying upon request. If this Agreement involves federal funds, the Recipient shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Agreement documents.

- C. Except as provided in Section 6 of this Agreement, the records listed in A and B above shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Revised Code of Washington (RCW) Chapter 40.14.
- D. Medical records shall be maintained and preserved by the Recipient in accordance with state and federal medical records statutes, including but not limited to RCW 70.41.190, 70.02.160, and standard medical records practice. If the Recipient ceases operations under this Agreement, the Recipient shall be responsible for the disposition and maintenance of such medical records.
- E. The Recipient agrees to cooperate with the County or its agent in the evaluation of the Recipient's performance under this Agreement and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.56.
- F. The Recipient agrees that all information, records, and data collected in connection with this Agreement shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

**6. Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

The Recipient shall not use protected health information created or shared under this Agreement in any manner that would constitute a violation of HIPAA and any regulations enacted pursuant to its provisions. Recipient shall read and certify compliance with all HIPAA requirements at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>

**7. Audits**

- A. If the Recipient is a municipal entity or other government institution or jurisdiction, it shall notify the County in writing within 30 days of when its annual report of examination/audit, conducted by the Washington State Auditor, has been completed.
- B. Additional audit or review requirements which may be imposed on the County will be passed on to the Recipient and the Recipient will be required to comply with any such requirements.

#### **8. Corrective Action**

If the County determines that a breach of Agreement has occurred, that is, the Recipient has failed to comply with any terms or conditions of this Agreement or the Recipient has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

- A. The County will notify the Recipient in writing of the nature of the breach;  
The Recipient shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Agreement into compliance, which date shall not be more than ten (10) days from the date of the Recipient's response, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- B. The County will notify the Recipient in writing of the County's determination as to the sufficiency of the Recipient's corrective action plan. The determination of sufficiency of the Recipient's corrective action plan shall be at the sole discretion of the County;
- C. In the event that the Recipient does not respond within the appropriate time with a corrective action plan, or the Recipient's corrective action plan is determined by the County to be insufficient, the County may commence termination or suspension of this Agreement in whole or in part pursuant to Section 1.C.;
- D. In addition, the County may withhold any payment owed the Recipient or prohibit the Recipient from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- E. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 1., Subsections B, C, D, and E.

#### **9. Dispute Resolution**

The parties shall use their best, good-faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both parties will make a good faith effort to continue without delay to carry out their respective responsibilities under this Agreement while attempting to resolve the dispute under this section.

#### **10. Hold Harmless and Indemnification**

- A. In providing services under this Agreement, the Recipient is an independent contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of the County for any purpose. The Recipient shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Recipient, its employees, subcontractors and/or others by reason of this Agreement. The Recipient shall protect, indemnify, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Recipient's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Recipient of work,

services, materials, or supplies by Recipient employees or other suppliers in connection with or support of the performance of this Agreement.

- B. The Recipient further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Agreement by the Recipient, its officers, employees, agents, or subcontractors. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Agreement pursuant to the Term and Termination section.
- C. The Recipient shall defend, indemnify, and hold harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Recipient, its officers, employees, sub-awardees and/or agents in its performance or non-performance of its obligations under this Agreement. In the event the County incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Recipient.
- D. The County shall defend, indemnify, and hold harmless the Recipient, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the County, its officers, employees, or agents in its performance or non-performance of its obligations under this Agreement. In the event the Recipient incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the County.
- E. Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
- F. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.
- G. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

## **11. Insurance Requirements**

By the date of execution of this Agreement, the Recipient shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Recipient, its agents, representatives, employees, and/or sub-awardees. The costs of such insurance shall be paid by the Recipient or sub-awardee. The Recipient may furnish separate certificates of insurance and policy endorsements for each sub-awardee as evidence of compliance with the insurance requirements of this Agreement. The Recipient is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Recipient, its agents, employees, officers, sub-awardee, providers, and/or provider sub-awardees to comply with the insurance requirements stated herein shall constitute a material breach of this Agreement. Specific coverages and requirements are at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>; Recipients shall read and provide required insurance documentation prior to the signing of this Agreement.

## **12. Assignment/Sub-agreements**

- A. The Recipient shall not assign or sub-award any portion of this Agreement or transfer or assign any claim arising pursuant to this Agreement without the written consent of the County. Said consent must be sought in writing by the Recipient not less than fifteen (15) days prior to the date of any proposed assignment.

- B. "Sub-agreement" shall mean any agreement between the Recipient and a sub-awardee or between sub-awardees that is based on this Agreement, provided that the term "sub-awardee" does not include the purchase of (1) support services not related to the subject matter of this Agreement, or (2) supplies.
- C. The Recipient shall include Sections 2.D., 2.E., 3, 4, 5, 6, 10.A., 10.B., 10.G., 12, 13, 14, 15, 16, 17, 23, 24, 26, and the Funder's Special Terms and Conditions, if attached, in every sub-agreement that relates to the subject matter of this Agreement.
- D. The Recipient agrees to include the following language verbatim in every sub-agreement for services which relate to the subject matter of this Agreement:  

"Sub-awardee shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of sub-awardee, its officers, employees, and/or agents in connection with or in support of this Agreement. Sub-awardee expressly agrees and understands that King County is a third party beneficiary to this Agreement and shall have the right to bring an action against sub-awardee to enforce the provisions of this paragraph."

### **13. Nondiscrimination and Equal Employment Opportunity**

The Recipient shall comply with all applicable federal, state and local laws regarding discrimination, including those set forth in this Section.

During performance of the Agreement, the Recipient agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification. The Recipient will make equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Additional requirements are at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>; Recipients shall read and certify compliance.

### **14. Conflict of Interest**

- A. The Recipient agrees to comply with applicable provisions of K.C.C. 3.04. Failure to comply with such requirements shall be a material breach of this Agreement, and may result in termination of this Agreement pursuant to Section II and subject the Recipient to the remedies stated therein, or otherwise available to the County at law or in equity.
- B. The Recipient agrees, pursuant to KCC 3.04.060, that it will not willfully attempt to secure preferential treatment in its dealings with the County by offering any valuable consideration, thing of value or gift, whether in the form of services, loan, thing or promise, in any form to any county official or employee. The Recipient acknowledges that if it is found to have violated the prohibition found in this paragraph, its current Agreements with the county will be cancelled and it shall not be able to bid on any county Agreement for a period of two years.
- C. The Recipient acknowledges that for one year after leaving County employment, a former County employee may not have a financial or beneficial interest in an agreement or grant that was planned, authorized, or funded by a County action in which the former County employee participated during County employment. Recipient shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Agreement. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Agreement. After Agreement award, the Recipient is responsible for notifying the County's

Project Manager of current or former County employees who may become involved in the Agreement any time during the term of the Agreement.

**15. Equipment Purchase, Maintenance, and Ownership**

- A. The Recipient agrees that any equipment purchased, in whole or in part, with Agreement funds at a cost of \$5,000 per item or more, when the purchase of such equipment is reimbursable as an Agreement budget item, is upon its purchase or receipt the property of the County and/or federal/state government. The Recipient shall be responsible for all such property, including the proper care and maintenance of the equipment.
- B. The Recipient shall ensure that all such equipment will be returned to the County or federal/state government upon termination of this Agreement unless otherwise agreed upon by the parties.

**16. Proprietary Rights**

The parties to this Agreement hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the party that produces such material or article. If any patentable or copyrightable material or article should result from the work described herein and is jointly produced by both parties, all rights accruing from such material or article shall be owned in accordance with US Patent Law. Each party agrees to and does hereby grant to the other party, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Agreement.

The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Recipient which are modified for use in the performance of this Agreement.

The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Recipient that are not modified for use in the performance of this Agreement.

**17. Political Activity Prohibited**

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

**18. King County Recycled Product Procurement Policy**

In accordance with King County Code 18.20, the Recipient shall use recycled paper, and both sides of sheets of paper whenever practicable, when submitting proposals, reports, and invoices, if paper copies are required.

**19. Future Support**

The County makes no commitment to support the services awarded for herein and assumes no obligation for future support of the activity awarded herein except as expressly set forth in this Agreement.

**20. Entire Agreement/Waiver of Default**

The parties agree that this Agreement is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

**21. Amendments**

Either party may request changes to this Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement. Changes to the County's Agreement numbering system or fund source may be made unilaterally by the County and without the need for amendment of this Agreement. The Recipient shall be notified in writing of any changes in the Agreement number or fund source assigned by the County; provided, however, that the total compensation allocated by the County through this Agreement does not change.

**22. Notices**

Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing and directed to the chief executive office of the Recipient and the project representative of the County department specified on page one of this Agreement. Any time within which a party must take some action shall be computed from the date that the notice is received by said party.

**23. Services Provided in Accordance with Law and Rule and Regulation**

The Recipient and any sub-awardee agree to abide by the laws of the state of Washington, rules and regulations promulgated thereunder, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Agreement, all of which are incorporated herein by reference.

In the event that there is a conflict between any of the language contained in any exhibit or attachment to this Agreement, the language in the Agreement shall have control over the language contained in the exhibit or the attachment, unless the parties affirmatively agree in writing to the contrary.

**24. Applicable Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any action hereunder shall be in the Superior Court for King County, Washington.

**25. Electronic Processing and Signatures**

The parties agree that this Agreement may be processed and signed electronically, which if done so, will be subject to additional terms and conditions found at <https://www.docuSign.com/company/terms-of-use>.

The parties acknowledge that they have consulted with their respective attorneys and have had the opportunity to review this Agreement. Therefore, the parties expressly agree that this Agreement shall be given full force and effect according to each and all of its express terms and provisions and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

The parties executing this Agreement electronically have authority to sign and bind its represented party to this Agreement.

**26. No Third Party Beneficiaries**

Except for the parties to whom this Agreement is assigned in compliance with the terms of this Agreement, there are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any person or entity that is not a party hereto.

**END OF COUNTY TERMS AND CONDITIONS**

**EXHIBIT A  
SCOPE OF WORK**

**CITY OF DES MOINES  
1/1/2019-12/31/2020**

**Background**

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

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

**Scope of Work**

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

**Responsibilities of the Parties**

**The City**

1. The City shall develop and submit project proposals and budget requests to the Program’s Contract Administrator. Funds provided to the City by the Program pursuant to this Contract shall be used to implement hazardous waste programs and/or services as approved by the MCC.
2. The City shall submit timely reimbursement requests as negotiated with the Contract Administrator. For reimbursement, the City shall submit the following to the Contract Administrator:
  - a) An invoice (see Exhibit C). Invoices should be sent to the Contract Administrator for approval and payment.
  - b) A brief description of activity accomplished and funds expended in accordance with the scope of work.

- c) Copies of invoices for expenditures or a financial statement prepared by the City's finance department. The financial statement should include vendor names, a description of services provided, date paid and a check or warrant number.
  - d) A legible copy of the Hazardous Waste Manifest.
3. The City shall submit to the Contract Administrator no later than December 5<sup>th</sup> of each year a final invoice or estimate for activities completed in that calendar year.
  4. It is the responsibility of the City to comply with all applicable county, state and/or federal reporting requirements with respect to the collection and transfer of moderate risk wastes. The City shall report to the Contract Administrator the quantity, by type, of moderate risk waste collected using Program funds. The City shall also provide the Contract Administrator with copies of EPA's Non-Hazardous Waste Manifest or similar form, associated with the transport of moderate risk waste collected through Program-funded events.
  5. The City is solely responsible for any and all spills, leaks or other emergencies arising at the facilities associated with the City's events or in any other way associated with activities conducted within the scope of this Contract. In the event of a spill or other emergency, the City is responsible for complying with all applicable laws and regulations.
  6. The City agrees to appropriately acknowledge the Program in all media produced – in part or in whole – with Program funds. Where feasible, the City will use the Program's logo. The intent of this provision is to further strengthen this regional partnership in the public's mind.
  7. The City agrees to provide the Program with copies of all media material produced for local hazardous waste management events or activities that have been funded by the Program. The City also agrees to allow the Program to reproduce media materials created with Program money provided that the Program credits the City as the originator of that material.
  8. This project shall be administered by Laura Techico at the City of Des Moines, 21630 11<sup>th</sup> Ave. S, Suite "D", Des Moines, at (206) 870-6595, (ltechico@desmoineswa.gov) or her designee.
  9. Questions or concerns regarding any issue associated with this Exhibit that cannot be handled by the Contract Administrator should be referred to the LHWMP Program Director for resolution.

### **Seattle-King County Department of Public Health**

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

invoices are incomplete (e.g. they do not include proper documentation of expenditures for which reimbursement is being requested) or are not consistent with the submitted scope of work.

**Program Contacts**

Lynda Ransley  
LHWMP Program Director  
150 Nickerson Street, Suite 204  
Seattle, WA 98109  
206-263-8241  
[lynda.ransley@kingcounty.gov](mailto:lynda.ransley@kingcounty.gov)

Joy Carpine-Cazzanti  
LHWMP Contract Administrator  
401 Fifth Avenue, Suite 1100  
Seattle, WA 98104  
206-263-0365  
[jcarpine@kingcounty.gov](mailto:jcarpine@kingcounty.gov)

**Agreement # 3749 EHS  
EXHIBIT B  
2019-2020 BUDGET**

**LOCAL HAZARDOUS WASTE MANAGEMENT PROGRAM**

City of Des Moines  
21630 11<sup>th</sup> Ave S, Suite "D"  
Des Moines, WA 98198

<b>Component Description</b>	<b>2019-2020 Budget</b>
Household Hazardous Waste Education	\$0
Household Hazardous Waste Collection	\$27,568.50
<b>TOTAL</b>	<b>\$27,568.50</b>

**Footnote:** The 2019-2020 budget can be partly or totally spent in either 2019 and/or 2020 but cannot exceed the budget total in these two years.

ALL FIELDS MUST BE COMPLETED FOR PROMPT PAYMENT PROCESSING

King County Accounts Payable Information	
Purchase Order #	_____
Supplier Name	City of Des Moines
Supplier #	1270
Supplier Pay Site	Des Moines
Remit to Address	21630 11th Ave S, Suite "D"
	Des Moines WA 98198
Invoice Date	_____
Invoice #	_____
Amount to be Paid	_____
	_____
	_____
PH Program name/phone	Kristin Painter (206) 477-5470

**INVOICE**

Contract Number: EHS 3749  
 Exhibit: C  
 Contract Period of Performance: 1/1/19-12/31/20

**City of Des Moines**  
 21630 11th Ave S, Suite "D"  
 Des Moines WA 98198  
 Invoice Processing Contact: Laura Techico  
 (206) 870-6595  
[ltechico@desmoineswa.gov](mailto:ltechico@desmoineswa.gov)

Submit signed hardcopy invoice to:  
 Joy Carpine-Cazzanti  
 Local Hazardous Waste Management Program  
 Public Health - Seattle & King County  
 401 5th Ave., Suite 1100  
 Seattle, WA 98104  
[jcarpine@kingcounty.gov](mailto:jcarpine@kingcounty.gov)

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

Start Date	End Date
<input type="text"/>	<input type="text"/>

MM/DD/YY

Project	Organization	Expend Acct	Task	CPA	Amount
1114016	860000	53105	001		

Attach sheet for multiple POETAs

Expenditure Item	2019-20 Budget	Previously Billed	Current	Cumulative	Balance
HHW Education					
HHW Collection	\$27,568.50				\$27,568.50
<b>Total</b>	<b>\$27,568.50</b>				<b>\$27,568.50</b>

**Materials and quantities collected:**

Gallons of motor oil	<input type="text"/>
Number of motor oil filters	<input type="text"/>
Gallons of mixed fuel	<input type="text"/>
Gallons of antifreeze	<input type="text"/>
Pounds of lead acid batteries	<input type="text"/>
Pounds of dry batteries	<input type="text"/>
Number of CFC appliances	<input type="text"/>
Other (please specify)	<input type="text"/>

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

\_\_\_\_\_  
 Recipient Signed Date

\_\_\_\_\_  
 PH Authorization / Approval Date

\_\_\_\_\_  
 Print Name

# INVOICE DETAIL

Salaries & Wages- List by Employee	Hours	Rate of Pay/ Hr	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
------------------------------------	-------	-----------------	--------	-------------------	---------------------	---------------------------------	----------------------------------

<b>Subtotal</b>			\$ -	\$ -	\$ -	\$ -	\$ -
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Fringe Benefits:	Base	Rate	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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<b>Subtotal</b>			\$ -	\$ -	\$ -	\$ -	\$ -
-----------------	--	--	------	------	------	------	------

Consultant Costs- Itemize by consultant below	Unit of measure	Rate	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
---	-----------------	------	--------	-------------------	---------------------	---------------------------------	----------------------------------

			\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>			\$ -	\$ -	\$ -	\$ -	\$ -

Supplies- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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<b>Subtotal</b>	\$ -	\$ -	\$ -	\$ -	\$ -
-----------------	------	------	------	------	------

Travel	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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In State Travel	Total # of Miles	Rate

Out of State Travel	# of People	Rate

Per Diem and Lodging	# of People	# of Units	Unit Cost

<b>Subtotal</b>	\$ -	\$ -	\$ -	\$ -	\$ -
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Other Costs- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
----------------------------------	--------	-------------------	---------------------	---------------------------------	----------------------------------

	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>	\$ -	\$ -	\$ -	\$ -	\$ -

Overhead Costs- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
-------------------------------------	--------	-------------------	---------------------	---------------------------------	----------------------------------

	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>	\$ -	\$ -	\$ -	\$ -	\$ -

	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
--	--------	-------------------	---------------------	---------------------------------	----------------------------------

<b>Direct Costs Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Grand Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -

Notes regarding this invoice

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CPA #

Draft**INTERAGENCY AGREEMENT FOR 2019 and 2020****Between****KING COUNTY and the CITY OF DES MOINES**

This two-year Interagency Agreement "Agreement" is executed between King County, a Charter County and political subdivision of the State of Washington, and the City of Des Moines, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively. Collectively, the County and City will be referred to as "Party" or "Parties."

**PREAMBLE**

King County and the City of Des Moines adopted the 2001 King County Comprehensive Solid Waste Management Plan, which includes waste reduction and recycling goals. In order to help meet these goals, the King County Solid Waste Division has established a waste reduction and recycling grant program for the cities that operate under the King County Comprehensive Solid Waste Management Plan. This program provides funding to further the development and/or enhancement of local waste reduction and recycling projects and for broader resource conservation projects that integrate with waste reduction and recycling programs and services. This grant program does not fund household hazardous waste collection activities. Program eligibility and grant administration terms are discussed in the Grant Guidelines, attached to this Agreement as Exhibit B and incorporated herein by reference. Grant funding for this program is subject to the budget approval process of the King County Council.

Grant funding approved by the King County Council is available to all King County cities that operate under the King County Comprehensive Solid Waste Management Plan. The City will spend its grant funds to fulfill the terms and conditions set forth in the scope of work, which is attached hereto as Exhibit A and incorporated herein by reference. The County expects that any information and/or experience gained through the grant program by the City will be shared with the County and other King County cities.

**I. PURPOSE**

The purpose of this Agreement is to define the terms and conditions for funding to be provided to the City by the County for waste reduction and recycling programs and/or services as outlined in the scope of work and budget attached as Exhibit A.

## II. RESPONSIBILITIES OF THE PARTIES

The responsibilities of the Parties to this Agreement shall be as follows:

### A. The City

1. Funds provided to the City by the County pursuant to this Agreement shall be used to provide waste reduction and recycling programs and/or services as outlined in Exhibit A. The total amount of funds available from this grant in 2019 and 2020 shall not exceed \$40,853.
2. This Agreement provides for distribution of 2019 and 2020 grant funds to the City. However, grant funds are not available until January 1, 2019.
3. During this two-year grant program, the City will submit a minimum of two (2), but no more than eight (8), progress reports to the County in a form approved by the County. Reports must be signed by a City official. These reports will include:
  - a. a description of each activity accomplished pertaining to the scope of work; and
  - b. reimbursement requests with both a Budget Summary Report Form, which is attached hereto as Exhibit D and incorporated herein by reference, and an Expense Summary Form, which is attached hereto as Exhibit E and incorporated herein by reference, unless the City has a spreadsheet similar to the Expense Summary Form already in use, in which case the City is free to use that spreadsheet instead of the Expense Summary Form. The City will submit the form or similar spreadsheet and not submit backup documentation for grant expenses. If backup documentation is submitted, SWD will not retain it. The City shall maintain this documentation in its records.

If the City chooses to submit up to the maximum of eight (8) progress reports and requests for reimbursement during the two-year grant program, they shall be due to the County on the last day of the month following the end of each quarter (April 30, July 30, October 31, January 31) except for the final progress report and request for reimbursement, which shall be due by March 31, 2021.

If the City chooses to submit the minimum of two progress reports and requests for reimbursement during the two-year grant program, they shall be due to the County by January 31, 2020 and March 31, 2021.

Regardless of the number of progress reports the City chooses to submit, in order to secure reimbursement, the City must provide in writing to the County by the 5<sup>th</sup> working day of January 2020 and January 2021, the dollar amount of outstanding expenditures for which the City has not yet submitted a reimbursement request.

4. The City shall submit a final report to the County which summarizes the work completed under the grant program and evaluates the effectiveness of the projects for which grant funds were utilized, according to the evaluation methods specified in the scope of work. The final report is due within six (6) months of completion of the project(s) outlined in the scope of work, but no later than June 30, 2021.

5. If the City accepts funding through this grant program for the provision of waste reduction and recycling programs and projects for other incorporated areas of King County, the City shall explain the relationship with the affected adjacent city or cities that allows for acceptance of this funding and the specifics of the proposed programs and projects within the scope of work document related thereto.
6. The City shall be responsible for following all applicable Federal, state, and local laws, ordinances, rules, and regulations in the performance of work described herein. The City assures that its procedures are consistent with laws relating to public contract bidding procedures, and the County neither incurs nor assumes any responsibility for the City's bid, award, or contracting process.
7. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of or access to services or any other benefits under this Agreement as defined by King County Code, Chapter 12.16.
8. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall engage in unfair employment practices as defined by King County Code, Chapter 12.18. The City shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, RCW Chapter 49.60 and Titles VI and VII of the Civil Rights Act of 1964.
9. The City shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement. The City shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical.
10. The City shall maintain accounts and records, including personnel, financial, and programmatic records, and other such records as may be deemed necessary by the County, to ensure proper accounting for all project funds and compliance with this Agreement. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and service provided in the performance of this Agreement.  
  
These records shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the State Archivist in accordance with RCW Chapter 40.14. These accounts shall be subject to inspection, review, or audit by the County and/or by federal or state officials as so authorized by law.
11. The City shall maintain a record of the use of any equipment that costs more than \$1,000 and is purchased with grant funds from King County for a total period of three (3) years. The records shall be compiled into a yearly evaluation report, a copy of which shall be submitted to King County by March 31 of each year through the year 2021.

12. The City agrees to credit King County on all printed materials provided by the County, which the City is duplicating, for distribution. Either King County's name and logo must appear on King County materials (including fact sheets, case studies, etc.), or, at a minimum, the City will credit King County for artwork or text provided by the County as follows: "artwork provided courtesy of King County Solid Waste Division" and/or "text provided courtesy of King County Solid Waste Division."
13. The City agrees to submit to the County copies of all written materials which it produces and/or duplicates for local waste reduction and recycling projects which have been funded through the waste reduction and recycling grant program. Upon request, the City agrees to provide the County with a reproducible copy of any such written materials and authorizes the County to duplicate and distribute any written materials so produced, provided that the County credits the City for the materials.
14. The City will provide the King County Project Manager with the date and location of each Recycling Collection Event provided by the City, as well as copies of any printed materials used to publicize each event, as soon as they are available but no later than thirty (30) days prior to the event. If there is any change in the date or the location of an event, the City will notify the County a minimum of thirty (30) days prior to the event. If the event brochure is required for admission to the City's event, the City is exempt from having to provide the brochure to King County.
15. If the City accepts funding through this grant program for the provision of recycling collection events for adjacent areas of unincorporated King County, the City shall send announcements of the events to all residences listed in the agreed upon areas listed in Exhibit A. The announcements and all other printed materials related to these events shall acknowledge King County as the funding source.
16. This project shall be administered by Laura Techico, Land Use Planner, or designee.

**B. The County:**

1. The County shall administer funding for the waste reduction and recycling grant program. Funding is designated by the city and is subject to the King County Council's budget approval process. Provided that the funds are allocated through the King County Council's budget approval process, grant funding to the City will include a base allocation of \$10,000 per year with the balance of funds to be allocated according to the City's percentage of King County's residential and employment population. However, if this population based allocation formula calculation would result in a city receiving less than \$10,000 per year, that city shall receive an additional allocation that would raise their total grant funding to \$10,000 per year.

2. Within forty-five (45) days of receiving a request for reimbursement from the City, the County shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The County will not authorize payment for activities and/or expenditures which are not included in the scope of work and budget attached as Exhibit A, unless the scope has been amended according to Section V of this Agreement. King County retains the right to withhold all or partial payment if the City's report(s) and reimbursement request(s) are incomplete (i.e., do not include proper documentation of expenditures and/or adequate description of each activity described in the scope of work for which reimbursement is being requested), and/or are not consistent with the scope of work and budget attached as Exhibit A.
3. The County agrees to credit the City on all printed materials provided by the City to the County, which the County duplicates, for distribution. Either the City's name and logo will appear on such materials (including fact sheets, case studies, etc.), or, at a minimum, the County will credit the City for artwork or text provided by the City as follows: "artwork provided courtesy of the City of Des Moines" and/or "text provided courtesy of the City of Des Moines."
4. The County retains the right to share the written material(s) produced by the City which have been funded through this program with other King County cities for them to duplicate and distribute. In so doing, the County will encourage other cities to credit the City on any pieces that were produced by the City.
5. The waste reduction and recycling grant program shall be administered by Lucy Auster, Project Manager, King County Solid Waste Division, or designee.

### **III. DURATION OF AGREEMENT**

This Agreement shall become effective on either January 1, 2019 or the date of execution of the Agreement by both the County and the City, if executed after January 1, 2019, and shall terminate on June 30, 2021. The City shall not incur any new charges after December 31, 2020. However, if execution by either Party does not occur until after January 1, 2019, this Agreement allows for disbursement of grant funds to the City for County-approved programs initiated between January 1, 2019 and the later execution of the Agreement provided that the City complies with the reporting requirements of Section II.A of the Agreement.

#### **IV. TERMINATION**

- A. This Agreement may be terminated by King County, in whole or in part, for convenience without cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice.
- B. This Agreement may be terminated by either Party, in whole or in part, for cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice. Reasons for termination for cause may include but not be limited to: nonperformance; misuse of funds; and/or failure to provide grant related reports/invoices/statements as specified in Section II.A.3. and Section II.A.4.
- C. If the Agreement is terminated as provided in this section: (1) the County will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and (2) the City shall be released from any obligation to provide further services pursuant to this Agreement.
- D. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other Party.

#### **V. AMENDMENTS**

This Agreement may be amended only by written agreement of both Parties. Amendments to scopes of work will only be approved if the proposed amendment is consistent with the most recently adopted King County Comprehensive Solid Waste Management Plan. Funds may be moved between tasks in the scope of work, attached as Exhibit A, only upon written request by the City and written approval by King County. Such requests will only be approved if the proposed change(s) is (are) consistent with and/or achieves the goals stated in the scope and falls within the activities described in the scope.

#### **VI. HOLD HARMLESS AND INDEMNIFICATION**

The City shall protect, indemnify, and hold harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or issues whatsoever occurring from actions by the City and/or its subcontractors pursuant to this Agreement. The City shall defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of any kind whatsoever (hereinafter "claims") brought against the County arising out of or incident to the City's execution of, performance of, or failure to perform this Agreement. Claims shall include but not be limited to assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

## **VII. INSURANCE**

- A. The City, at its own cost, shall procure by the date of execution of this Agreement and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of work pursuant to this Agreement by the City, its agents, representatives, employees, and/or subcontractors. The minimum limits of this insurance shall be \$1,000,000 general liability insurance combined single limit per occurrence for bodily injury, personal injury, and property damage. If the policy has an aggregate limit, a \$2,000,000 aggregate shall apply. Any deductible or self-insured retentions shall be the sole responsibility of the City. Such insurance shall cover the County, its officers, officials, employees, and agents as additional insureds against liability arising out of activities performed by or on behalf of the City pursuant to this Agreement. A valid Certificate of Insurance and additional insured endorsement is attached to this Agreement as Exhibit C, unless Section VII.B. applies.
- B. If the Agency is a Municipal Corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a written acknowledgement of self-insurance is attached to this Agreement as Exhibit C.
- C. If the Agency is a Municipal Corporation or an agency of the State of Washington and is a member of the Washington Cities Insurance Authority (WCIA), a written acknowledgement/certification of current membership is attached to this Agreement as Exhibit C.

## **VIII. ENTIRE CONTRACT/WAIVER OF DEFAULT**

This Agreement is the complete expression of the agreement of the County and City hereto, and any oral or written representations or understandings not incorporated herein are excluded. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

## **IX. TIME IS OF THE ESSENCE**

The County and City recognize that time is of the essence in the performance of this Agreement.

## **X. SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

**XI. NOTICE**

Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent to the King County Solid Waste Division and the City at the addresses provided below:

Lucy Auster, Project Manager, or a provided designee  
King County Solid Waste Division  
Department of Natural Resources and Parks  
201 South Jackson Street, Suite 701  
Seattle, WA 98104-3855

If to the City:

Laura Techico, Land Use Planner, or a provided designee  
City of Des Moines  
21630 11<sup>th</sup> Avenue South, Suite "D"  
Des Moines, WA 98198

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

**City of Des Moines**

\_\_\_\_\_  
Michael Matthias, City Manager

\_\_\_\_\_  
Date

**King County**

BY \_\_\_\_\_  
Pat D. McLaughlin, Director  
Solid Waste Division

For Dow Constantine, King County Executive

\_\_\_\_\_  
Date

# AGENDA ITEM

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

SUBJECT: 2019 Consultant Contract: BHC Consultants, LLC

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Planning, Building & Public Works

**ATTACHMENTS:**

DATE SUBMITTED: January 8, 2019

- 1. 2019 Contract for Building Inspection and Plan Review Services between the City of Des Moines and BHC Consultants, LLC

**CLEARANCES:**

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

CHIEF OPERATIONS OFFICER: *DSB*

- Legal *TO*
- Finance *BW*
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

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

**Purpose and Recommendation**

The purpose of this agenda item is to request Council’s approval of a Contract (refer to Attachment 1) with BHC Consultants, LLC for building inspection and plan review services for the year 2019. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion 1:** “I move to approve the Contract with BHC Consultants, to provide professional inspection and plan review services for the year 2019 up to a total of \$50,000, and authorize the City Manager to sign the Contract substantially in the form submitted.”

**Background**

Due to the current and projected economy and workload, and the requirement for timely building inspection and plan review services, the City has been contracting with BHC Consultants, LLC over the last few years to assist in meeting the inspection work load for the Building Division.

**Discussion**

The City has used BHC Consultants, LLC for inspection services since 2014. This proposed contract will continue the City's relationship with BHC Consultants as needed through 2019.

**Alternatives**

None offered.

**Financial Impact**

The financial impact is the total contract amount (\$50,000). There are sufficient funds authorized in the 2019 Budget to cover this expenditure.

**Recommendation**

Staff recommends the Council approve the Contract as submitted.



## **CONSULTANT SERVICES CONTRACT between the City of Des Moines and BHC Consultants, LLC**

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and BHC Consultants, organized under the laws of the State of Washington, located and doing business at 1601 Fifth Avenue Suite 500, Seattle WA 98101 (hereinafter the "Consultant").

### **I. DESCRIPTION OF WORK.**

Consultant shall perform the following services for the City in accordance with the following described plans and/or specifications:

The scope of services to be performed, and the schedule and compensation for performing those services, shall be as described in Exhibit "A" and Exhibit "B", attached, and hereby incorporated into this Contract.

Consultant further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

**II. TIME OF COMPLETION.** The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by December 31, 2019.

### **III. COMPENSATION.**

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed \$50,000 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in "B" for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

- B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

**IV. INDEPENDENT CONTRACTOR.** The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant has the ability to control and direct the performance and details of its work; however, the City shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

**V. CHANGES.** The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Consultant determines, for any reason, that a change order is necessary, Consultant must submit a written change order request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Consultant knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Consultant's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Consultant on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Consultant shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Consultant fails to require a change order within the time specified in this paragraph, the Consultant waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Consultant disagrees with the equitable adjustment, the Consultant must complete the change order work; however, the Consultant may elect to protest the adjustment as provided in subsections A through E of Section VI, Claims, below.

The Consultant accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Consultant as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

**VI. CLAIMS.** If the Consultant disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Consultant may file a claim as provided in this section. The Consultant shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Consultant knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Consultant unless a

timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Consultant's written claim shall include the information set forth in subsections A, items 1 through 5 below.

**FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.**

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
1. The date of the Consultant's claim;
  2. The nature and circumstances that caused the claim;
  3. The provisions in this Contract that support the claim;
  4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
  5. An analysis of the progress schedule showing the schedule change or disruption if the Consultant is asserting a schedule change or disruption.
- B. Records. The Consultant shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Consultant's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Consultant's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.
- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Consultant also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Consultant completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

**VII. LIMITATION OF ACTIONS.** CONSULTANT MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONSULTANT'S ABILITY

TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

**VIII. TERMINATION.** Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

**IX. DISCRIMINATION.** In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

**X. INDEMNIFICATION.** Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract 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 the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Contract.

**XI. INSURANCE.** The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

**No Limitation.** Consultant's maintenance of insurance as required by the Contract shall not be construed to limit the liability of the Consultant to the coverage

provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**A. Minimum Scope of Insurance.** Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

**Minimum Amounts of Insurance:** Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

**B. Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**C. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

**D. Verification of Coverage** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**XII. EXCHANGE OF INFORMATION.** The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Contract.

**XIII. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.** Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Consultant for this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

**XIV. CITY'S RIGHT OF INSPECTION.** Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

**XV. WORK PERFORMED AT CONSULTANT'S RISK.** Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

**XVI. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. **Alternative Dispute Resolution.** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted

under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. 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.

2. **Applicable Law and Jurisdiction.** This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. 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 right to indemnification under Section X of this Contract.

C. **Written Notice.** All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. **Assignment.** Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. **Modification.** No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.

F. **Entire Contract.** The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

G. **Compliance with Laws.** The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

H. **Business License.** Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Des Moines Municipal Code.



<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONSULTANT:</b></p> <p>Craig Chambers, President BHC Consultants 601 Fifth Avenue, Suite 500 Seattle, WA 98101 (206) 505-3400 (telephone)</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF DES MOINES:</b></p> <p>Larry Pickard, Building Official City of Des Moines 21630 11<sup>th</sup> Avenue S., Suite A Des Moines, WA 98198 (206) 870-6569 (telephone) LPickard@desmoineswa.gov</p>
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## EXHIBIT "A"

### SCOPE OF SERVICES

#### 2019 Community Development On-Call Services Contract

#### GENERAL

The City of Des Moines (City) has selected BHC, LLC (Consultant) to provide on-call Services for various Community Development projects and tasks. BHC agrees to perform on-call Services, and will be available on an as-needed called upon basis through December 31, 2019. BHC will serve as a partner to the City in order to expand the capability of City staff.

The time for completion of all work under this Agreement shall be no later than December 31, 2019, provided that any work authorized before that date may continue until the completion date set for such work authorization, but in no event shall continue beyond December 31, 2019. No new work shall be authorized after December 31, 2019 unless this Agreement is amended by the City to extend these termination dates.

The Consultant is expected to respond on short notice to requests from the City that are deemed to be an emergency and require urgent work orders to be resolved immediately. The Consultant should be capable of performing urgent task order assignments while working on several other task orders simultaneously.

Any services provided under this Agreement shall be performed pursuant to individual and specific task orders issued to the Consultant by the City. Each task order will have a specific scope of work, budget, and schedule. Work on scoping and/or preparation of the individual task order agreements are not reimbursable. Individual task order budgets will be based on time and materials and will be charged at the hourly rate shown in Exhibit B, as determined by the City. The amount for each task order assignment will be the maximum amount payable for that assignment unless modified in writing by the City.

#### PROJECT DESCRIPTION

Task order assignments may include but are not limited to the following types of work/services:

- Plan Reviews, including but not limited to Building, Fire, Electrical, Mechanical, and Plumbing.
- Building Inspections, including but not limited to non-structural fire and life safety inspections, structural inspections, energy code inspections, barrier free inspections, mechanical, plumbing and electrical inspections.
- Building Official and Administrative Services, including but not limited to Code Interpretations and administrative needs such as ordinance review and update, staffing needs and department budget development and review.
- Land Use Planning, including but not limited to review of development applications for subdivisions, planned developments, binding site plans, variances, conditional uses, sign permits, critical area permits, GMA concurrency, SEPA compliance, comprehensive planning and GIS.
- Civil and Site Plan Review
- Attendance at meetings.
- Other related work as requested by the City.

### TASK ORDER PROCESS

Task orders made by the City shall be issued in writing by a Task Order Assignment Document, provided in Exhibit A-1. In response to a Task Order Assignment Document, the Consultant shall prepare a detailed Scope of Work, professional service budget, project schedule, and identify key staff assignments. The scope of work will be thorough and sufficiently detailed to match the complexity of the project. The Consultant's project manager will also develop a Quality Assurance review schedule which shall be included in the scope of work. The City's Project Manager will review and comment on the scope, schedule, and budget. An Assignment shall become effective when a Task Order Assignment Document is signed by the Consultant and the City and the City issues it back to the Consultant with a Notice to Proceed. The exception is that emergency actions requiring an immediate response (less than 24 hour) can be handled by oral authorization. Such oral authorization shall be followed up with a Task Order Assignment Document within four working days, and any billing rates agreed to orally (for individual, subcontractors, or organizations whose rates were not previously established in this Agreement) shall be provisional and subject to final negotiation and acceptance by the City.

In case of projects covering two or more direct phases, when the cost for the second phase depends on decisions reached during the first phase, the work order agreement should cover only the first phase.

Once a Task Order Assignment Document is issued by the City, whether formal or informal, the consultants designated project manager will meet with the City personnel as needed to discuss project specifics, including a site visit to fully understand the desired project outcome. The Consultant will then assemble a project team, including sub-consultants if necessary, possessing the specific skills necessary to perform the required work. Roles and responsibilities will be well defined within the project team to provide clear communication and establish accountability. When forming a project team the consultant will:

- Be as accurate as possible when identifying key staff that will be assigned project work.
- Achieve concurrence in staffing assignments from the appropriate discipline team leaders and principle in charge.
- Identify appropriate sub-consultants and similarly obtain Principal in Charge concurrence.

### CONTRACT VALUE

The City estimates that the potential value of the contract will not exceed \$50,000. The City is not obligated to assign any specific number of tasks, volume of work, or a specific contract value to the Consultant under this Agreement. At any time during the funding year, all projects and subsequent Task Order Assignments may be subject to change including funding levels and project priorities. The City reserves the right to add and or delete Task Assignments to meet other priorities.

### PLAN REVIEW TASK ORDERS

BHC will review plans submitted with building permit applications for structural and nonstructural code compliance in accordance with the currently adopted construction codes as adopted and amended by the State of Washington and City of Des Moines (CITY), except that BHC will confer with the Building Official and his/her agent on any portion of the review that specifically requires the approval of the Building Official as specified in the code(s).

- A. The BHC will not provide design assistance or advice to the applicant, make any structural changes on the plans, or make any changes that directly contradict other information on the plans. Significant changes must be made by or under the direction of the applicant or design

professional.

- B. Reviews shall be done by BHC, an approved representative, or an outside sub-consultant. The name of the reviewer or outside consultant shall be submitted to the CITY.
- C. If corrections or additions are required, the Consultant will write a draft review letter addressed to the applicant. This draft review letter will be sent to the CITY's agent. The CITY will then send the draft review letter, along with any additional CITY requirements to the applicant. The correction letter will indicate to the applicant that they are required to submit the revisions/additions to the CITY per the submittal requirements for the permit type under review.
- D. BHC will indicate that the drawings and other review materials have been reviewed and found to be in substantial compliance with applicable construction codes and ordinances. The reviewer's name and date of compliance will be affixed to each sheet in up to two sets of drawings including the cover sheet.
- E. Complete reviews will include structural, nonstructural, accessibility, energy, and ventilation requirements. Partial reviews will be indicated as either structural or nonstructural or as mutually agreed upon in the Task Assignment.
- F. The CITY will intake, track, and process the permit applications and all revisions per current building and permit administration procedures.
- G. BHC will be responsible for the transportation and cost of returning permit review documents back to the CITY. The CITY will be responsible for the transportation and cost of delivering permit review documents to BHC.
- H. Unless specifically noted otherwise in the Task Order Assignment, the Consultant will complete the initial review and will have either approved the application and notified the CITY of approval or contacted the applicant and the CITY with corrections within the time frames listed below:

<b>Project Type</b>	<b>Initial Review</b>	<b>Re-Review</b>
Single-Family	10 days (2 weeks)	5 days (1 week)
Multi-Family	15 days (3 weeks)	10 days (2 weeks)
Commercial	20 days (4 weeks)	15 ays (3 weeks)

- I. The Consultant will review any revisions or additional information and will either indicate compliance with the code(s) against which it was checked and notify the CITY of compliance, or if the drawings are still not complete, contact the applicant and the CITY with additional revision requests within the time frames specified above.
- J. The review time may be negotiated based on the number and complexity of projects to be reviewed. The Consultant will not be held responsible for delays beyond the Consultant's control. During heavy workloads or schedule delays, the Consultant shall notify the CITY of revisions to estimated target dates.

**BUILDING INSPECTION TASK ORDERS**

BHC will provide certified building inspectors that will provide building inspections in accordance with the currently adopted International Codes, Washington State Building Code (WAC 51-50 and 51-51), and Energy Code (WAC 51-11), and the applicable CITY Building Codes, except that inspectors will confer

with the Building Official or his/her agent on any portion of the review that specifically requires an approval of the Building Official under the applicable Code(s), or that involves an unusual interpretation.

Inspections will be done in accordance with CITY codes, ordinances and regulations in effect and will be performed in a courteous and professional manner. Up-to-date records of inspection status will be maintained on the job card in the field and on the office copy of the permit.

**EXHIBIT "A-1"**

**Formal Task Assignment Document**

Task Number \_\_\_\_\_

The general provisions and clauses of the Consultant On-Call Services Contract dated \_\_\_\_\_ shall be in full force and effect for this Task Assignment.

Location of Project: \_\_\_\_\_

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

Maximum Amount Payable Per Task Assignment: \_\_\_\_\_

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

Description of Work:  
(Note attachments and give brief description)

Agency Project Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Oral Authorization Date: \_\_\_\_\_ See Letter Dated: \_\_\_\_\_

Consultant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Agency Approving Authority: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT "B"**  
**SCHEDULE OF RATES, CHARGES AND FEES**

Task Order Assignments will be based on the hourly rates indicated below:

<u>Classification</u>	<u>Hourly Rate</u>
Building Inspector	\$80
Electrical	\$85
Plan Reviewer - nonstructural	\$140
Fire code/sprinkler review	\$130
Structural P.E.	\$175
Civil/site plan review (P.E.)	\$150
Principal Consultant (Building Official)	\$150
Planning Director	\$140
Planning Manager (Land Use/Environmental)	\$110
Planner (Land Use/Environmental)	\$95
GIS Technician	\$90
Administration Assistance	\$75

- A. Each billing statement will include the permit application number and owner or project name of the plans reviewed with the fee.
- B. Billing statements will be issued for reviews that receive a complete initial review in the preceding month or other acceptable time period.
- C. The CITY shall have the right to withhold payment to the Consultant for any work not completed in a satisfactory manner until such time that the consultant modifies such work to the satisfaction of the CITY.
- D. The cost of delivering plans for review to BHC will be incurred by the CITY. The cost of delivering reviewed plans back to city will be incurred by BHC.
- E. Hourly rates shown are portal to portal from inspector's residence or the Seattle office, whichever is less for on-call services.
- F. All mileage included by BHC inspector will be reimbursed at the most current IRS rate, currently .555 cents per mile. Mileage will not be assessed on travel using client supplied vehicle.
- G. Consultant staff's normal work days are Monday through Friday (8am~5pm). Office work on Saturdays, Sundays, or CITY Holidays will be performed only at specific request of the CITY. Billing for work performed outside normal work hours are on Saturdays, Sundays, or CITY Holidays shall be at 150% of the rates shown above.

H. This Schedule of Hourly Rates is effective as of January 1, 2019. Rates are subject to annual review.

# A G E N D A   I T E M

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

SUBJECT: Arts Commission Appointment

FOR AGENDA OF: January 24, 2019

ATTACHMENTS:  
1. Application

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January

CLEARANCES:

Community Development

Marina

Parks, Recreation & Senior Services *SMB*

Public Works

CHIEF OPERATIONS OFFICER: *DJB*

Legal \_\_\_\_\_

Finance \_\_\_\_\_

Courts \_\_\_\_\_

Police \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

The purpose of this agenda item is to recommend City Council approval of an appointment to the City of Des Moines Arts Commission.

### Suggested Motion

**Motion:** "I move to confirm the Mayoral appointment of Sarah Vogel to an unexpired term on the City of Des Moines Arts Commission effective immediately and expiring on December 31, 2020."

### Background

The City Council adopted Ordinance No. 1393 establishing the Des Moines Arts Commission in November 30, 2006. The nine Arts Commission positions were appointed in February 2007. The terms were staggered so that six positions are retained each year and three positions expire each year on December 31.

The Arts Commission was created to:

- (1) Represent the interest of the city in matters of the arts, to be a spokes group for the arts in the city and to keep the city council informed on all such related matters.
- (2) Evaluate, prioritize, and make recommendations on funding for cultural arts needs within the city.
- (3) Review and recommend works of art for the city, especially works to be acquired through appropriations set aside from municipal construction projects. Local artists will be encouraged and given equal consideration for these projects.
- (4) Inform, assist, sponsor or coordinate with arts organizations, artists, or others interested in the cultural advancement of the community.
- (5) Encourage and aid programs for the cultural enrichment of the citizens of Des Moines and encourage more public visibility of the arts.
- (6) Develop cooperation with schools, local, regional, state and national arts organizations.
- (7) Obtain private, local, regional, state or federal funds to promote arts projects within the Des Moines community.

### **Discussion**

There are currently five vacancies on the Arts Commission due to resignations or terms that expired on December 31, 2018. This agenda seeks confirmation of the Mayoral appointment of Sarah Vogel to the Des Moines Arts Commission effective immediately and expiring on December 31, 2020.

### **Alternatives**

None provided.

### **Financial Impact**

No financial impact.

### **Recommendation/Concurrence**

Parks, Recreation & Senior Services Staff support this appointment to the Des Moines Arts Commission.



**CITY OF DES MOINES  
APPLICATION FOR APPOINTEE OFFICE**  
21630 11th Avenue South  
Des Moines, WA 98198

Recvd. \_\_\_\_\_

2017-2018 *PMW*

Please Check

NAME: SARAH VOGEL  
ADDRESS: 24611 9th Ave S  
CITY/ZIP: Des Moines 98198  
PHONE: Home 206.212.6651 Work 206.966.2772  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 1 year  
REGISTERED VOTER? yes  
E-MAIL ADDRESS: SaritaVogel@hotmail.com

- Civil Service Commission
- Planning Agency
- Library Board
- Human Services
- Senior Services
- Arts Commission
- Marina Beach Park

EMPLOYMENT SUMMARY LAST FIVE YEARS: Executive + personal assistant to CEO in Puerto Rico 2011-2017. Relocated to native Washington State + opened own business as a virtual assistant in March 2017.

Are you related to anyone presently employed by the City or a member of a City Board? NO  
If yes, explain: \_\_\_\_\_

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? NO if so, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY. *Please see attached.*

1. Why do you wish to serve in this capacity and what can you contribute? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. What problems, programs or improvements are you most interest in? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Please list any Des Moines elective/appointive offices you have run/applied for previously. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Arts Commission Application****Sarah Vogel****206.966.2772****saritavogel@hotmail.com****1. Why do you wish to serve in this capacity and what can you contribute?**

I recently moved back to Washington State after living 16 years in Puerto Rico where my spouse is from. I am impressed and happy to see how diverse Des Moines has become and now that we are settled I would like to become involved in organizing community events. I also have been involved in the music industry for 20 years in artist representation and management. I have 20 years' professional administrative experience, working with corporate executives, high profile clientele, and also non-profit social service agencies.

**2. What problems, programs or improvements are you most interested in?**

I am interested in bringing diverse types of music, dance and art to the diverse population in Des Moines and surrounding areas. I have many contacts with local musicians, jazz and salsa in particular, and I am bilingual in Spanish / English.

**3. Please list any Des Moines elective/appointive offices you have run/applied for previously.**

None.

**Additional info about me:**

I was born and raised in the Pacific Northwest, in fact my grandparents lived just off 16<sup>th</sup> Ave S behind Highline and I used to play in the fields that are no longer there. As a kid I spent a lot of time at the Des Moines Marina, I remember Johnny's grocery store and free cookie club at Albersons where the Dollar Store now is. I am very interested in working to see the Downtown area flourish and I hope the new theater will be an additional place to feature diverse artists and productions. For more about my professional history please visit my Linked-In profile:

<https://www.linkedin.com/in/sarah-vogel-saration/>

Thank you for considering me for the Arts Commission position!

Sincerely,  
Sarah Vogel

# AGENDA ITEM

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT:  
Des Moines/King County Conservation Futures  
Van Gasken funds

- ATTACHMENTS:
- 1. ILA Amendment F
  - 2. Interlocal Agreement (1990)

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Parks, Recreation and Senior  
Services

DATE SUBMITTED: January 15, 2019

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: *DBB* \_\_\_\_\_

- Legal *LB*
- Finance *ELW*
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

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

**Purpose and Recommendation**

The purpose of this agenda item is to seek City Council approval of an amendment to the current Suburban City Open Space Acquisition Projects Interlocal Agreement (ILA) with King County. Adopting Amendment F will authorize distribution of Des Moines FY 2019 funding award of \$594,000 for the Van Gasken Property Waterfront Open Space.

**Suggested Motion**

**Motion 1:** "I move to accept the funding award of \$594,000 to assist with the purchase of Van Gasken Waterfront property and authorize the City Manager to sign Amendment F to the Conservation Futures Interlocal Agreement between the City and King County, substantially in the form as attached."

## **Background**

King County's Conservation Futures tax levy (CFT) is a dedicated portion of property taxes collected throughout King County. CFT funds are used to purchase open space lands and conservation easements in unincorporated King County and in King County's cities.

As a result of a competitive grant process, the City was awarded \$594,000 in King County Conservation Futures funds to acquire and protect from development the Van Gasken property (402 S. 222<sup>nd</sup> Street). The City identified the site for acquisition when it was put on the open market in order to preserve the property, provide additional park and open spaces in the City in accordance with the Comprehensive Plan, and to ensure that the site was not redeveloped in a manner that would further limit public access and views of the Puget Sound.

In 2017, the Des Moines City Council took action with the help of Forterra to purchase the property and protect it from private development. The City of Des Moines and Forterra entered into a Memorandum of Understanding whereby Forterra acquired the 0.67 acre property on behalf of the City, for \$1,190,000 to ensure it was not sold on the private market before funds could be raised. The \$594,000 from King County Conservation Futures will partially fund repayment to Forterra for acquisition of the property. The King County Conservation Futures funding requires the City to provide a matching contribution equal to the amount of their funding of \$594,000.

## **Discussion**

The Van Gasken property is a 0.67-acre parcel located on a bluff above Puget Sound, with sweeping views of the Olympics, Vashon Island, and City waterfront. The parcel will add to dozens of acres protected at nearby parks, which offer shoreline access, forested habitat, and trails that will include the western terminus of the Lake to Sound Regional Trail. The acquisition will add a new viewpoint to the nearby parks, and offers opportunity for interpretive signage. The property has an older home and a rich history, and cultural resources consultation is underway to help inform the future of the property.

This property will be a regional waterfront resource that provides connectivity between the Marina District and the Puget Sound for the residents of South King County.

## **Alternatives**

Not adopt the amendment (not recommended)

## **Financial Impact**

Adoption of the amendment will enable the City to receive \$594,000 from King County for the Van Gasken property acquisition. The total estimated amount to purchase the Van Gasken property is \$1,317,400. The acceptance of these funds will provide approximately 45% of the purchase price of the Van Gasken property. The City plans to use Park In-lieu Fees to fund the City's share of the acquisition costs. Currently, the Park In-lieu Fund Balance is approximately \$577,000. To complete the purchase of the property the City Council will need to authorize a small interfund loan for approximately \$150,000, which will be brought to the City Council for review and approval in March. This interfund loan will be repaid with future Park In-lieu Fees as collected.

## **Recommendation**

Staff recommends approval of the motion.

**AMENDMENT TO THE CONSERVATION FUTURES  
INTERLOCAL COOPERATION AGREEMENT  
BETWEEN KING COUNTY AND THE CITY OF DES MOINES  
FOR OPEN SPACE ACQUISITION PROJECTS**

**Preamble**

The King County Council, through Ordinance 9128, has established a Conservation Futures Levy Fund and appropriated proceeds to King County and certain cities. This amendment is entered into to provide for the allocation of additional funds made available for open space acquisition.

THIS AMENDMENT is entered into between the CITY OF DES MOINES and KING COUNTY, and amends and attaches to and is part thereof of the existing Interlocal Cooperation Agreement entered into between the parties on the 5th day of June, 1990, as previously amended.

The parties agree to the following amendments:

**Amendment 1: Article 1. Recitals**

A paragraph is hereby added to the Recitals Section to provide for a Conservation Futures Levy proceeds allocation for the Van Gasken Property Waterfront Open Space project, and hereafter reads:

- On November 13, 2018, the King County Council passed Ordinance 18835 which appropriated a total of five hundred and ninety four thousand dollars (\$594,000) in 2019 Conservation Futures Levy proceeds to the City of Des Moines for the Van Gasken Property Waterfront Open Space project. In accordance with Section 8.2, the executive or designee is authorized to execute this Amendment.

**Amendment 2: Article V. Conditions of Agreement**

Section 5.1 is amended to include the Exhibit 1 attached to this Amendment, which lists a 2019 Conservation Futures Levy proceeds allocation for the Van Gasken Property Waterfront Open Space project.

**Amendment 3: Exhibit 1**

The Interlocal Cooperation Agreement is hereby amended by adding Exhibit 1, attached hereto.

In all other respects, the terms, conditions, duties and obligations of both parties shall remain the same as agreed to in the Interlocal Cooperation Agreement as previously amended.

Once fully executed, this Amendment shall be incorporated into the existing Interlocal Cooperation Agreement as if fully set forth, and shall become Amendment F.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

CITY OF DES MOINES

\_\_\_\_\_  
Dow Constantine  
King County Executive

\_\_\_\_\_  
Michael Matthias  
City Manager

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

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

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Dan Satterberg  
King County Prosecuting Attorney

\_\_\_\_\_  
Tim George  
City Attorney

## EXHIBIT 1

**2019 CONSERVATION FUTURES LEVY PROCEEDS  
CITY OF DES MOINES ALLOCATION**

Jurisdiction	Project Name (Project Number)	Allocation
Des Moines	Van Gasken Property Waterfront Open Space (1133801)	\$594,000
TOTAL		<b>\$594,000</b>

**Project Description:**

*1133801 - Des Moines – Van Gasken Property Waterfront Open Space (\$594,000):* The City of Des Moines seeks to acquire 0.67-acre parcel 200900-3295 located on a bluff above Puget Sound, with sweeping views of the Olympics, Vashon Island, and city waterfront. The parcel will add to dozens of acres protected at nearby parks, which already offer shoreline access, forested habitat, and trails that will include the western terminus of the Lake to Sound Regional Trail. The acquisition will add a new viewpoint to the nearby parks, and offers opportunity for interpretive signage. The property has an older home and a rich history, and cultural resources consultation is underway to help inform the future of the property. The City may consider converting the home to a viewpoint shelter, or creating a new shelter to serve that purpose. To meet impervious surface requirements for CFT funds, the City has removed the footprint of the home and the garage from the CFT-funded portion of the site, which would reduce the estimated CFT-eligible costs to \$594,000. The City has worked with Forterra to buy and hold the property, to ensure it was not sold on the private market before funds could be raised. The City is seeking state Recreation and Conservation Office (RCO) funds as a match to CFT funds. The City indicated that local funds could be used short-term and/or to fill a funding gap in fundraising.

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INTERLOCAL COOPERATION AGREEMENT BETWEEN KING COUNTY  
AND THE CITY OF DES MOINES  
SUBURBAN CITY OPEN SPACE ACQUISITION PROJECTS

THIS INTERLOCAL COOPERATION AGREEMENT is entered into  
between the CITY OF DES MOINES ("City") and KING COUNTY  
("County").

**Article I. Recitals**

On September 21, 1989, the King County Council passed ordinance number 9128, which established a Conservation Futures Levy Fund and appropriated a total of \$2,900,000 in conservation futures levy proceeds to King County (\$1,100,000), the City of Seattle (\$1,100,000) and suburban cities (\$700,000).

Ordinance 9128 also established conditions for use of the Fund, including conditions covering allowable projects, costs and expenses.

The Open Space Citizens Advisory Committee has recommended an initial allocation of Conservation Futures funds from the Suburban City Open Space Acquisition Project following notification to the suburban cities that funds were available, provision of an opportunity for the suburban cities to respond and receipt by the committee of requests for funding, all pursuant to ordinance 8867.

The King County Council by motion number 7742 has approved the initial allocation and authorized the King County Executive to enter into interlocal cooperation agreements with the suburban cities in order to initiate the approved projects.

Pursuant to King County ordinance 9128, King County motion 7742, Washington Statute chapter 84.34 RCW and Washington Statute chapter 39.34, the parties agree as follows:

Article II. Definitions

1. Open Space

The term "open space" or "open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv), enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, or (v) enhance recreational activities, or (vi) preserve historic sites, or (vii) retain in its natural state tracts of land of not less than five acres situated in an urban area and open to public

use on such conditions as may be reasonably required by the legislative body granting the open space classification.

(2) Project.

The term "Project" means specific projects which meet open space criteria as described in King County ordinance 8867, section 1, and RCW 84.34.020 and which are attached to and incorporated by reference in King County ordinance number 9071 or added to the list of approved projects by the County.

(3) Conservation Futures.

The term "conservation futures" means developmental rights which may be acquired by purchase, gift, grant, bequest, devise, lease, or otherwise, except by eminent domain, and may consist of fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve, restore, limit future use of, or otherwise conserve open space land, all in accordance with the provisions of Washington statute chapter 84.34 and King County ordinance number 8867.

Article III. PURPOSE OF THE AGREEMENT

The purpose of this agreement is to create a cooperative arrangement between the City and the County relating to the Projects and to define the terms and conditions governing both parties' obligations created by this agreement.

Article IV. TERM OF AGREEMENT

This agreement shall be and continue in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The term of the agreement shall be indefinite. The agreement will be terminated if the City is unable or unwilling (i) to expend the funds provided through this agreement, (ii) satisfy the matching requirements contained in this agreement and (iii) upon reimbursement by the City to the County of all unexpended funds provided by the County pursuant to this agreement in the manner and amounts described below.

Article V. CONDITIONS OF AGREEMENT.

Section 5.1 Project Description. Funds available pursuant to this agreement may be used only for Projects listed in attachment A, which is incorporated herein by reference, or such substituted Projects as may be approved by the County as set forth below. All County funded Projects must meet open space criteria as described in King County ordinance 8867, section 1, and Washington Statute chapter 84.34.020 RCW.

Section 5.2. Use of Funds. Funds provided to the City pursuant to this agreement as well as funds provided by the City as match pursuant to this agreement may be used only for expenses related to property acquisition. Those expenses include appraisals, title searches, negotiations, administrative overhead,

and the cost of actual acquisition or purchase options, all in accordance with the provisions of section 3 of Ordinance 9128. Funds utilized pursuant to this agreement may not be used to purchase land obtained through the exercise of eminent domain.

**Section 5.3. Substitution/Deletion of Projects.**

If the City does not proceed with the Projects described in Section 5.1 of this agreement, the City may reimburse the County all funds provided by the County less approved expenses previously incurred in good faith to acquire the property for open space, plus accrued interest earnings on the unexpended balance. Alternatively the City may submit specific requests for project reprogramming to the County for its approval. All projects proposed for reprogramming must meet open space criteria as described in King County ordinance 8867, section 1, and Washington statute 84.34.020 RCW, be submitted to and recommended by the County's Citizen oversight Committee or its successor and be approved by action of the King County Council. All reprogramming requests shall be submitted to the County's Department of Parks Planning and Resources.

**Section 5.4 Eminent Domain.** If any Project requires the exercise of eminent domain to acquire the property all funds provided pursuant to this argument plus accrued interest on such

funds shall be reprogrammed as provided in this agreement or repaid to the County.

Article VI. Responsibilities of the City.

Section 6.1 Matching Requirements. Any Project funded by Conservation Future Levy proceeds shall be supported by the City in which the Project is located with a matching contribution which is no less than the amount of Conservation Futures Levy funds allocated to the Project. This contribution may be in the form of cash, land trades with a valuation verified by an appraisal conducted by a MAI certified appraiser, or credits for other qualifying open space acquired on or after January 1, 1989. Any City match, other than cash, shall require County approval. County approval and County acceptance of the City's cash match will be transmitted in writing to the City by the Manager of the County's Office of Open Space or his successor in function.

If the Project involves two or more suburban cities, those cities shall determine the allocation of contributions to the matching requirements of this agreement, so long as the total match is no less than the amount of Conservations Futures Levy funds provided by the County.

Such contribution must be available within two years of the City's application for County funds to support Projects identified herein or approved substitute Projects.

If such commitment is not timely made, the County shall be released from any obligation to fund the Project in question, and the City shall reimburse the County all funds provided to the City pursuant to this agreement plus accrued interest on such funds. All such monies will be available to the County to reallocate to other approved Projects. By appropriate legislature action taken not more than 60 days following the effective date of this agreement, the City shall commit to contribute its required match.

#### Section 6.2. Project Description.

As part of the application to receive Conservation Futures Levy funds from the County, the City shall submit the following information concerning each project: (1) a narrative description of the project; (2) a description of the specific uses for Conservation Futures Levy funds in the Project; (3) a description of the means by which the City will satisfy the matching requirements contained in this agreement; and (4) if the City has more than 20,000 population, the City must certify that the Project is compatible with an approved open space master plan or its equivalent and provide such plan to the County.

#### Section 6.3. Reporting.

All funds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other City

funds, accounts and monies. Until the property described in the Project is acquired and all funds provided pursuant to this agreement expended, the City shall provide quarterly written reports to the County within 30 days of the end of each relevant time period. The quarterly report shall contain the following information: (a) an accounting of all cash expenditures and encumbrances in support of the Project; (b) the status of each Project and any changes to the approved time line; and (c) other relevant information requested by the County for the purpose of determining compliance with this agreement.

Following acquisition of the property and expenditure of all funds provided pursuant to this agreement, the City shall provide the County annual reports, within 90 days of the end of each calendar year, which reports shall specify any change in the status of the Project during the prior year and any change in the status of the Project which the City reasonably anticipates during the ensuing year. All such reports shall be submitted to the County's Department of Parks, Planning and Resources.

#### Section 6.4 - Disposition of Remaining Funds.

It is anticipated that Open Space Bond funds will be available for Projects identified in this agreement. If allocation of Conservation Futures levy funds to such Projects produces an excess of revenues over the approved cost of the Projects, then as to such excess funds, the City will (1) reprogram such excess funds as set forth in this agreement, or

ii) justify to the County's satisfaction that such excess funds are necessary to complete the Project, or iii) repay such excess funds to the County.

If the City does not expend all funds provided through this agreement and no substitute project is requested or approved as to the excess funds, such funds shall be refunded to the County. For purposes of this section, "funds" shall include all monies provided by the County plus interest accrued by the City on such monies.

#### Section 6.5. Maintenance in Perpetuity

The City, and any successor in interest, agree to maintain properties acquired with funds provided pursuant to this agreement as open space in perpetuity. If the City changes the status or use of properties acquired with funds provided pursuant to this agreement to any other purpose, the City shall pay the County an amount in cash to be mutually determined or substitute other property acceptable to the County. In either case, the value of the property shall be established at the time of the change in status or use, based on the changed status or use and not based on its value as open space.

At its own cost, the City will provide the County an independent M.A.I. appraisal in accordance with this section. The value established by the appraisal will not be binding on the County. The City shall provide the County with written notice prior to the change of use and shall reimburse the County within

90 days of such notification. Reimbursement not received within 90 days will accrue interest at the then legal rate.

Article VII. Responsibilities of County

Subject to the terms of this agreement, the County will provide Conservation Futures Levy funds in the amount shown in attachment A. The City may request additional funds; however, the County has no obligation to provide funds to the City in excess of the amount shown in attachment A. The County assumes no obligation for future support of the Projects described herein except as expressly set forth in this agreement.

Article VIII Other Provisions

Section 8.1. Hold Harmless and Indemnification.

A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this agreement. The City shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, costs and losses whatsoever occurring or resulting from (1) the City's failure to pay any compensation, wage, fee, benefits or taxes; and (2) the supplying to the City of work, services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this agreement.

B. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts or failure for any reason to comply with the terms of this agreement by the City, its officers, employees, agents or representatives.

C. The City shall protect, defend, indemnify, and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents. For purposes of this agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington statute chapter 52 to the extent necessary to extend its obligations under this paragraph to any claim, demand or cause of action brought by or on behalf of any employees, including judgments, awards and costs arising therefrom including attorneys' fees.

Section 8.2 - Amendment.

The parties reserve the right to amend or modify this agreement. Such amendments or modifications must be by written instrument signed by the parties and approved by the respective City and County councils.

**Section 7.3 - Contract Waiver.**

No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.

**Section 7.4 - Entirety.**

This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supercedes all prior negotiations, representations and agreements between the parties relating to the projects and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below.

KING COUNTY

CITY OF DES MOINES

Jesus Sanchez FOR  
TIM HILL  
King County Executive

By: Greg Prothman  
GREG PROTHMAN  
City Manager

Date: JUN 05 1990  
Acting under authority of  
authority of motion number  
7742

April 13, 1990  
Date:  
Acting under authority of Motion of  
the Council No. 4/12/90

Approved as to form:  
Robert J. Stein  
NORM MALENG  
King County Prosecuting Attorney



# A G E N D A I T E M

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

SUBJECT: Consultant Services Contract Addendum #2 with The LA Studio at Blueline for Bidding and Construction Administration Services for Des Moines Play Areas

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: January 9, 2019

ATTACHMENTS:

1. Contract Amendment/Addendum #2 Form
2. Consultant Services Contract Agenda Packet with The LA Studio LLC dated 11/30/2017
3. Contract Amendment/Addendum #1 dated 11/05/2018
4. Current CIP Project Worksheets

CLEARANCES:

- Community Development N/A
- Marina N/A
- Parks, Recreation & Senior Services ama
- Public Works RBC

CHIEF OPERATIONS OFFICER: DSS

- Legal TS
- Finance Baw
- Courts N/A
- Police N/A

APPROVED BY CITY MANAGER FOR SUBMITTAL: [Signature]

**Purpose and Recommendation**

The purpose of this agenda item is for City Council to approve of the Consultant Services Contract Addendum #2 with The LA Studio at Blueline for bidding and construction administration services for Des Moines Play Areas. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion:** "I move to approve the Consultant Services Contract Addendum #2 with The LA Studio at Blueline for bidding and construction administration services for Des Moines Play Areas in the amount of \$32,500.00 bringing the contract total to a new not to exceed amount of \$197,500.00, and additionally authorize the City Manager to sign the Consultant Services Contract Addendum substantially in the form as submitted".

### **Background**

On November 30, 2017, the City awarded the Consultant Services Contract to The LA Studio LLC for design services for Des Moines Play Areas in the not to exceed amount of \$165,000.00 (Attachment 2).

On November 5, 2018, the City executed Addendum #1 with The LA Studio at Blueline for design services to address the additional time needed to complete the scope of work (Attachment 3). Addendum #1 extended the completion date to December 31, 2019.

### **Discussion**

In the process of developing the concepts and plans for the various play areas, it was decided to perform some re-design work on Steven J. Underwood Park to include a trail connection to the Senior Activity Center, relocate the play area from the proposed center field location to the area adjacent to the existing public restroom building, and create a small Veteran Memorial area. The level of effort required, and the consultant costs associated with this re-design were handled under Addendum #1 (time extension) and the additional costs to perform this work were absorbed by the existing project budget (by using funds for tasks that were previously placed on hold, or were not utilized).

Addendum #2 (Attachment 1) authorizes additional project funds for The LA Studio at Blueline to be used to provide the City with bidding assistance and construction administration services for the two proposed park design packages. One design package will include Steven J. Underwood Park, Westwood Park, and Wooton Park. A separate design package will include City/Kiddie Park, as it is partially funded by King County Community Development Block Grant funds; and involves Federal Funding.

### **Alternatives**

City Council could choose to not approve the addendum, which would likely impact the project timeline and require City staff to respond to bidding questions that may be specific to the Engineer/Architect of Record. Staff also has not planned/resourced the time necessary for full project documentation during the construction phase.

### **Financial Impact**

There are sufficient funds available within the project budgets to cover this additional bidding and construction administration work (Attachment 4).

### **Recommendation**

Staff recommends that Council approve the Consultant Services Contract Addendum #2 with The LA Studio at Blueline for bidding and construction administration services for Des Moines Play Areas.



## CONTRACT AMENDMENT/ADDENDUM FORM

### CONTRACT FOR DES MOINES PLAY AREAS DESIGN BETWEEN THE CITY OF DES MOINES AND THE LA STUDIO AT BLUELINE

**THIS AMENDMENT/ADDENDUM #2** is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, pursuant to that certain Contract entered into on the 11th day of December, 2017, between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **THE LA STUDIO LLC**, and subsequently assigned to The Blueline Group on the 1<sup>st</sup> day of July, 2018 (hereinafter "Consultant"),.

The parties herein agree that the Contract dated December 11, 2017, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

1) **SECTION I** of Contract dated December 11, 2017, is hereby amended to read as follows:

The Consultant scope of work shall be amended to include the **REVISED** scope of work dated 9/24/18.

2) **SECTION III** of Contract dated December 11, 2017, is hereby amended to read as follows:

The City shall pay the Consultant, based on time and materials, an amount not to exceed \$197,500.00 for the services described in this Contract. Original contract amount was not to exceed \$165,000.00. This new scope will add an additional not to exceed amount of \$32,500.00, bringing the new not to exceed amount to \$197,500.00.



**IN WITNESS WHEREOF** the parties hereto have executed this

Addendum as of the date first above written.

<p align="center"><b>CONSULTANT:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____                  Its _____  <i>(Title)</i></p> <p>DATE: _____</p>	<p align="center"><b>CITY OF DES MOINES:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: <u>Michael Matthias</u>                  Its <u>City Manager</u>  <i>(Title)</i></p> <p>DATE: _____</p> <p align="right">Approved as to form:                  _____                  City Attorney</p> <p align="right">DATE:                  _____</p>
<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONSULTANT:</b></p> <p>Melvin R. Easter                  The LA Studio at BlueLine                  15200 52<sup>nd</sup> Avenue South, Suite 210                  Tukwila, WA 98188                  (206) 204-0507 (telephone)  <a href="mailto:mele@thelastudio.net">mele@thelastudio.net</a> (e-mail)</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF DES MOINES:</b></p> <p>Scott J. Romano                  City of Des Moines                  21650 11<sup>th</sup> Avenue S                  Des Moines, WA 98198                  (206) 870-6539 (telephone)  <a href="mailto:sromano@desmoineswa.gov">sromano@desmoineswa.gov</a> (e-mail)</p>

At the Direction of the Des Moines  
 City Council taken at an open public  
 Meeting on \_\_\_\_\_.



September 24, 2018

Mr. Scott Romano, Project Manager  
 City of Des Moines  
 21650 11<sup>th</sup> Avenue South  
 Des Moines, WA 98198

RE: Kiddie/City Park Renovation - Des Moines, WA  
 Proposal for Bidding and Construction Administration Services

Dear Scott:

The LA Studio at Blueline is pleased to present this proposal for Bidding and Construction Administration services associated with the Kiddie/City Park Renovation project. Below is our understanding of the proposed scope of work as well as a summary of the fees for providing our services.

### PROJECT UNDERSTANDING

The scope of work included in this proposal is limited to the Bidding and Construction Administration Phases of this CDBG funded park renovation projects. Preparation of the play area design, construction documents and specifications (Project Manual) were prepared under separate contract. Design Disciplines that will participate in this work include Landscape Architecture and Civil Engineering (The Blueline Group). Roby Snow, Project Manager, will be the lead and primary contact. Please see attached Scope and Fee document for a more detailed description of services included in this proposal.

TASK NUMBER	TASK NAME	AMOUNT
001	Bidding Phase	\$3,000.00
002	Construction Administration Phase	\$6,500.00

Thank you for the opportunity to provide this proposal. Bidding and Construction are expected to begin in January of 2019. Please do not hesitate to contact me with any questions at (206) 204-0507, ext 207.

Sincerely,

The **LA** studio AT BLUELINE

Melvin R. Easter, PLA ASLA  
 Landscape Architect / Studio Manager

Attachment: Exhibit A – Scope & Fee

**Project Name: Kiddie/City Park Renovation**

**Job #: LA 1832**

**Date: 9/24/2018**

## Task 001 Bidding Phase

**Fixed-Fee: \$3,000.00**

The LA Studio at Blueline (Landscape Architecture) will provide the following services during the Bidding Phase:

1. Work with City of Des Moines and King County CDBG staff to develop the competitive bid process, finalize the “Project Manual” and establish the bid date.
2. Prepare and issue bid documents, including plans and specifications (project manual) to specified Plan Centers.
3. Respond to bidder questions and issue bid addendum(s) using the pre-determined format and process to insure a fair and competitive bid.
4. Review bids and assist the City/County with selection of a General Contractor. City/County to insure the selected GC meets all contractor qualifications and requirements.
5. Prepare bid tabulations to assist with the bid review process.
6. City to review G.C. qualifications to insure they meet all City requirements.
7. Provide letter of recommendation to award contract to apparent low bidder.
8. City and General Contractor to sign construction contract, which will include the construction schedule, project substantial completion and closeout dates.
9. General project administration and coordination, including necessary meetings and/or phone calls.

## Task 002 Construction Administration Phase

**Fixed-Fee: \$6,500.00**

The LA Studio at Blueline (Landscape Architecture) and The Blueline Group (Civil Engineering) will provide the following services during the Construction Administration Phase:

1. Attend the project pre-construction meeting. Designated members of the design team, City staff and King County CDBG program should be in attendance. Ground rules will be established, including weekly site meetings, draw requests, and the process for submitting RFI’s, submittals questions and design changes and other procedures will be established.
2. Attend weekly site meetings and submit meeting minutes. At appropriate time(s) during construction, the Civil Engineer will attend to review site/civil work.
3. Respond to Contractor questions, RFI’s and shop drawing submittals in a timely fashion.
4. At project substantial completion, provide a “preliminary” followed by a “final” punch list.
5. Assist the City and General Contractor with final close out.
6. Prepare and submit final site, civil and landscape “as-built” documents.





September 24, 2018

Mr. Scott Romano, Project Manager  
 City of Des Moines  
 21650 11<sup>th</sup> Avenue South  
 Des Moines, WA 98198

RE: Steven J. Underwood, Westwood and Wooton Park Renovations - Des Moines, WA  
 Proposal for Bidding and Construction Administration Services

Dear Scott:

The LA Studio at Blueline is pleased to present this proposal for Bidding and Construction Administration services associated with Steven J. Underwood, Westwood and Wooton Park Renovation projects. Below is our understanding of the proposed scope of work as well as a summary of the fees for providing our services.

### PROJECT UNDERSTANDING

The scope of work included in this proposal is limited to the Bidding and Construction Administration Phases of these (3) park renovation projects. Preparation of the play area design, construction documents and specifications (Project Manual) were prepared under separate contract. Design Disciplines that will participate in this work include Landscape Architecture and Civil Engineering (The Blueline Group). Roby Snow, Project Manager, will be the lead and primary contact. Please see attached Scope and Fee document for a more detailed description of services included in this proposal.

TASK NUMBER	TASK NAME	AMOUNT
001	Bidding Phase	\$ 4,500.00
002	Construction Administration Phase	\$18,500.00

Thank you for the opportunity to provide this proposal. Bidding and Construction are expected to begin in January of 2019. Please do not hesitate to contact me with any questions at (206) 204-0507, ext 207.

Sincerely,

The LA studio AT BLUELINE

Melvin R. Easter, PLA ASLA  
 Landscape Architect / Studio Manager

Attachment: Exhibit A – Scope & Fee

**Project Name: Steven J. Underwood, Westwood and Wooton Park Renovations**

**Job #: LA 1821 Date: 09/24/2018**

## Task 001 Bidding Phase

**Fixed-Fee: \$4,500.00**

The LA Studio at Blueline (Landscape Architecture) will provide the following services during the Bidding Phase:

1. Work with City of Des Moines to coordinate and administer the competitive bid process, including the establishment of the project “bid date”.
2. Prepare and issue bid documents, including plans and specifications (project manual) to the specified Plan Centers.
3. Attend a site walk-thru (at each park) with city staff and interested bidders to describe project scope and respond to bidder questions.
4. Respond to bidder questions and issue bid addendum(s) using the pre-determined format and process to insure a fair and competitive bid.
5. Assist the City staff with review of bids and selection of a General Contractor.
6. Prepare bid tabulations to assist with the bid review process.
7. City to review G.C. qualifications to insure they meet all City requirements.
8. City and General Contractor to sign construction contract, which will include the construction schedule, project substantial completion and closeout dates.
9. General project administration and coordination, including necessary meetings and/or phone calls.

## Task 002 Construction Administration Phase

**Fixed-Fee: \$18,500.00**

The LA Studio at Blueline (Landscape Architecture) and The Blueline Group (Civil Engineering) will provide the following services during the Construction Administration Phase for (3) park renovations:

1. Attend the project pre-construction meeting(s) for each park. Designated members of the Blueline Group design team and City staff should be in attendance. Ground rules will be established, including weekly site meetings, draw requests, and the process for submitting RFI's, submittals questions and design changes and other procedures will be established.
2. Attend weekly site meetings (3 parks) and submit meeting minutes. At appropriate time(s) during construction, the Civil Engineer will attend to review site/civil work.
3. Respond to Contractor questions, RFI's and shop drawing submittals in a timely fashion.
4. At project substantial completion, provide a “preliminary” followed by a “final” punch list.
5. Assist the city and contractor with final close out.
6. Prepare and submit final “as-built” documents.



# A G E N D A I T E M

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

**SUBJECT:**  
Consultant Services Contract with  
The LA Studio LLC for Design Services

- ATTACHMENT:**
1. Consultant Services Contract with  
The LA Studio LLC
  2. 2017 Capital Project Budget-  
Play Equipment Master Design
  3. 2017 Capital Project Budget-  
Kiddie Park Play Equipment

**FOR AGENDA OF:** November 30, 2017

**DEPT. OF ORIGIN:** Parks, Recreation, & Senior  
Senior Services

**DATE SUBMITTED:** November 16, 2017

**CLEARANCES:**

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

- CHIEF OPERATIONS OFFICER:** DJB
- Legal JG
  - Finance CR
  - Courts
  - Police

**APPROVED BY CITY MANAGER**  
**FOR SUBMITTAL:** \_\_\_\_\_

**Purpose and Recommendation**

The purpose of this agenda item is to seek City Council approval to enter into a contract with The LA Studio LLC for the Des Moines Play Areas Design Project. The following motion will appear on the consent calendar:

**Suggested Motion**

“I move to approve the Consultant Services Contract with The LA Studio LLC for design services for Des Moines Play Areas Design Project in the amount of \$165,000.00, and additionally authorize the City Manager to sign the Consultant Services Contract substantially in the form as submitted”.

**Background**

The Des Moines City Council amended the 2017 Capital Improvement Budget in March of this year to include funding for designs to repair and replace play structures at seven parks and to create new play

areas at two parks. This action is the first of many steps that will be taken within the next three to four years to restore City's aging park play areas.

The play equipment located at Cecil Powell Neighborhood Park was removed due to safety concerns in 2013 and the neighborhood has asked for the equipment to be replaced. The removal of play equipment at Kiddie Park, Westwood Park and Wooton Park is also eminent, likely within the next year or two. And, there is strong community support for play areas to be installed at Des Moines Beach Park where the play area was removed over a decade ago due to flooding and infrastructure repairs and at Steven J. Underwood Memorial Park where a play area has not been installed due to lack of funding.

Funding for park play area construction is identified in the 2017- 2022 Capital Improvement Plan, dependent on the City's Real Estate Excise Tax, State and Local Grants, the Des Moines Legacy Foundation and business and citizen contributions.

### **Discussion**

The City of Des Moines advertised for a Request for Qualifications for the Des Moines Play Areas Design Project in August 2017 and received qualifications from three Architectural firms. The LA Studio was selected as the most qualified consultant for this project. The Attached Consultant Services Contract will provide 100% play area designs for Cecil Powell Park, Des Moines Field House Park, Kiddie Park, Steven J Underwood Memorial Park, Westwood Park and Wooton Park and a 30% design for the Des Moines Beach Park Plaza/Play Area.

### **Alternatives**

City Council could choose to not approve the contract.

### **Financial Impact**

There is \$157,000 funds available in the 2017 Park Equipment Master Design Capital Budget Project # 310.066.045 to cover the \$146,000 cost for the multiple park's play areas design work (Attachment 2). There is \$27,000 funds available in the 2017 Kiddie Park Play Eq. Capital Budget Project # 310.070 to cover the \$25,525 cost for the Kiddie Park play areas design work (Attachment 3).

### **Recommendation**

Staff recommends that Council approve the Consultant Services Contract with The LA Studio LLC for design services for Des Moines play areas designs.



## CONSULTANT SERVICES CONTRACT between the City of Des Moines and

### The LA Studio LLC

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and The LA Studio LLC organized under the laws of the State of Washington, located and doing business at 15200 52<sup>nd</sup> Avenue South Suite 210, Seattle, WA 98188 (hereinafter the "Consultant").

#### I. DESCRIPTION OF WORK.

Consultant shall perform the following services for the City in accordance with the following described plans and/or specifications:

See attached Exhibit "A" - Consultant Cover Letter, Consultant Scope and Fee Proposal, Consultant Exhibits A, B & C, and Consultant 2017 Hourly Billing Schedule, dated November 9, 2017; which is incorporated into this contract.

**Note: No work shall begin on the Des Moines Beach Park design without prior written permission from the City Project Manager.**

Consultant further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

**II. TIME OF COMPLETION.** The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by December 31, 2018.

#### III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed **\$165,000.00** for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit "A" for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

- B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

**IV. INDEPENDENT CONTRACTOR.** The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant has the ability to control and direct the performance and details of its work; however, the City shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

**V. CHANGES.** The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Consultant determines, for any reason, that a change order is necessary, Consultant must submit a written change order request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Consultant knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Consultant's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Consultant on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Consultant shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Consultant fails to require a change order within the time specified in this paragraph, the Consultant waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Consultant disagrees with the equitable adjustment, the Consultant must complete the change order work; however, the Consultant may elect to protest the adjustment as provided in subsections A through E of Section VI, Claims, below.

The Consultant accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Consultant as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

**VI. CLAIMS.** If the Consultant disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Consultant may file a claim as provided in this section. The Consultant shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Consultant knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Consultant unless a

timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Consultant's written claim shall include the information set forth in subsections A, items 1 through 5 below.

**FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.**

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
1. The date of the Consultant's claim;
  2. The nature and circumstances that caused the claim;
  3. The provisions in this Contract that support the claim;
  4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
  5. An analysis of the progress schedule showing the schedule change or disruption if the Consultant is asserting a schedule change or disruption.
- B. Records. The Consultant shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Consultant's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Consultant's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.
- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Consultant also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Consultant completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

**VII. LIMITATION OF ACTIONS.** CONSULTANT MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONSULTANT'S ABILITY

TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

**VIII. TERMINATION.** Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

**IX. DISCRIMINATION.** In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

**X. INDEMNIFICATION.** Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract 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 the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Contract.

**XI. INSURANCE.** The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

**No Limitation.** Consultant's maintenance of insurance as required by the Contract shall not be construed to limit the liability of the Consultant to the coverage

provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**A. Minimum Scope of Insurance.** Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

**Minimum Amounts of Insurance:** Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

**B. Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**C. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

**D. Verification of Coverage** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**XII. EXCHANGE OF INFORMATION.** The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Contract.

**XIII. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.** Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Consultant for this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

**XIV. CITY'S RIGHT OF INSPECTION.** Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

**XV. WORK PERFORMED AT CONSULTANT'S RISK.** Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

**XVI. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. **Alternative Dispute Resolution.** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted

under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. 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.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. 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 right to indemnification under Section X of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.

F. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

G. Compliance with Laws. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

H. Business License. Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Des Moines Municipal Code.



EXHIBIT<sup>33</sup> "A"

the **LAstudio** LLC

land planning  
landscape architecture  
land entitlement

November 9, 2017

Patrice Thorell, Director  
Scott Romano, Project Manager  
City of Des Moines  
21630 11<sup>th</sup> Avenue South, Suite A  
Des Moines, WA 98198

RE: **DES MOINES PLAY AREAS DESIGN PROJECT – Des Moines, WA**  
Landscape Architectural/Civil Engineering/Land Surveying Services

Our Project #: LA1715

Patrice/Scott,

Please accept this cover letter and attachments as our final scope of work and fee proposal for the above referenced Park Play Areas Design Project. It is our understanding this package will be presented to the Des Moines City Council for review and approval. Our team; The LA Studio, LLC, The BlueLine Group LLC and Axis Surveying and Mapping are thrilled to have been selected to assist the City of Des Moines with renovation of these (7) park properties. The park sites included in our scope of work are:

- a. Cecil Powell Park
- b. Des Moines Beach Park
- c. Field House Park
- d. Kiddie Park
- e. Steven J. Underwood Park
- f. Westwood Park
- g. Wooton Park

Please see attached Exhibit A for Scope of work and Proposed Fees; Exhibit B for a Fee Summary of all park properties; and Exhibit C for Proposal Assumptions and Understandings. We look forward to working with the City of Des Moines staff and community to bring these park play areas to a quality-level that will encourage additional usage and create "destination" recreation facilities for the City of Des Moines Park system.

Sincerely,

**The LA Studio, LLC**

Melvin R. Easter, PLA ASLA  
Landscape Architect / President

Attachments: Exhibit A - Scope of Work and Proposed Fees  
Exhibit B - Fee Summary  
Exhibit C - Assumptions and Understandings

15200 52nd Avenue South  
Suite 210  
Seattle, Washington 98188  
206.204.0507

[www.theLAstudio.net](http://www.theLAstudio.net)





EXHIBIT A (Cont)

Scope of Work & Proposed Fees – 11/9/2017

**B. Design, Construction and Bld Documents**

**1. CECIL POWELL PARK – 1300 South 250<sup>th</sup> Street**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
The Blueline Group/ Axis Surveying & Mapping (Civil Engineer/Surveyor)	Provide LIDAR surveys with property boundaries and contours. Supplement as appropriate by Axis or Blueline with the City-provided hard copies of "old" plans (between 2000 and 2010) as available. Obtain additional field shots, either for ADA purposes, in areas of tree cover, etc. Prepare Electronic (AutoCAD) Base Plan Prepare Preliminary and Final Grading, TESC and Drainage Plans Coordination with Landscape Architect	<hr/> \$2,500.00
The LA Studio, LLC (Landscape Architect)	<u>DESIGN – 30% Documents</u> Coordination with Surveyor & Civil Engineer Create (Electronic) Park Base Plan Play Equipment Selections Develop Play Area Concept(s), ADA Access, Site Furnishings Meeting with City Staff to Present Park Design Concept(s) Based on City Feedback, Finalize Play Area & ADA Access Design Prepare a Preliminary "Opinion of Probable Cost" Overall Project Management - Consultant & City Coordination Submit 30% Plans for City Review & Comment	<hr/> \$4,000.00
	<u>CONSTRUCTION DOCUMENTS – 90% and FINAL</u> Based on City 30% Review, Prepare Final Layout Plan(s) Prepare Site Construction Details (Edging, Furniture, Paving, Fencing) Final Coordination with Civil Engineer Prepare Preliminary Specifications Prepare Final "Opinion of Probable Cost" & Draft Specifications Overall Project Management - Consultant & City Coordination Prepare and Submit 90% Documents for Final City Review Plan Revisions in Response to 90% Review Prepare and Submit Final (100%) Documents, incl. Specifications	<hr/> \$6,000.00
Reimbursable Expenses		\$ 400.00
<b>Sub-Total</b>		<b>\$12,900.00</b>



EXHIBIT A (Cont)

Scope of Work & Proposed Fees – 11/9/2017

**B. Design, Construction and Bid Documents – Design Only (30%)**

**2. DES MOINES BEACH PARK – 22030 Cliff Avenue South**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
The BlueLine Group/ Axis Surveying & Mapping (Civil Engineer/Surveyor)	Provide LIDAR surveys with property boundaries and contours. Supplement as appropriate by Axis or BlueLine with the City-provided hard copies of "old" plans (between 2000 and 2010) as available. Obtain additional field shots, either for ADA purposes, in areas of tree cover, etc. Prepare Electronic (AutoCAD) Base Plan	\$ 3,000.00
The LA Studio, LLC (Landscape Architect)	<u>DESIGN – 30% Documents</u> Coordination with Surveyor Create (Electronic) Entry/Promontory Base Plan Develop Design Concept(s) for new Park Entry & Gateway - Water Play, Water Feature(s), Sculpture/Art Pieces, Paving, Furnishings, Lighting, Overhead Structure(s), ADA Access, etc. Meeting with City Staff to Present Design Concept(s) Based on City Feedback, Finalize Entry/Promontory Design Prepare a Preliminary "Opinion of Probable Cost" Overall Project Management - Consultant & City Coordination Submit 30% Plans for City Review & Comment	\$15,000.00
Reimbursable Expenses		\$ 900.00
<b>Sub-Total</b>		<b>\$18,900.00</b>



EXHIBIT A (Cont)

Scope of Work & Proposed Fees – 11/9/2017

**B. Design, Construction and Bid Documents**

**3. FIELD HOUSE PARK – 1000 South 220<sup>th</sup> Street**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
The BlueLine Group/ Axis Surveying & Mapping (Civil Engineer/Surveyor)	Provide LIDAR surveys with property boundaries and contours. Supplement as appropriate by Axis or BlueLine with the City-provided hard copies of "old" plans (between 2000 and 2010) as available. Obtain additional field shots, either for ADA purposes, in areas of tree cover, etc. Prepare Electronic (AutoCAD) Base Plan Coordination with Landscape Architect	<hr/> \$4,000.00
The LA Studio, LLC (Landscape Architect)	<p><u>DESIGN – 30% Documents</u></p> Coordination with Surveyor & Civil Engineer Create (Electronic) Park Base Plan (Use Robert Droll Documents Play Equipment Selections Develop Play Area Concept(s), ADA Access, Site Furnishings Meeting with City Staff to Present Park Design Concept(s) Based on City Feedback, Finalize Play Area & ADA Access Design Prepare a Preliminary "Opinion of Probable Cost" Overall Project Management - Consultant & City Coordination Submit 30% Plans for City Review & Comment	<hr/> \$5,500.00
	<p><u>CONSTRUCTION DOCUMENTS – 90% and FINAL</u></p> Based on City 30% Review, Prepare Final Layout Plan(s) Prepare Site Construction Details (Edging, Furniture, Paving, Fencing) Prepare Preliminary Specifications Prepare Final "Opinion of Probable Cost" & Draft Specifications Overall Project Management - Consultant & City Coordination Prepare and Submit 90% Documents for Final City Review Plan Revisions in Response to 90% Review Prepare and Submit Final (100%) Documents, Incl. Specifications	<hr/> \$10,500.00
Reimbursable Expenses		\$ 700.00
<b>Sub-Total</b>		<b>\$20,700.00</b>



EXHIBIT A (Cont)

Scope of Work & Proposed Fees – 11/9/2017

**B. Design, Construction and Bld Documents**

**4. KIDDIE PARK – 21<sup>ST</sup> Avenue South and South 230<sup>th</sup> Street**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
The Blueline Group/ Axis Surveying & Mapping (Civil Engineer/Surveyor)	Provide LIDAR surveys with property boundaries and contours. Supplement as appropriate by Axis or Blueline with the City-provided hard copies of "old" plans (between 2000 and 2010) as available. Obtain additional field shots, either for ADA purposes, in areas of tree cover, etc. Prepare Electronic (AutoCAD) Base Plan Prepare Preliminary and Final Grading, TESC and Drainage Plans Prepare Final ADA Access Walk Alignment (to New Play Equipment) Coordination with Landscape Architect	\$5,000.00
The LA Studio, LLC (Landscape Architect)	<p><u>DESIGN – 30% Documents</u></p> Coordination with Surveyor & Civil Engineer Create (Electronic) Park Base Plan Play Equipment Selections – NO SLIDES Develop Play Area Concept(s), ADA Access, Site Furnishings Meeting with City Staff to Present Park Design Concept(s) Based on City Feedback, Finalize Play Area & ADA Access Design Prepare a Preliminary "Opinion of Probable Cost" Overall Project Management - Consultant & City Coordination Submit 30% Plans for City & CDBG Review& Comment	\$7,000.00
	<p><u>CONSTRUCTION DOCUMENTS – 90% and FINAL</u></p> Based on City 30% Review, Prepare Final Layout Plan(s) Prepare Site Construction Details (Edging, <b>Signage</b> , Paving, Fencing) Irrigation Design Modifications Demolish and Restore Existing Play Area Prepare Preliminary Specifications Prepare Final "Opinion of Probable Cost" & Draft Specifications Overall Project Management - Consultant & City Coordination Submit 60% Plans for City & CDBG Review& Comment Plan Revisions in Response to 60% Review Prepare and Submit 90% Documents for Final City & CDBG Review Plan Revisions in Response to 90% Review Prepare and Submit Final (100%) Documents, Incl. Specifications	\$11,500.00
Reimbursable Expenses		\$ 700.00
<b>Sub-Total</b>		<b>\$24,200.00</b>

EXHIBIT A (Cont)

Scope of Work &amp; Proposed Fees – 11/9/2017

**B. Design, Construction and Bid Documents****5. STEVEN J. UNDERWOOD PARK – 1300 South 250<sup>th</sup> Street**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
The Blueline Group/ Axis Surveying & Mapping (Civil Engineer/Surveyor)	Provide LIDAR surveys with property boundaries and contours. Supplement as appropriate by Axis or Blueline with the City-provided hard copies of "old" plans (between 2000 and 2010) as available. Obtain additional field shots, either for ADA purposes, in areas of tree cover, etc. Prepare Electronic (AutoCAD) Base Plan Prepare Preliminary and Final Grading, TESC and Drainage Plans Prepare Drainage Report & Assist with SEPA Prepare Final ADA Access – 6' Wide Asphalt Trail Coordination with Landscape Architect	<u>\$ 10,500.00</u>
The LA Studio, LLC (Landscape Architect)	<u>DESIGN – 30% Documents</u> Coordination with Surveyor & Civil Engineer Create (Electronic) Park Base Plan Play Equipment Selections /Safety Netting Develop Play Area Concept(s), Picnic Shelter, Site Furnishings Meeting with City Staff to Present Park Design Concept(s) Based on City Feedback, Finalize Play Area & ADA Access Design Prepare a Preliminary "Opinion of Probable Cost" Overall Project Management - Consultant & City Coordination Submit 30% Plans for City Review & Comment	<u>\$ 9,000.00</u>
	<u>CONSTRUCTION DOCUMENTS – 90% and FINAL</u> Based on City 30% Review, Prepare Final Layout Plan(s) Prepare Site Construction Details (Shelter, Edging, Paving) Irrigation Design Modifications – INCLUDED Prepare Preliminary Specifications Prepare Final "Opinion of Probable Cost" & Draft Specifications Overall Project Management - Consultant & City Coordination Prepare and Submit 90% Documents for Final City Review Plan Revisions In Response to 90% Review Prepare and Submit Final (100%) Documents, incl. Specifications	<u>\$18,000.00</u>
Reimbursable Expenses		\$ 900.00
<b>Sub-Total</b>		<b>\$38,400.00</b>

EXHIBIT A (Cont)

Scope of Work &amp; Proposed Fees – 11/9/2017

**B. Design, Construction and Bid Documents****6. WESTWOOD PARK – 6<sup>th</sup> Avenue South and South 192<sup>nd</sup> Street**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
The BlueLine Group/ Axis Surveying & Mapping (Civil Engineer/Surveyor)	Provide LIDAR surveys with property boundaries and contours. Supplement as appropriate by Axis or BlueLine with the City-provided hard copies of "old" plans (between 2000 and 2010) as available. Obtain additional field shots, either for ADA purposes, in areas of tree cover, etc. Prepare Electronic (AutoCAD) Base Plan Prepare Final ADA Access Coordination with Landscape Architect	<u>\$2,500.00</u>
The LA Studio, LLC (Landscape Architect)	<u>DESIGN – 30% Documents</u> Coordination with Surveyor & Civil Engineer Create (Electronic) Park Base Plan Play Equipment Selections/New Drinking Fountain Develop Play Area Concept(s), ADA Access, Site Furnishings Meeting with City Staff to Present Park Design Concept(s) Based on City Feedback, Finalize Play Area & ADA Access Design Prepare a Preliminary "Opinion of Probable Cost" Overall Project Management - Consultant & City Coordination Submit 30% Plans for City Review & Comment	<u>\$4,000.00</u>
	<u>CONSTRUCTION DOCUMENTS – 90% and FINAL</u> Based on City 30% Review, Prepare Final Layout Plan(s) Prepare Site Construction Details (Edging, Furniture, Paving, Fencing) Final Coordination with Civil Engineer Prepare Preliminary Specifications Prepare Final "Opinion of Probable Cost" & Draft Specifications Overall Project Management - Consultant & City Coordination Prepare and Submit 90% Documents for Final City Review Plan Revisions in Response to 90% Review Prepare and Submit Final (100%) Documents, incl. Specifications	<u>\$5,500.00</u>
Reimbursable Expenses		\$ 400.00
<b>Sub-Total</b>		<b>\$12,400.00</b>

EXHIBIT A (Cont)

Scope of Work &amp; Proposed Fees – 11/9/2017

**B. Design, Construction and Bid Documents****7. WOOTON PARK – 28202 9<sup>th</sup> Avenue South (Redondo)**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
The Blueline Group/ Axis Surveying & Mapping (Civil Engineer/Surveyor)	Provide LIDAR surveys with property boundaries and contours, Supplement as appropriate by Axis or Blueline with the City-provided hard copies of "old" plans (between 2000 and 2010) as available. Obtain additional field shots, either for ADA purposes, in areas of tree cover, etc. Prepare Electronic (AutoCAD) Base Plan Prepare Preliminary and Final Grading, TESC and Drainage Plans Prepare Final ADA Access Coordination with Landscape Architect	<u>\$6,000.00</u>
The LA Studio, LLC (Landscape Architect)	<u>DESIGN – 30% Documents</u> Coordination with Surveyor & Civil Engineer Create (Electronic) Park Base Plan Play Equipment Selections Remove Horseshoe Plots, Replace with Bocce Ball Develop Play Area Concept(s), Gazebo Replacement, Site Furnishings Meeting with City Staff to Present Park Design Concept(s) Based on City Feedback, Finalize Play Area, ADA Access & Gazebo Prepare a Preliminary "Opinion of Probable Cost" Overall Project Management - Consultant & City Coordination Submit 30% Plans for City Review & Comment	<u>\$6,000.00</u>
	<u>CONSTRUCTION DOCUMENTS – 90% and FINAL</u> Based on City 30% Review, Prepare Final Layout Plan(s) Prepare Site Construction Details (Shelter, Edging, Paving) Repair or Replace (2) Drinking Fountains Prepare Preliminary Specifications Prepare Final "Opinion of Probable Cost" & Draft Specifications Overall Project Management - Consultant & City Coordination Prepare and Submit 90% Documents for Final City Review Plan Revisions in Response to 90% Review Prepare and Submit Final (100%) Documents, incl. Specifications	<u>\$9,000.00</u>
Reimbursable Expenses		\$ 900.00
<b>Sub-Total</b>		<b>\$21,900.00</b>



EXHIBIT A (Cont)

Scope of Work & Proposed Fees – 11/9/2017

**C. Unassigned Services Reserve (Allowance)**

<u>Consultant</u>	<u>Task</u>	<u>Fee</u>
All	This task provides for unanticipated services deemed to be necessary during the course of the Project that are not specifically identified in the scope of work tasks defined above. Any additional work or funds under this Item are not to be used unless explicitly authorized by the City.	
	<b>Deliverables:</b> None yet identified.	
		<b>\$5,000.00</b>

EXHIBIT B

Fee Summary – November 9, 2017

**DES MOINES PLAY AREAS DESIGN PROJECT – Des Moines, WA**

		<u>Base Fee</u>	<u>Reimbursables</u>
<b>A. Community Meeting &amp; City Council Presentations</b>			
	The LA Studio, LLC	\$10,000.00	
		<b>\$10,000.00</b>	\$ 600.00
<b>B. Design, Construction and Bid Documents</b>			
<b>1. Cecil Powell Park</b>			
	The Blueline Group/ Axis Surveying & Mapping	\$ 2,500.00	
	The LA Studio, LLC	\$10,000.00	
		<b>\$12,500.00</b>	\$ 400.00
<b>2. Des Moines Beach Park (30% Design Only)</b>			
	The Blueline Group/ Axis Surveying & Mapping	\$ 3,000.00	
	The LA Studio, LLC	\$15,000.00	
		<b>\$18,000.00</b>	\$ 900.00
<b>3. Field House Park</b>			
	The Blueline Group/ Axis Surveying & Mapping	\$ 4,000.00	
	The LA Studio, LLC	\$16,000.00	
		<b>\$20,000.00</b>	\$ 700.00
<b>4. Kiddie Park</b>			
	The Blueline Group/ Axis Surveying & Mapping	\$ 5,000.00	
	The LA Studio, LLC	\$18,500.00	
		<b>\$23,500.00</b>	\$ 700.00
<b>5. Steve J. Underwood Park</b>			
	The Blueline Group/ Axis Surveying & Mapping	\$10,500.00	
	The LA Studio, LLC	\$27,000.00	
		<b>\$37,500.00</b>	\$ 900.00
<b>6. Westwood Park</b>			
	The Blueline Group/ Axis Surveying & Mapping	\$ 2,500.00	
	The LA Studio, LLC	\$ 9,500.00	
		<b>\$12,000.00</b>	\$ 400.00
<b>7. Wooton Park</b>			
	The Blueline Group/ Axis Surveying & Mapping	\$ 6,000.00	
	The LA Studio, LLC	\$15,000.00	
		<b>\$21,000.00</b>	\$ 900.00
<b>C. Unassigned Services Reserve (Allowance)</b>		<b>\$5,000.00</b>	



EXHIBIT B (Cont)

Fee Summary – November 9, 2017

**Fee Totals:**

Base Fee Amount	\$154,500.00
Unassigned Services Reserve	\$ 5,000.00
Reimbursable Expenses:	\$ 5,500.00
<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$165,000.00</b>

**Total Fees Per Team Member**

The Blueline Group /Axis Surveying & Mapping	\$ 33,500.00
The LA Studio, LLC	\$121,000.00
<b>Total:</b>	<b>\$154,500.00</b>



### EXHIBIT C

Proposal Assumptions and Understandings – November 9, 2017

### **DES MOINES PLAY AREAS DESIGN PROJECT – Des Moines, WA**

1. Full field Surveys are NOT anticipated for any Park Sites.
2. Bidding and Construction Administration services are EXCLUDED from this proposal. Our team will happily provide a separate proposal for those services at the appropriate future date.
3. All (7) parks will be designed concurrently through 100% Final construction/ bid documents, with the exception of Des Moines Beach Park which will end at 30% Design.
4. All (7) park designs will be presented at one (1) public meeting after 30% Design is complete.
5. All (7) park designs will be presented to the City Council at two separate council meetings - after 30% Design and following 60% Construction Documents.
6. Assumes one basic specification book will be created for the (6) park sites. The Kiddie Park Spec Book will be unique due to CDBG funding requirements.
7. Assumes our team will NOT be participating in any grant funding application processes.
8. Proposal EXCLUDES any impacts to completed Construction Documents as a result of RCO Grants, REET funds, CDBG Funds or any other funding programs.
9. Preparation of Drainage Reports (except Steven J Underwood Park) has been EXCLUDED from the scope of services.
10. SWPPP and NPDS documentation is NOT anticipated in this proposal.
11. SEPA (may be required for Steven J. Underwood Park), HPA, Army Corp, Shoreline Substantial Development Permit or other environmental permitting has been EXCLUDED from this proposal.



## 2017 Hourly Billing Schedule

Title	Rate Per Hour
Principal Landscape Architect	\$130
Director of Landscape Architecture	\$110 - \$125
Project Manager	\$105 - \$120
Project Landscape Architect	\$75 - \$95
Landscape Designer	\$70 - \$80
Landscape Designer (Intern)	\$55 - \$65
Technical/Support Staff	\$50 - \$60

The following expenses are considered reimbursable and will be included in the monthly invoice:

- Miscellaneous office costs - printing, long distance phone calls, fax transmissions, etc.;
- Maps and other documents purchased to assist with the planning and design process;
- Expert Witness Rate shall be 125% of the Principal billing rate.
- Outside reproductions will be billed at cost plus a 10 % markup;
- Automobile travel from the office will be billed at the current IRS rate;
- Miscellaneous travel costs such as airfare, hotels, automobile rental, meals, etc. will be billed at cost plus a 10% markup.

In-House Reproductions are billed at the following rates:

8 ½ x 11 – B&W:	\$ .10 each
8 ½ x 11 – Color:	\$ .75 each
11 x 17 – B&W:	\$ .20 each
11 x 17 – Color:	\$1.25 each
Large Format – B & W:	\$ .45/square foot
Large Format – Color:	\$ 3.50/square foot
Reductions/Enlargements:	\$ .85/square foot
Mounting:	\$ 4.50/square foot

15200 52nd Avenue South  
Suite 210  
Seattle, Washington 98188  
206.204.0507

[www.thelastudio.net](http://www.thelastudio.net)



Project Title: **Kiddle Park Play Eq.** Project # **310.070** Summary Project Description:

TOTAL PROJECT SCOPE				PROJECT ALLOCATIONS BY YEAR								
Expenditures	1/1/17 Current CIP Budget	2017 CIP Supplemental Request	2017 Revised CIP Budget Estimate	Project to Date 12/31/16	Project To Date 10/31/2017	2017 Year to Date 10/31/2017	2017 Remaining	Estimated Year End 2017	Planned Year 2018	Planned Year 2019	Planned Year 2020	Planned Year 2021
<b>Design</b>												
External Engineering	27,000	(2,800)	24,200				24,200	24,200				
Internal Engineering/Project Mgmt		2,800	2,800				2,800	2,800				
<b>Prop/ROW/Easements</b>												
<b>Construction</b>												
Construction Contract	100,000	4,000	104,000						104,000			
<b>Other</b>												
Interfund Financial Services												
Contingencies	11,000		11,000								11,000	
<b>Total Project Expense Budget:</b>	<b>138,000</b>	<b>4,000</b>	<b>142,000</b>				<b>27,000</b>	<b>27,000</b>	<b>115,000</b>			
<b>Funding Sources</b>												
REET 2	27,000		27,000				27,000	27,000				
Federal Grants COBG	111,000	4,000	115,000						115,000			
<b>Total Project Revenue Budget:</b>	<b>138,000</b>	<b>4,000</b>	<b>142,000</b>				<b>27,000</b>	<b>27,000</b>	<b>115,000</b>			



**CONTRACT AMENDMENT/ADDENDUM FORM**

**CONTRACT FOR DES MOINES PLAY AREAS DESIGN BETWEEN  
THE CITY OF DES MOINES AND THE LA STUDIO AT BLUELINE**

**THIS AMENDMENT/ADDENDUM #1** is entered into on this 5 day of November, 2018, pursuant to that certain Contract entered into on the 11th day of December, 2017, between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **THE LA STUDIO LLC**, and subsequently assigned to The Blueline Group on the 1<sup>st</sup> day of July, 2018 (hereinafter "Consultant"),.

The parties herein agree that the Contract dated December 11, 2017, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

1) **SECTION II** of Contract dated December 11, 2017, is hereby amended to read as follows:

The Consultant shall complete the work described in Section I by December 31, 2019.



**IN WITNESS WHEREOF** the parties hereto have executed this

Addendum as of the date first above written.

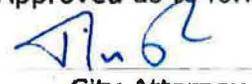
**CONSULTANT:**

**CITY OF DES MOINES:**

By:   
 (signature)  
 Print Name: Melvin R. Easter  
 Its: Studio Director  
 (Title)  
 DATE: 11/1/2018

By:   
 (signature)  
 Print Name: Michael Matthias  
 Its: City Manager  
 (Title)  
 DATE: 11-5-18

Approved as to form:

  
 City Attorney

DATE: 11-5-18

**NOTICES TO BE SENT TO:**

**NOTICES TO BE SENT TO:**

**CONSULTANT:**

**CITY OF DES MOINES:**

Melvin R. Easter  
 The LA Studio at Blueline  
 15200 52<sup>nd</sup> Avenue South, Suite 210  
 Tukwila, WA 98188  
 (206) 204-0507 (telephone)  
[mele@thelastudio.net](mailto:mele@thelastudio.net) (e-mail)

Scott J. Romano  
 City of Des Moines  
 21650 11<sup>th</sup> Avenue S  
 Des Moines, WA 98198  
 (206) 870-6539 (telephone)  
[sromano@desmoineswa.gov](mailto:sromano@desmoineswa.gov) (e-mail)

Wooton Park

Project # 310.066 (2)

Summary Project Description:

TOTAL PROJECT SCOPE				PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN										
Expenditures	7/26/18	CIP	Revised	Project to	Estimated	2018	Planned	2019	Planned	Planned	Planned	Planned	Planned	
	Current CIP	Supplemental	CIP Budget			Appropriated	Year	Year	Year	Year	Year	Year		
	Budget	Request	Estimate	Date	Year End	Budget	2019	Budget	2020	2021	2022	2023	2024	
				12/31/17	2018									
Design														
External Engineering - LA Studio	23,000	(1,382)	21,618	2,940	18,678									
Internal Engineering/Project Mgmt		2,795	2,795	-	1,795		1,000							
Permits		15,000	15,000				15,000							
Other Misc (Advertise, Postage, Etc.)		1,000	1,000				1,000							
Prop/ROW/Easements														
Construction														
External Engineering	170,000	(162,300)	7,700	-			7,700							
Internal Engr-Proj Mgmt/ Inspect		7,000	7,000	-			7,000							
Construction Contract		160,000	160,000	-			160,000							
Const Contract 1 - Contract Contingency		-	-											
Other														
Interfund Financial Services		34	34	34	-									
Non-Capitalizable Services		167	167	167										
Contingencies	17,000	3,000	20,000	-			20,000							
<b>Total Project Expense Budget:</b>	<b>210,000</b>	<b>25,314</b>	<b>235,314</b>	<b>3,141</b>	<b>20,473</b>		<b>211,700</b>	<b>187,000</b>						

Funding Sources	7/26/18	CIP	Revised	Project to	Scheduled	2018	Scheduled	2019	Scheduled	Scheduled	Scheduled	Scheduled	Planned
	Current CIP	Supplemental	CIP Budget	Date	Year	Appropriated	Year	Appropriated	Year	Year	Year	Year	Year
	Budget	Request	Estimate	12/31/17	2018	Budget	2019	Budget	2020	2021	2022	2023	2024
REET 2	160,000	25,314	185,314	3,141	20,473		161,700	137,000					
Private Contributions	50,000	-	50,000	-		21,000	50,000	50,000					
<b>Total Project Revenue Budget:</b>	<b>210,000</b>	<b>25,314</b>	<b>235,314</b>	<b>3,141</b>	<b>20,473</b>	<b>21,000</b>	<b>211,700</b>	<b>187,000</b>					

Committed Cash: -

TOTAL PROJECT SCOPE				PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN									
Expenditures	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Estimated Year End 2018	2018 Appropriated Budget	Planned Year 2019	2019 Appropriated Budget	Planned Year 2020	Planned Year 2021	Planned Year 2022	Planned Year 2023	Planned Year 2024
<b>Design</b>													
External Engineering	27,000	1,317	28,317	4,329	23,988								
Internal Engineering/Project Mgmt		2,532	2,532	-	2,532								
Permits		10,000	10,000				10,000						
Other Misc (Advertise, Postage, Etc.)		2,000	2,000				2,000						
<b>Prop/ROW/Easements</b>													
<b>Construction</b>													
External Engineering	-	9,500	9,500	-	-		9,500						
Internal Engr-Proj Mgmt/ Inspect		7,500	7,500	-	-		7,500						
Construction Contract	180,000	(43,000)	137,000	-			137,000						
<b>Other</b>													
Interfund Financial Services		308	308	43	265								
Contingencies	20,000	(5,000)	15,000	-			15,000						
<b>Total Project Expense Budget:</b>	<b>227,000</b>	<b>(14,843)</b>	<b>212,157</b>	<b>4,372</b>	<b>26,785</b>	<b>23,000</b>	<b>181,000</b>	<b>200,000</b>	-	-	-	-	-

Funding Sources	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Scheduled Year 2018	2018 Appropriated Budget	Scheduled Year 2019	2019 Appropriated Budget	Scheduled Year 2020	Scheduled Year 2021	Scheduled Year 2022	Scheduled Year 2023	Planned Year 2024
REET 2	27,000	4,157	31,157	4,372	26,785	23,000							
Federal Grants CDBG	200,000	(19,000)	181,000	-			181,000	200,000					
<b>Total Project Revenue Budget:</b>	<b>227,000</b>	<b>(14,843)</b>	<b>212,157</b>	<b>4,372</b>	<b>26,785</b>	<b>23,000</b>	<b>181,000</b>	<b>200,000</b>					

Committed Cash:

Westwood Play Equipment				Project # 310.074				Summary Project Description:									
TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES				BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN								
Expenditure Categories	7/26/18	CIP	Revised	Project to	Project	2018	2018	Estimated	2018	Planned	2019	Planned	Planned	Planned	Planned	Planned	
	Current CIP Budget	Supplemental Request	CIP Budget Estimate	Date 12/31/17	To Date 11/30/2018	Year to Date 11/30/2018	Remaining Budget	Year End 2018	Appropriated Budget	Year 2019	Appropriated Budget	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	
<b>Design</b>																	
External Engineering (LA Studio)	15,000	(1,981)	13,019	2,180	13,019	10,839	-	10,839									
Internal Engineering/Project Mgmt		-	-	-	1,962	1,962	(1,962)										
Permits		12,000	12,000	-	-	-	-			12,000							
<b>Prop/ROW/Easements</b>																	
<b>Construction</b>																	
External Engineering (LA Studio)	81,000	(73,300)	7,700	-	-	-	-			7,700							
Internal Engr-Proj Mgmt/Inspect		5,000	5,000	-	-	-	-			5,000							
Construction Contract 1		75,000	75,000	-	-	-	-			75,000							
<b>Other</b>																	
Interfund Financial Services		34	34	34	34	-	-										
Contingencies	6,000	(1,000)	7,000	-	-	-	-			7,000							
<b>Total Project Expense Budget:</b>	<b>104,000</b>	<b>15,920</b>	<b>119,920</b>	<b>2,381</b>	<b>15,182</b>	<b>12,801</b>	<b>(1,962)</b>	<b>10,839</b>	<b>13,000</b>	<b>106,700</b>	<b>89,000</b>						

Funding Sources	7/26/18	CIP	Revised	Project to	Project to	2018	2018	Scheduled	2018	Scheduled	2019	Scheduled	Scheduled	Scheduled	Scheduled	Scheduled
	Current CIP Budget	Supplemental Request	CIP Budget Estimate	Date 12/31/17	Date 11/30/2018	YTD 11/30/2018	Remaining Budget	Year 2018	Appropriated Budget	Year 2019	Appropriated Budget	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024
REET 2	104,000	15,920	119,920	2,381	13,352	10,971	(132)	10,839	13,000	106,700	89,000					
<b>Total Project Revenue Budget:</b>	<b>104,000</b>	<b>15,920</b>	<b>119,920</b>	<b>2,381</b>	<b>13,352</b>	<b>10,971</b>	<b>(132)</b>	<b>10,839</b>	<b>13,000</b>	<b>106,700</b>	<b>89,000</b>					

Committed Cash: - (1,830) Cash on hand  
A/R outstanding

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SJU Play		Project # 310,080		Summary Project Description:													
TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES				BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN								
Expenditure Categories	7/26/18	CIP	Revised	Project to	Project to	2018	2018	Estimated	2018	Planned	2019	Planned	Planned	Planned	Planned		
	Current CIP Budget	Supplemental Request	CIP Budget Estimate	Date 12/31/17	Date 11/30/2018	Year to Date 11/30/2018	Remaining Budget	Year End 2018	Appropriated Budget	Year 2019	Appropriated Budget	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	
<b>Design</b>																	
External Engineering (LA Studio)	37,000	12,074	49,074	4,650	52,198	47,548	(3,124)	44,424									
Internal Engineering/Project Mgmt		1,795	1,795	-	1,962	1,962	(167)	1,795									
Permits		20,000	20,000	-	-	-	-	-		20,000							
Other Misc (Advertise, Postage, Etc.)		1,000	1,000	-	-	-	-	-		1,000							
<b>Prop/ROW/Easements</b>																	
<b>Construction</b>																	
External Engineering (LA Studio)	408,000	(401,000)	7,000	-	-	-	-	-		7,000							
Internal Engr-Proj Mgmt/ Inspect		8,000	8,000	-	-	-	-	-		8,000							
Construction Contract 1		467,000	467,000	-	-	-	-	-		467,000							
<b>Other</b>																	
Interfund Financial Services		34	34	34	34	-	-	-		-							
Contingencies	34,000	(12,000)	22,000	-	-	-	-	-		22,000							
<b>Total Project Expense Budget:</b>	<b>479,000</b>	<b>97,070</b>	<b>576,070</b>	<b>4,851</b>	<b>54,361</b>	<b>49,510</b>	<b>(3,291)</b>	<b>46,219</b>	<b>454,000</b>	<b>525,000</b>	<b>20,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	

Funding Sources	7/26/18	CIP	Revised	Project to	Project to	2018	2018	Scheduled	2018	Scheduled	2019	Scheduled	Scheduled	Scheduled	Scheduled	
	Current CIP Budget	Supplemental Request	CIP Budget Estimate	Date 12/31/17	Date 11/30/2018	YTD 11/30/2018	Remaining Budget	Year 2018	Appropriated Budget	Year 2019	Appropriated Budget	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024
REET 2	184,000	97,070	281,070	4,851	47,243	42,392	116,608	158,000	158,000	117,219	20,000					
King County Youth & Amateur Sports - Construction Only 2018	245,000	-	245,000	-	-	-	245,000	245,000	245,000	245,000						
Private Contributions	50,000	-	50,000	-	-	-	50,000	50,000	50,000							
<b>Total Project Revenue Budget:</b>	<b>479,000</b>	<b>97,070</b>	<b>576,070</b>	<b>4,851</b>	<b>47,243</b>	<b>42,392</b>	<b>411,608</b>	<b>454,000</b>	<b>454,000</b>	<b>117,219</b>	<b>20,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
				Committed Cash:												
						(7,118)	Cash on hand	407,781								
							A/R outstanding									

## A G E N D A I T E M

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

SUBJECT: Lease Agreement with Redondo Square GRF2, LLC for the operation of a Des Moines Police Department substation at Redondo Square

ATTACHMENT:

1. Lease Agreement

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: January 15, 2018

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DJB

- Legal JG
- Finance Baw
- Courts
- Police ht

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

#### Purpose and Recommendation

This purpose of this agenda item is to approve a lease agreement with Redondo Square GRF2, LLC, the owner of Redondo Square shopping center, for a 1,400 square foot storefront in Redondo Square for the purpose of operating a Des Moines Police Department substation. The lease agreement has an initial three-year term, with an option for one additional three-year term.

#### Suggested Motion:

**Motion: "I move to approve the lease agreement between the City of Des Moines and Redondo Square GRF2, LLC and to authorize the City Manager to sign the agreement substantially in the form as submitted."**

#### Background

The City of Des Moines has a geographic profile that is significantly longer north-to-south than it is east-to-west. This profile tends to spread police patrols thin north-to-south and makes quick travel from the Des Moines Police Station and other locations in the north of the City to the southern edges difficult.

This is compounded by narrow and winding roads to communities in the south of the City such as Redondo.

Locating a substation in the southern area of the City, especially in a location with good access to Redondo will facilitate quicker response and more effective law enforcement in those areas of the City. The substation will also allow Des Moines Police to more effectively assist their law enforcement partners in Federal Way, southern Kent, Auburn, and others.

A tangible, concrete, and visible presence in the area should serve to promote trust, connection, and a sense of security for the local residents and deterrence to the criminal element. The proposed location will also provide an opportunity to create a headquarters for a multi-jurisdictional task force to address the most serious crimes in the area.

### **Discussion**

South Des Moines and the Redondo Beach area in particular have long been challenging from a law enforcement response aspect. It has been a priority of the Des Moines Police Department to regain a physical foothold in the area to better serve the residents and to address the serious criminal elements that cause disruptions in Redondo and Redondo Square from time to time. This lease agreement allows DMPD to return to Redondo Square and better serve these goals, both by significantly improving response times and by increasing presence overall.

This location would also provide the opportunity to better address the most serious issues in the South King County area as a whole, including gang activity and firearm related crimes. Police Chief Ken Thomas and his department have been active in building partnerships with other agencies at the city, county, state and federal levels. Through these partnerships, Des Moines Police will participate in, and the City will reap the benefit from, multi-jurisdictional task forces that specifically target such issues as gun violence, violent crime, and gangs.

The substation at Redondo proposes to serve as a headquarters for these various task forces and the federal, state, and local agents who staff them. If approved, this project can serve as a model that can be utilized nationwide to combat the most serious crime issues facing law enforcement, while at the same time supporting the basic patrol functions that DMPD also needs to provide.

### **Alternatives**

The City Council may decline to approve the lease agreement. Declining the agreement will leave the Des Moines Police Department without a substation in the south end of the City and is not recommended.

### **Financial Impact**

Rent due under the lease for the initial three-year term averages approximately \$1,229.79 per month. The agreement also requires the City to pay a proportional share of common area maintenance (CAM)

costs and taxes, based on square footage occupied. The landlord's good faith estimate of CAM and taxes for 2019 is approximately eight dollars per square foot, or \$11,200 for a 1,400 square foot storefront.

This figure represents a negotiated discount from market rate for the storefront. If the City chooses to exercise its option for one additional three-year term, the total rent due for that additional three-year period will also be based on a 25% discount from market rate.

The lease agreement also requires a \$2,100.00 security deposit from the City.

**Recommendation**

The staff recommends that the Council adopt the suggested motion.

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RETAIL LEASE

at

REDONDO SQUARE

by and between

REDONDO SQUARE GRF2, LLC

Landlord

and

THE CITY OF DES MOINES

Tenant

“Des Moines Police Department”

**RETAIL LEASE  
REFERENCE PAGES**

**SHOPPING CENTER:** Redondo Square, located in Des Moines, Washington, as the same may be re-configured or modified at Landlord's discretion from time to time. Exhibit A sets forth the general layout of the Shopping Center, but shall not be deemed to be a warranty, representation or agreement that all or any part of the Shopping Center is, will be, or will continue to be configured as indicated on Exhibit A. The Shopping Center is legally described in Exhibit A-1 hereto.

**LANDLORD:** REDONDO SQUARE GRF2, LLC, a Delaware limited liability company

**LANDLORD'S ADDRESS:** REDONDO SQUARE GRF2, LLC  
973 Lomas Santa Fe Drive  
Solana Beach CA 92075  
Attn: John A. Waters

**LEASE REFERENCE DATE:** \_\_\_\_\_, 2019

**TENANT:** THE CITY OF DES MOINES, a Municipal corporation

**TENANT'S ADDRESS:** 21900 11<sup>th</sup> Avenue South, Des Moines, WA 98198

**PREMISES:** 27013 Pacific Highway South, Suite D7, Des Moines, WA 98198.

**PREMISES AREA:** Approximately 1,400 square feet.

**USE:** The Premises shall be used for the operation of a Des Moines Police Department substation, and for no other use or purpose.

**TENANT'S TRADE NAME:** Des Moines Police Department

**COMMENCEMENT DATE:** The earlier of (i) the date that is thirty (30) days after the Delivery Date, or (ii) the date Tenant initially opens for business in the Premises.

**TERMINATION DATE:** The last day of the calendar month in which the third (3<sup>rd</sup>) anniversary of the Commencement Date occurs.

**TERM OF LEASE:** Beginning on the Commencement Date and ending on the Termination Date. Tenant shall have one (1) option to extend the Term for a period of three (3) years, pursuant to Section 1.2.

**ANNUAL RENT:** Annual Rent shall be payable in accordance with Article 2 as follows:

LEASE YEARS	ANNUAL RENT	MONTHLY INSTALLMENTS
1	\$14,000.00	\$1,166.67
2	\$14,420.00	\$1,201.67
3	\$14,852.60	\$1,237.72
<u>Option Term</u> 4 – 6	Determined under Section 2.2	

SECURITY DEPOSIT: \$2,100.00

STOREFRONT SIGN ALLOWANCE: \$10,000.00, payable pursuant to Section I of Exhibit B.

BROKERS: Landlord: First Western Properties-Tacoma  
Tenant: None

The information in the Reference Pages is incorporated into and made a part of the Lease. In the event of any conflict between any information in the Reference Pages and the Lease, the Lease shall control. This Lease includes **Exhibits A through D** all of which are made a part of this Lease.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the Lease Reference Date.

LANDLORD

TENANT

REDONDO SQUARE GRF 2, LLC,  
a Delaware limited liability company

THE CITY OF DES MOINES,  
a Municipal corporation

By: Gerrity Retail Fund 2 Holdings I, LLC,  
a Delaware limited liability company,  
its Manager

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

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

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

By: Gerrity Retail Fund 2, Inc.,  
a Delaware corporation,  
its Manager

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

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

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

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

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

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

## LEASE

By this Lease Landlord leases to Tenant and Tenant leases from Landlord the Premises in the Shopping Center as set forth and described on the Reference pages. This is a lease of real property, improvements, and fixtures. No personal property is leased hereunder. The Reference pages, including all terms defined thereon, is incorporated as part of this Lease.

### 1. TERM.

1.1. The Term of this Lease shall begin on the Commencement Date. The date that Landlord initially tenders possession of the Premises to Tenant is herein referred to as the “**Delivery Date**”. In the event Tenant shall occupy or use the Premises for any reason (including performance of Tenant’s Work) prior to the Commencement Date, such use and occupancy shall be subject to all the terms, conditions and provisions of this Lease (other than the payment or rent, which shall not commence until the Commencement Date). Tenant shall accept possession of the Premises from Landlord upon the Delivery Date; provided, however, Tenant shall have no right to enter into physical possession of the Premises until Tenant has delivered all of the following to Landlord: (i) certificates of insurance (as required under Article 12); (ii) the plans and specifications approved as provided in Section II(B) of Exhibit B; (iii) a copy of Tenant’s building permit, if issued by such date, and (iv) written confirmation of the transfer of the utilities for the Premises to Tenant’s name. Landlord shall not be obligated to deliver possession of the Premises to Tenant until such items are delivered, but neither the Delivery Date nor the Commencement Date, nor any of Tenant’s obligations under this Lease, shall be affected or delayed by Tenant’s failure to deliver any of such items or by Landlord’s decision not to deliver physical possession of the Premises as a result of such failure. The term “**Lease Year**” shall mean each 12-month period during the Term, with the first Lease Year commencing upon the Commencement Date, and the last Lease Year ending upon Termination Date. Within ten (10) days of Landlord’s request, Tenant shall execute a memorandum (“**Commencement Date Memorandum**”) in the form provided by Landlord setting forth the Commencement Date, the Termination Date, the date Tenant opened for business in the Premises and other matters set forth therein.

1.2. If Tenant (i) is not then in default in any of the terms or provisions of the Lease beyond any applicable notice and cure period, (ii) Tenant is in occupancy and conducting business from the Premises, and (iii) Tenant has not assigned, subleased or otherwise transferred its interest in the Lease or the Premises, then that Tenant is not in default under this Lease beyond any applicable notice and cure period at the time of exercise of the option to extend provided herein, Tenant shall have one (1) option to extend the Term of this Lease for a period of thirty-six (36) months (“**Option Term**”), by giving Landlord written notice at least two hundred seventy (270) days before the expiration of the initial Term. If Tenant exercises said option by written notice to Landlord, the extension of the Term of this Lease shall be automatically effected without the execution of any additional documents, and all of the terms, covenants, conditions, provisions and agreements applicable to the initial Term shall be applicable to the Option Term, except as otherwise modified herein. Time is of the essence with respect to Tenant’s exercise of the option to extend the Term of this Lease provided herein. Tenant’s failure to strictly comply with the time and notice requirements set forth herein shall cause the option provided herein to automatically cease and terminate and, in such event, this Lease shall terminate upon the expiration of the initial Term. All references in this Lease to the “Term” shall be deemed to mean the initial Term as extended by the Option Term, as applicable. Within fifteen (15) days of Landlord’s written request, Tenant shall execute an amendment of the Lease prepared by Landlord confirming the Option Term and matters related thereto.

## 2. RENT AND SECURITY DEPOSIT.

2.1. Tenant agrees to pay to Landlord, from and after the Commencement Date, the Annual Rent in effect from time to time by paying the monthly installment of Annual Rent then in effect on or before the first day of each full calendar month during the Term; provided, however, that the Annual Rent and the estimated Additional Rent for the first month for which rent is payable under this Lease (in an amount equal to \$2,100.00) shall be paid upon the execution of this Lease. Rent for any period during the Term which is less than a full month shall be a prorated portion of the monthly installment of rent based upon a thirty (30) day month. Said rent shall be paid to Landlord, without deduction or offset and without notice or demand, to such address as Landlord may from time to time designate.

2.2. The Annual Rent for the Option Term shall be an amount equal to seventy-five percent (75%) of the then prevailing fair market rent (the “**Fair Market Rent**”), but shall in no event be less than one hundred three percent (103%) of the Annual Rent payable during the one year period immediately preceding the commencement of the Option Term. Landlord shall, prior to the commencement of the Option Term, determine the Fair Market Rent as provided herein and notify Tenant of the same. The Fair Market Rent shall be determined by Landlord in good faith based on comparable rentals then charged and collected in the area where the Shopping Center is located, taking into account items customarily considered in such determinations, including location, the credit of tenants of other properties, size, age, design, utility and other relevant factors of other comparable properties in the area where the Shopping Center is located. Effective on the first anniversary of the commencement of the Option Term, and thereafter annually on each successive anniversary of the commencement of the Option Term, Annual Rent, as adjusted under this Section 2.2, shall be further increased by three percent (3%).

2.3. [Intentionally Omitted].

2.4. Tenant recognizes that late payment of any rent or other sum due under this Lease will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease, a late charge shall be imposed in an amount equal to five percent (5%) per month of the unpaid rent or other payment. Any such charges shall be immediately payable to Landlord on demand and shall be Additional Rent hereunder. The amount of the late charge to be paid by Tenant shall be reassessed and added to Tenant’s obligation for each successive monthly period until paid. The provisions of this Section 2.4 in no way relieve Tenant of the obligation to pay rent or other payments on or before the date on which they are due, nor do the terms of this Section 2.4 in any way affect Landlord’s remedies pursuant to Article 19 of this Lease in the event said rent or other payment is unpaid after date due.

2.5. Tenant shall deposit the Security Deposit with Landlord upon the execution of this Lease. Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by Tenant and not as an advance rental deposit or as a measure of Landlord’s damage in case of Tenant’s default. If Tenant defaults with respect to any provision of this Lease, Landlord may use any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant’s default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant’s default. If any portion is so used, Tenant shall within five (5) days after written demand therefor, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount and Tenant’s failure to do so shall be a material breach of this Lease. Except to such extent, if any, as shall be required by law, Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If

Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at such time after termination of this Lease when Landlord shall have determined that all of Tenant's obligations under this Lease have been fulfilled.

3. [INTENTIONALLY OMITTED].

4. ADDITIONAL RENT.

4.1. From and after the Commencement Date, Tenant shall pay as additional rent for each Lease Year Tenant's Proportionate Share of Common Area Maintenance (CAM) and Taxes incurred for such Lease Year.

4.1.1 "CAM" shall be defined as: all costs and expenses of operation, maintenance, repair and management of the Shopping Center, including the following costs by way of illustration, but not limitation: insurance charges relating to all insurance policies and endorsements deemed by Landlord to be reasonably necessary or desirable for the protection, preservation or operation of all or any part of the Shopping Center; utility costs and services for all parts of the Common Areas (including any property management, marketing, maintenance and/or security office and community/public rooms or buildings), including, but not limited to, light, power, steam, gas, trash/waste collection and disposal, water and sewer (utility costs and services for all other parts of the Shopping Center, and costs of utilities and related services metered directly to the Premises, or jointly metered with other tenant premises, shall not be deemed to be CAM, and shall be payable by Tenant pursuant to Article 14); the cost of security and alarm services (including any central station signaling system); property management fees; the salaries of personnel involved in the management of the Shopping Center at or below the level of regional or property manager; the cost of maintaining, repairing and replacing any heating, ventilating and air conditioning systems not otherwise being paid for by tenants; the cost of landscaping and seasonal decorations; the cost of maintaining and repairing any exterior stairway, truck way, loading dock, package pickup station, pedestrian sidewalk and ramp, and all exterior walls of Shopping Center buildings and building surfaces, downspouts, gutters and related items; the cost of periodic painting of exterior walls of Shopping Center buildings; the cost of maintaining, repairing, operating and policing the buildings and improvements in the Shopping Center and their appurtenances and equipment, including, without limitation, the roof, common signage, the garage and/or parking lot and any driveway areas, including the construction and maintenance of lighting facilities therefor, comfort stations and first aid stations, exterior window cleaning costs; labor costs; employee benefits and payroll taxes; accounting and legal fees; material costs; equipment costs, including the cost of service agreements on equipment; tool costs; the costs of licenses, permits and inspection fees, and any sales, use or service taxes incurred in connection therewith. In addition, Tenant shall pay to Landlord, or to a property management company selected by Landlord, an administrative fee equal to fifteen percent (15%) of total CAM. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees that the foregoing administrative fee, and any management fee or reimbursement of administrative and management salaries and related costs and expenses included hereunder in CAM, are all separate and independent permissible CAM charges, shall not be deemed to be duplicative of each other or any other costs or expenses included in CAM, and each shall be payable hereunder by Tenant without limitation or qualification. Further, Landlord shall be entitled to amortize and include as an additional rental adjustment: (i) an allocable portion of the cost of capital improvement items which are reasonably calculated to reduce operating expenses; (ii) fire sprinklers and suppression systems and other life safety systems; and (iii) other capital expenses which are required under any governmental laws, regulations or ordinances. All such costs shall be amortized over the reasonable life of such improvements in accordance with such reasonable life and amortization schedules as shall be determined by Landlord in accordance with generally accepted accounting principles, with interest on the unamortized

amount at one percent (1%) in excess of the prime lending rate announced from time to time as such by The Northern Trust Company of Chicago, Illinois (“**Interest Rate**”).

4.1.2 “**Taxes**” shall be defined as: all real estate taxes and any other taxes, charges and assessments which are levied with respect to the Shopping Center or the land appurtenant to the Shopping Center, or with respect to any improvements, fixtures and equipment or other property of Landlord, real or personal, located in the Shopping Center and used in connection with the operation of the Shopping Center and said land, any payments to any ground lessor in reimbursement of tax payments made by such lessor; and all fees, expenses and costs incurred by Landlord in investigating, protesting, contesting or in any way seeking to reduce or avoid increase in any assessments, levies or the tax rate pertaining to any Taxes to be paid by Landlord in any Lease Year. Taxes shall not include any corporate franchise, or estate, inheritance or net income tax.

4.2. The annual determination of CAM shall be made by Landlord and certified to Tenant (the “**Expense Statement**”).

4.3. Prior to the actual determination thereof for a Lease Year, Landlord may from time to time estimate Tenant’s liability for CAM and/or Taxes under Section 4.1, Article 7 and Article 28 for the Lease Year or portion thereof. Landlord will give Tenant written notification of the amount of such estimate and Tenant agrees that it will pay additional rent in the amount of such estimate.

4.4. When the above mentioned actual determination of Tenant’s liability for CAM and/or Taxes is made in any Lease Year and after Tenant’s receipt of the Expense Statement, then:

4.4.1 If the total additional rent Tenant actually paid pursuant to Section 4.2 on account of CAM and/or Taxes for the Lease Year is less than Tenant’s liability for CAM and/or Taxes, then Tenant shall pay to Landlord such deficiency as additional rent in one lump sum within thirty (30) days of receipt of Landlord’s bill therefor; and

4.4.2 If the total additional rent Tenant actually paid pursuant to Section 4.2 on account of CAM and/or Taxes for the Lease Year is more than Tenant’s liability for CAM and/or Taxes, then Landlord shall credit the difference against the then next due payments to be made by Tenant under this Article 4.

4.5. If the Commencement Date is other than January 1 or if the Termination Date is other than December 31, Tenant’s liability for CAM and Taxes for the Lease Year in which said Date occurs shall be prorated based upon a three hundred sixty-five (365) day year.

4.6 The term “**Tenant’s Proportionate Share**” shall be that fraction, the numerator of which shall be the total square footage in the Premises and the denominator of which shall be the total leasable square footage in the Shopping Center (or, in the case of the payment of Taxes, the total leasable square footage in the tax parcel which includes the Premises). Tenant’s Proportionate Share may change from time to time as the leasable square footage and/or configuration of the Shopping Center is changed. “Total leasable square footage in the Shopping Center” does not include space occupied by tenants that do not fully contribute toward CAM costs, provided, however, the amounts such tenants or other occupants do contribute shall be credited toward CAM costs as reasonably determined by Landlord. Tenant acknowledges and agrees that Tenant’s Proportionate Share may change from time to time as the leasable square footage of the Shopping Center and Landlord/Tenant responsibilities (e.g. roof repair, fire life & safety, trash removal, security, etc.) change, and/or configuration of the Shopping Center, is changed, and as otherwise set forth in this Lease, including, but not limited to, with respect to Cost Pools as described

herein. Landlord shall have the right, from time to time, to equitably allocate some or all of the CAM for the Shopping Center, or amongst other properties owned or managed by Landlord or affiliates of Landlord, among different portions or user groups of the Shopping Center and other properties owned or managed by Landlord (or affiliates of Landlord), or if certain items of CAM are not attributable to all occupants and/or an occupant maintains a certain service at that occupant's own expense, in such event Landlord may, at Landlord's sole and absolute discretion, establish alternative methods of allocating such CAM (the "Cost Pool"). The CAM within each such Cost Pool shall be allocated and charged to the occupants within such Cost Pool in an equitable manner as determined in Landlord's good faith and reasonable business judgment.

4.7. Landlord's good faith estimate of Tenant's Proportionate Share of CAM and Taxes for calendar year 2019 (on an annualized basis) is approximately Eight Dollars (\$8.00) per square foot of Premises Area; it being acknowledged that such estimate is not binding on Landlord and shall not be construed to be a cap or guarantee.

## 5. USE OF PREMISES; TENANT COVENANTS.

5.1. Tenant shall continuously throughout the Term of this Lease conduct and carry on in the entire Premises under Tenant's Trade Name the type of business for the specific use described on the Reference pages and shall not conduct or carry on any other business or use, or permit the use of, the Premises for any other purpose. Tenant shall not install, operate or permit the operation of any automated teller machines (or any other such devices) in the Premises.

5.2. Tenant shall comply with all matters of record affecting the Shopping Center and all governmental laws, ordinances and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in or upon, or in connection with, the Premises, all at Tenant's sole expense. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not permit the Premises to be used for any use or purpose that violates any prohibited uses or any exclusive or preferential use rights granted to any other tenant of the Shopping Center. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, demands, actions, causes of action, losses (including but not limited to loss of rents resulting from the termination by another tenant of its lease), damages, costs, and expenses, including court costs and attorneys' fees, arising from or related to, wholly or in part, from any violation or breach of this paragraph by Tenant.

5.3. Tenant shall operate its business in a dignified manner and in accordance with high standards of operation so as to maintain a character in keeping with the rest of the Shopping Center, and shall, at all times when the Premises are open for business to the public, keep the Premises properly equipped with fixtures and attended by adequate personnel.

5.4. Tenant shall operate for business in the Premises for the Permitted Use on the days and during the hours as the majority of other tenants of the Shopping Center are also open for business.

5.5. [Intentionally Omitted].

5.6. Tenant shall not, without Landlord's prior written consent: (i) make any changes to the storefront of the Premises; (ii) install any exterior lighting, decorations, painting, awnings, canopies and the like; or (iii) erect or install any signs, window or door lettering, placards, decoration or advertising media of any type which is visible from the exterior of the Premises, excepting only dignified displays of customary type for its display windows. No handwritten signs shall be permitted.

5.7. Tenant agrees to comply with and observe the rules and regulations set forth on Exhibit C. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of this Lease as if the same were contained herein as covenants. Landlord reserves the right from time to time to amend or supplement said rules and regulations. Notice of such amendments and supplements shall be given to Tenant and Tenant agrees to comply with and observe all such rules and regulations, as revised.

5.8. Tenant shall not do or permit anything to be done in or about the Premises which will obstruct or interfere with the rights of other tenants or occupants of the Shopping Center or injure, annoy, or disturb them or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose. Tenant shall not do, permit or suffer in, on, or about the Premises the sale of any alcoholic liquor without the written consent of Landlord first obtained, or the commission of any waste. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate or prevent the procuring of any insurance protecting against loss or damage to the Shopping Center or any of its contents by fire or other casualty or against liability for damage to property or injury to persons in or about the Shopping Center or any part thereof; and shall cooperate with Landlord's insurance representatives.

5.9. Tenant shall install at Tenant's expense an exterior sign conforming to the general appearance of other signs in the Shopping Center and Landlord's signage criteria which are attached hereto as Exhibit D. Tenant shall at all times keep all signs in accordance with Landlord's sign criteria and in good condition, proper operating order and in accordance with all applicable government regulations. Use of the roof of the building in which the Premises are located is reserved to Landlord and Landlord may install upon the roof equipment, signs, antenna, displays and other objects and may construct additional stories above the Premises, provided any such use does not unreasonably interfere with Tenant's occupancy of the Premises. Upon expiration or earlier termination of this Lease, Tenant shall remove any signs and repair any damage to the Shopping Center caused by the installation and removal thereof.

5.10. Tenant shall not, and shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees to at any time handle, use, manufacture, generate, store or dispose of in or about the Premises or the Shopping Center any (collectively "**Hazardous Materials**") flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "**Environmental Laws**"), nor shall Tenant suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws, in the Premises or the Shopping Center and appurtenant land or allow the environment to become contaminated with any Hazardous Materials. Notwithstanding the foregoing, and subject to Landlord's prior consent, Tenant may handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, routine cleaning supplies, paints, paint remover and the like) to the extent customary and necessary for the use of the Premises for retail store purposes; provided that Tenant shall always handle, store, use and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Shopping Center and appurtenant land or the environment. Tenant shall immediately advise Landlord in writing of (a) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws relating to any Hazardous Materials affecting the Premises; and (b) all claims made or threatened by any third party against Tenant, Landlord, the Premises or the Shopping Center relating to damage, contribution, cost recovery, compensation, loss or

injury resulting from any Hazardous Materials on or about the Premises, and in either event, shall provide Landlord with copies of all communications with respect thereto.

In the event that any Hazardous Materials, including, but not limited to, any mold or related or similar substance, are at any time after Tenant initially enters into possession of the Premises discovered in the Premises, or otherwise emanating or arising from within the Premises, and if Tenant does not remove, remediate, dispose of or otherwise handle such materials as required in compliance with applicable Environmental Laws, within five (5) business days after notice from Landlord, then Landlord may, but shall not be obligated to, at any time thereafter perform such removal, remediation, disposal and handling of such materials, or perform such other acts on Tenant's behalf, and for Tenant's account, as Landlord shall, at Landlord's sole discretion, deem prudent or necessary under the circumstances, and without releasing Tenant from any obligations hereunder. Tenant shall pay to Landlord, within fifteen (15) days after delivery by Landlord to Tenant of statements for the costs incurred by Landlord in connection with all work performed by Landlord hereunder, along with an administrative fee of fifteen percent (15%) of all such amounts, plus any attorney's fees incurred by Landlord. Tenant hereby grants Landlord the right and power, as attorney-in-fact for Tenant, to enter into the Premises as necessary to perform such work and related acts, without any compensation to Tenant or abatement of rent whatsoever, notwithstanding any interference with Tenant's business operation in the Premises, and Tenant hereby waives any claim whatsoever against Landlord in connection with such entry and work.

Tenant shall protect, defend, indemnify and hold each and all of the Landlord Entities (as defined in Article 31) harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of any actual or asserted failure of Tenant to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials (even though permissible under all applicable Environmental Laws or the provisions of this Lease), including, but not limited to, mold and similar substances, or by reason of any actual or asserted failure of Tenant to keep, observe or perform any provision of this Section 5.10. Without Landlord's prior written consent, Tenant shall not perform any environmental testing, take any remedial action or enter into any agreements or settlements in response to the presence of any Hazardous Materials in, on or about the Premises. Any such testing and/or remedial work may only be performed by licensed contractors approved in advance by Landlord. Tenant's obligations under this Section 5.10 shall survive the expiration or earlier termination of this Lease.

## 6. COMMON AREAS.

Subject to Landlord's rights under this Lease, including Article 17, and the rules and regulations set forth in Exhibit C, Tenant, and its licensees, concessionaires, employees and customers (for purposes of this Section 6, collectively "Tenant") shall have the nonexclusive right to use the "**Common Areas**" (which shall be defined as the areas of the Shopping Center other than tenants' premises, as constituted from time to time, and as otherwise designated by Landlord), in common with Landlord, other tenants of the Shopping Center and other persons entitled to use the same. Landlord may require that automobiles operated by Tenant or its employees be parked in specific portions of the Common Areas or other areas outside the Shopping Center which are in reasonable proximity thereto. Tenant shall not interfere with the rights of other persons to use the Common Areas. Landlord may temporarily close parts of the Common Areas for such periods of time as may be necessary for (i) temporary use as a work area in connection with the construction of buildings or other improvements within the Shopping Center or contiguous property, (ii) repairs or alterations in or to the Common Areas or to any utility type facilities, (iii) preventing the public from obtaining prescriptive rights in or to the Common Areas, (iv) security reasons, or (v) doing and performing such other acts as in the use of good business judgment Landlord shall determine to be appropriate for the Shopping Center, provided however, that Landlord shall use reasonable efforts not to

unduly interfere with or disrupt Tenant's business. Landlord shall have the right at any time to change the dimensions and location of any buildings in the Shopping Center and the arrangement and/or locations of entrances, parking areas, sidewalks, landscaped areas, passageways or other parts of the Common Areas and to change the name, number or designation by which the Shopping Center is commonly known.

## 7. ALTERATIONS.

7.1. Except for those, if any, specifically provided for in Exhibit B to this Lease, Tenant shall not make or suffer to be made any alterations, additions, or improvements, including, but not limited to, the attachment of any fixtures or equipment in, on, or to the Premises or any part thereof or the making of any improvements as required by Article 8, without the prior written consent of Landlord. When applying for such consent, Tenant shall, if requested by Landlord, furnish complete plans and specifications for such alterations, additions and improvements. If Landlord consents to the making of any such alteration, addition or improvement by Tenant, the same shall be made using Landlord's contractor (unless Landlord agrees otherwise) at Tenant's sole cost and expense. If Tenant shall employ any contractor other than Landlord's contractor and such other contractor or any subcontractor of such other contractor shall employ any nonunion labor or supplier, Tenant shall be responsible for and hold Landlord harmless from any and all delays, damages and extra costs suffered by Landlord as a result of any dispute with any labor unions concerning the wage, hours, terms or conditions of the employment of any such labor. In any event Landlord may charge Tenant a reasonable charge to cover its overhead as it relates to such proposed work.

7.2. All alterations, additions or improvements proposed by Tenant shall be constructed in accordance with all government laws, ordinances, rules and regulations and Tenant shall, prior to construction, provide the additional insurance required under Article 12 in such case, and also all such assurances to Landlord, including but not limited to, waivers of lien, surety company performance bonds and personal guaranties of individuals of substance as Landlord shall require to assure payment of the costs thereof and to protect Landlord and the Shopping Center and appurtenant land against any loss from any mechanic's, materialmen's or other liens. Tenant shall pay in addition to any sums due pursuant to Article 4, any increase in real estate taxes attributable to any such alteration, addition or improvement for so long, during the Term, as such increase is ascertainable; at Landlord's election said sums shall be paid in the same way as sums due under Article 4.

7.3. All alterations, additions, and improvements in, on, or to the Premises made or installed by Tenant shall be and remain the property of Tenant during the Term, provided, however, upon the expiration or earlier termination of the Lease, the same shall become a part of the realty and belong to Landlord without compensation to Tenant, at which time title shall pass to Landlord under this Lease as by a bill of sale, unless Landlord elects otherwise. Upon such election by Landlord, Tenant shall upon demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence remove any such alterations, additions or improvements which are designated by Landlord to be removed, and Tenant shall forthwith and with all due diligence, at its sole cost and expense, repair and restore the Premises to their original condition, reasonable wear and tear excepted.

## 8. REPAIR.

8.1. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises, except as specified in Exhibit B if attached to this Lease, and except that Landlord shall repair and maintain the structural portions of the roof, foundation and exterior wall of the Shopping Center, including the basic plumbing, air conditioning, heating and electrical systems which do not serve the Premises exclusively. By taking possession of the Premises, Tenant accepts them as being in good order, condition and repair and in the condition in which Landlord is obligated to deliver them. It is hereby

understood and agreed that no representations respecting the condition of the Premises or the Shopping Center have been made by Landlord to Tenant, except as specifically set forth in this Lease. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant. Except to the extent, if any, prohibited by law, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

8.2. Tenant shall, at all times during the Term, keep the Premises in good condition and repair, including windows, glass and plate glass, doors, skylights, interior walls and finish work, floors and floor coverings, electrical systems and fixtures, plumbing work and fixtures and heating, ventilating and air conditioning equipment, and in compliance with all applicable governmental laws, ordinances and regulations, promptly complying with all governmental orders and directives for the correction, prevention and abatement of any violations or nuisances in or upon, or connected with, the Premises, all at Tenant's sole expense. Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by Landlord for servicing all heating and air conditioning systems and equipment serving the Premises (and a copy thereof shall be furnished to Landlord). The service contract must include all services suggested by the equipment manufacturer in the operation/maintenance manual, as well as any additional requirements of Landlord, and must become effective within thirty (30) days of the date Tenant takes possession of the Premises. Landlord may, upon notice to Tenant, enter into such a maintenance/ service contract on behalf of Tenant or perform the work and in either case, charge Tenant the cost thereof along with a reasonable amount for Landlord's overhead.

8.3. Except as specifically provided in Article 22, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Shopping Center or the Premises or to fixtures, appurtenances and equipment in the Shopping Center. Except to the extent, if any, prohibited by law, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

## 9. LIENS.

Tenant shall keep the Premises, the Shopping Center and appurtenant land and Tenant's leasehold interest in the Premises free from any liens arising out of any services, work or materials performed, furnished, or contracted for by Tenant, or obligations incurred by Tenant. If Tenant has not, within ten (10) days following the imposition of any such lien, caused the same to be released of record or bonded, Tenant shall provide Landlord with insurance against the same issued by a major title insurance company or such other protection against the same as Landlord shall accept, Landlord shall have the right to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be considered additional rent and shall be payable to it by Tenant within five (5) days of Landlord's demand. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or that Landlord shall deem proper, for the protection of Landlord, the Premises, the Shopping Center, and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give to Landlord at least ten (10) days' prior notice of commencement of any construction on the Premises.

## 10. ASSIGNMENT AND SUBLETTING.

10.1. Tenant shall not have the right to assign or pledge this Lease or to sublet the whole or any part of the Premises whether voluntarily or by operation of law, or permit the use or occupancy of the

Premises by anyone other than Tenant, and shall not make, suffer or permit such assignment, subleasing or occupancy, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, and said restrictions shall be binding upon any and all assignees of the Lease and subtenants of the Premises. In the event Tenant desires to sublet, or permit such occupancy of, the Premises, or any portion thereof, or assign this Lease, Tenant shall give written notice thereof to Landlord at least ninety (90) days but no more than one hundred eighty (180) days prior to the proposed commencement date of such subletting or assignment, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease or assignment and copies of financial reports and other relevant financial information of the proposed subtenant or assignee.

10.2. For purposes of this Article 10, the following events shall be deemed an assignment or sublease, as appropriate: (i) the issuance of equity interests (whether stock, partnership or trust interests or otherwise) in Tenant or any subtenant or assignee, or any entity controlling any of them, to any person or group of related persons, in a single transaction or a series of related or unrelated transactions, such that, following such issuance, such person or group shall have Control (as defined below) of Tenant or any subtenant or assignee; or (ii) a transfer of Control of Tenant or any subtenant or assignee, or any entity controlling them, in a single transaction or a series of related or unrelated transactions (including, without limitation, by consolidations, merger, acquisition or reorganization). Notwithstanding the foregoing, if Tenant or Tenant's parent is or becomes: (x) a publicly-traded company whose outstanding voting stock or other ownership is listed on a "national securities exchange" (as defined in the Securities Exchange Act of 1934 or is a "NASDAQ security" (as defined in Rule 11Aa3-1(a)(6) under such Act)), the disposition or acquisition of shares of publicly-traded company shall not be deemed an assignment or sublease hereunder; or (y) a closely-held corporation or limited liability company, the disposition or acquisition of shares or membership interests solely between or among the shareholders, members or key employees of Tenant or Tenant's parent and their families or any trust for the exclusive benefit of, or other entity wholly owned by, any such permitted transferees shall not be deemed an assignment or sublease hereunder provided that such disposition or acquisition does not involve a change in Control. "Control" shall mean direct or indirect ownership of fifty percent (50%) or more of all of the voting stock of a corporation or fifty percent (50%) or more of the legal or equitable interest in any other business entity, or the power to direct the operations of any entity (by equity ownership, contract or otherwise).

10.3. Notwithstanding any assignment or subletting, permitted or otherwise, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent specified in this Lease and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon the occurrence of an Event of Default, if the Premises or any part of them are then assigned or sublet, Landlord, in addition to any other remedies provided in this Lease or provided by law, may, at its option, collect directly from such assignee or subtenant all rents due and becoming due to Tenant under such assignment or sublease and apply such rent against any sums due to Landlord from Tenant under this Lease, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease.

10.4. In addition to Landlord's right to approve of any subtenant or assignee, Landlord shall have the option, in its sole discretion, in the event of any proposed subletting or assignment, to terminate this Lease, or in the case of a proposed subletting of less than the entire Premises, to recapture the portion of the Premises to be sublet, as of the date the subletting or assignment is to be effective. The option shall be exercised, if at all, by Landlord giving written notice to Tenant within sixty (60) days following Landlord's receipt of Tenant's written notice as required above. If this Lease shall be terminated with respect to the entire Premises pursuant to this Section, the Term of this Lease shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this Lease for the expiration of the Term. If Landlord recaptures under this Section only a portion of the

Premises, the rent to be paid from time to time during the unexpired Term shall abate proportionately based on the proportion by which the approximate square footage of the remaining portion of the Premises shall be less than that of the Premises as of the date immediately prior to such recapture.

10.5. In the event that Tenant sublets, assigns or transfers this Lease, Tenant shall pay to Landlord as Additional Rent an amount equal to one hundred percent (100%) of any Increased Rent (as defined below) when and as such Increased Rent is received by Tenant. As used in this Section, “**Increased Rent**” shall mean the excess of (i) all rent and other consideration which Tenant is entitled to receive by reason of any sale, sublease, assignment or other transfer of this Lease, over (ii) the rent otherwise payable by Tenant under this Lease at such time.

10.6. Notwithstanding any other provision hereof, Tenant shall have no right to make (and Landlord shall have the absolute right to refuse consent to) any assignment of this Lease or sublease of any portion of the Premises if: (a) at the time of either Tenant’s notice of the proposed assignment or sublease or the proposed commencement date thereof, there shall exist any uncured Event of Default of Tenant or matter which would become an Event of Default of Tenant with the giving of notice or the passage of time or both unless cured; (b) the proposed assignee or sublessee is (1) an entity with which Landlord is already in negotiation as evidenced by the issuance of a written proposal, (2) an entity which is already an occupant of the Shopping Center unless Landlord is unable to provide the amount of space required by such occupant, (3) a governmental agency, (4) incompatible with the character of occupancy of the Shopping Center, (5) an entity or related to an entity with whom Landlord or any affiliate of Landlord has had adverse dealings; (c) the assignment or subletting would involve a change in use from that expressly permitted under this Lease; (d) Landlord reasonably disapproves of the proposed assignee or subtenant’s reputation or creditworthiness; (e) Landlord reasonably determines that the proposed assignee may be unable to perform all of Tenant’s obligations under this Lease or the proposed subtenant may be unable to perform all of its obligations under the proposed sublease; or (f) the assignment or subletting would subject the Premises to a use which would: (1) involve increased personnel or wear upon the Shopping Center; (2) violate any exclusive right granted to another tenant of the Shopping Center or with the terms of any easement, covenant, condition or restriction, or other agreement affecting the Property; (3) require any addition to or modification of the Premises or the Shopping Center in order to comply with building code or other governmental requirements; or (4) involve a violation of any other provision of this Lease. Except as otherwise specified herein to be subject to a “reasonable” standard, Landlord shall have the absolute right to refuse consent to any of the aforementioned transactions and for purposes of any statutory or other requirement of reasonableness on the part of Landlord such refusal shall be deemed to be reasonable.

10.7. Upon any request to assign or sublet, Tenant will pay to Landlord an amount equal to \$1,500.00, plus attorneys’ fees incurred by Landlord in investigating and considering any proposed or purported assignment or pledge of this Lease or sublease of any of the Premises, regardless of whether Landlord shall consent to, refuse consent, or determine that Landlord’s consent is not required for, such assignment, pledge or sublease. Any purported assignment, mortgage, transfer of this Lease or subletting which does not comply with the provisions of this Article 10 shall be void. Tenant hereby waives any suretyship defenses it may now or hereafter have to an action brought by Landlord under any provisions of applicable law.

10.8. Notwithstanding anything contained herein to the contrary and without limiting the generality of Section 10.6 above, Tenant shall not: (a) sublet all or part of the Premises or assign this Lease on any basis such that the rental or other amounts to be paid by the subtenant or assignee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the subtenant or assignee; (b) sublet all or part of the Premises or assign this Lease to any person or entity in which, under Section 856(d)(2)(B) of the Internal Revenue Code of 1986, as amended (the “Code”), the Company or any

affiliate of the Company owns, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d) (5) of the Code), a ten percent (10%) or greater interest; or (c) sublet all or part of the Premises or assign this Lease in any other manner or otherwise derive any income which could cause any portion of the amounts received by Landlord pursuant hereto or any sublease to fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c) (2) of the Code. The requirements of this Section 10.8 shall likewise apply to any further subleasing by any subtenant. All references herein to Section 856 of the Code also shall refer to any amendments thereof or successor provisions thereto.

## 11. INDEMNIFICATION.

Tenant shall protect, defend, indemnify and hold the Landlord Entities harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys’ fees) incurred by reason of (a) any damage to any property (including but not limited to property of any Landlord Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises or the Shopping Center to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant, its agents, servants, employees, invitees, or visitors to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work or thing whatsoever done by Tenant in or about the Premises or from transactions of Tenant concerning the Premises; (c) Tenant’s failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to this Lease. The provisions of this Article 11 shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination. As between Landlord and Tenant, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant’s immunity under Washington’s Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, except to the extent of Landlord’s gross negligence or willful misconduct.

## 12. INSURANCE.

12.1. Tenant shall keep in force throughout the Term: (a) a Commercial General Liability insurance policy or policies on an occurrence basis to protect the Landlord Entities against any liability to the public or to any invitee of Tenant or a Landlord Entity incidental to the use of or resulting from any accident occurring in or upon the Premises with a limit of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 in the annual aggregate, or such larger amount as Landlord may reasonably require from time to time, covering bodily injury and property damage liability and \$1,000,000 products/completed operations aggregate; (b) Comprehensive Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 Combined Single Limit per accident; (c) Worker’s Compensation Insurance with limits as required by statute; (d) Employers Liability with limits of \$500,000 each accident, \$500,000 disease policy limit, \$500,000 disease—each employee; (e) All Risk or Special Form coverage protecting Tenant against loss of or damage to Tenant’s alterations, additions, improvements, carpeting, floor coverings, panelings, decorations, fixtures, inventory, plate glass and other business personal property situated in or about the Premises to the full replacement value of the property so insured; (f) Business Interruption Insurance with limit of liability representing loss of at least twelve (12) months of income; and (g) Minimum excess/umbrella policy on an occurrence basis of \$1,000,000. Maximum allowable deductibles will be \$10,000 for liability insurance and \$25,000 for property insurance unless otherwise approved in writing by Landlord. Tenant’s failure to comply with the foregoing requirements relating to insurance shall constitute a default under this Lease. Landlord’s failure to demand

certificates of insurance prior to Tenant's occupancy of the Premises or at any other time shall not release Tenant from its duty to comply with this paragraph and shall not constitute a waiver of any rights or remedies of Landlord. In addition to any other remedies under this Lease, upon such failure by Tenant, Landlord may, but is not obligated to, obtain such insurance on behalf of the parties hereto, whereupon Tenant shall pay to Landlord upon demand as Additional Rent the premium cost thereof plus interest thereon at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law from the date of payment by Landlord until repaid by Tenant. Insurance maintained by Tenant shall be primary and non-contributing with any insurance maintained by Landlord. Through its membership in a self-insured municipal risk pool (Washington Cities Insurance Authority, herein referred to as "WCIA"), the City of Des Moines satisfies all of the above listed insurance requirements, provided that (i) upon Landlord's request, Tenant shall furnish to Landlord documentary evidence of such membership, (ii) Tenant shall indemnify, defend and hold harmless Landlord and any other person that Tenant may be required hereunder to name as an additional insured against and from any and all losses or liabilities as to which this Article 12 otherwise requires Tenant to carry insurance, and (iii) Tenant, in addition to the waivers stated in Article 13, waives any right it may have against Landlord and Landlord's employees, agents and contractors on account of any loss or damage occasioned to Tenant or its property or the Premises or the contents thereof arising from any damage to person or property as to which Tenant self-insures. If Tenant at any time during the Term elects to terminate, or is no longer qualified to participate in, the WCIA, Tenant shall give at least thirty (30) days' prior written notice thereof to Landlord along with copies of replacement policies of insurance or certificates in accordance with the requirements set forth in this Article 12.

12.2. Each of the aforesaid policies shall (a) be provided at Tenant's expense; (b) name Landlord, the holder of any Superior Interest (as defined in Article 16) and the Shopping Center management company, if any, as additional insureds (General Liability) and loss payee (Property - Special Form); (c) be issued by an insurance company with a minimum Best's rating of "A-VII" during the Term; and (d) provide that said insurance shall not be canceled unless thirty (30) days prior written notice (ten days for nonpayment of premium) shall have been given to Landlord; a certificate of Liability on ACORD Form 25 and a certificate of Property Insurance on ACORD Form 27 and said policy or policies or certificates thereof shall be delivered to Landlord by Tenant prior to the date that Tenant enters or occupies the Premises for any reason and at least ten (10) days prior to each renewal of said insurance. The failure or refusal of Tenant to provide the foregoing policies or certificates as required herein shall not delay the Commencement Date. Landlord shall not be required to tender possession of the Premises to Tenant until the foregoing policies or certificates are delivered to Landlord, and in the event that Landlord is otherwise prepared to tender possession of the Premises to Tenant, then for purposes of the Commencement Date, the Premises shall be deemed to have been delivered to Tenant on such date that Landlord would otherwise have tendered possession of the Premises to Tenant, but for Tenant's failure to deliver the policies or certificates of insurance as and when required herein. So long as Tenant is a member of and obtaining coverage through the WCIA as described in Section 12.1 above, the requirements of this Section 12.2 shall not be applicable to Tenant.

12.3. Whenever Tenant shall undertake any alterations, additions or improvements in, to or about the Premises the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such work, without limitation including liability under any applicable structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such work.

### 13. WAIVER OF SUBROGATION.

Tenant, on behalf of its insurance companies insuring the Premises, its contents, Tenant's other property or other portions of the Shopping Center, waives any right of subrogation which such insurer or insurers may

have against Landlord, Landlord's partners, beneficiaries, directors, officers, agents and employees. Landlord, on behalf of its insurance companies described herein, waives any right of subrogation which such insurer may have against Tenant. Tenant and Landlord shall each secure an appropriate clause in, or an endorsement to such insurance policies, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. If any part of the Premises or the Shopping Center is damaged by fire or other cause for which a party is required to carry insurance pursuant to this Lease ("**Insuring Party**"), the other party shall not be liable to the Insuring Party (and the Insuring Party hereby waives all claims on behalf of itself and shall cause its insurance company to waive all such claims) for any loss, cost or expense arising out of or in connection with such damage. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant or any of the Tenant's employees, agents, contractors, representatives, licensees, subtenants, or assignees, for any damages arising out of or in connection with (a) any act or omission of any other tenant or occupant of the Shopping Center or for losses arising out of or in connection with theft or burglary or other acts or omissions of third parties or (b) fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises or the Shopping Center, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures.

#### 14. SERVICES AND UTILITIES.

Commencing on the Delivery Date, Tenant shall pay for all water, gas, heat, steam, light, power, telephone, sewer, waste disposal, sprinkler system charges and other utilities and services used in, on or from the Premises, together with any taxes, penalties and surcharges or the like pertaining thereto and any maintenance charges for utilities. If any such utilities and services are not separately metered to the Premises, Tenant shall pay such proportion of all charges jointly metered with other premises as determined by Landlord, in its sole reasonable discretion. Any such charges paid by Landlord and assessed against Tenant shall be immediately payable to Landlord on demand and shall be Additional Rent hereunder. Landlord shall in no event be liable for any interruption or failure of utility services on or to the Premises.

#### 15. HOLDING OVER.

Tenant shall pay Landlord for each day Tenant retains possession of the Premises or part thereof after termination of this Lease by lapse of time or otherwise at the rate ("**Holdover Rate**") which shall be 150% of the greater of: (a) the amount of the Annual Rent for the last period prior to the date of such termination plus all rent adjustments under Article 2 and Additional Rent under Article 4; and, (b) the then market rental value of the Premises as determined by Landlord assuming a new lease of the Premises of the then usual duration and other terms, in either case prorated on a daily basis, and also pay all damages sustained by Landlord by reason of such retention. If Landlord gives notice to Tenant of Landlord's election to that effect, such holding over shall constitute renewal of this Lease for a period from month to month at the Holdover Rate, but if the Landlord does not so elect, no such renewal shall result notwithstanding acceptance by Landlord of any sums due hereunder after such termination; and instead, a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. No provision of this Article 15 shall be deemed to waive Landlord's right of reentry or any other right under this Lease or at law.

#### 16. SUBORDINATION.

16.1. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be subject and subordinate at all times to ground or underlying leases and to the lien of any mortgages or deeds of trust now or hereafter placed on, against or affecting the Shopping Center, Landlord's interest or estate in the Shopping Center, or any ground or underlying lease

(collectively, “**Superior Interests**”); provided, however, that if the lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant’s interest in this Lease be superior to any such instrument, then, by notice to Tenant, this Lease shall be deemed superior, whether this Lease was executed before or after said instrument. Notwithstanding the foregoing, Tenant covenants and agrees to execute and deliver upon demand such further instruments evidencing such subordination or superiority of this Lease as may be required by Landlord.

16.2. Tenant shall not, without the prior written consent of the holder of any Superior Interest (each, a “**Holder**”): (i) enter into any agreement amending, modifying or terminating this Lease if the agreements governing the Superior Interest require the prior written consent thereto by the Holder, (ii) prepay any of the rents, Additional Rent or other sums due under this Lease for more than one (1) month in advance of the due date thereof, (iii) voluntarily surrender the Premises or terminate this Lease without cause or shorten the term thereof, except as expressly permitted by the terms of this Lease, or (iv) assign this Lease or sublet the Premises or any part thereof, if the agreements governing the Superior Interest require the prior written consent thereto by the Holder; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without the prior written consent of the Holder, to the extent required, shall not be binding on such Holder.

16.3. Tenant shall promptly notify each Holder of any default by Landlord under this Lease or any other circumstance which would entitle Tenant to cancel or terminate this Lease or abate the rents, Additional Rent or other sums payable thereunder, and agrees that, notwithstanding any provisions of this Lease to the contrary, no notice of cancellation, termination or abatement thereof shall be effective unless the Holder shall have received notice of the default or other circumstance giving rise to such cancellation, termination or abatement and such Holder shall have failed to cure such default or remedy such circumstance (i) within the cure period available to Landlord under this Lease plus thirty (30) days or (ii) within thirty (30) days following the date on which possession of the Shopping Center is obtained by such Holder, if such act or omission is not capable of being remedied without possession of the Shopping Center; provided, however, that if such default is not capable of cure within the relevant thirty (30) day period, then, provided that such Holder has commenced such cure within the relevant thirty (30) day period then such period shall be extended so long as such Holder is thereafter diligently pursuing any action necessary to cure such default or remedy such circumstance, as the case may be.

## 17. REENTRY BY LANDLORD.

Landlord reserves and shall at all reasonable times, upon at least twenty-four (24) hours’ prior notice (except in the case of emergency) have the right to reenter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant under this Lease, to show said Premises to prospective purchasers, mortgagees or tenants, and to alter, improve or repair the Premises and any portion of the Shopping Center, without abatement of rent, and may for that purpose erect, use and maintain scaffolding, pipes, conduits and other necessary structures and open any wall, ceiling or floor in and through the Shopping Center and Premises where reasonably required by the character of the work to be performed, provided access to the Premises shall not be materially impaired, and further provided that the business of Tenant shall not be interfered with unreasonably.

## 18. DEFAULT.

18.1. The following events shall be deemed to be Events of Default under this Lease:

18.1.1 Tenant shall fail to pay when due any sum of money becoming due to be paid to Landlord under this Lease, whether such sum be any installment of the rent reserved by this Lease, any

other amount treated as Additional Rent under this Lease, or any other payment or reimbursement to Landlord required by this Lease, whether or not treated as Additional Rent under this Lease, and such failure shall continue for a period of five (5) days after written notice that such payment was not made when due; provided that if any such notice shall be given, then for the twelve (12) month period commencing with the date of such notice, the failure to pay within five (5) days after the date due any additional sum of money becoming due to be paid to Landlord under this Lease during such period shall be an Event of Default, without notice.

18.1.2 Tenant shall fail to comply with any term, provision or covenant of this Lease which is not provided for in another Section of this Article 18 and shall not cure such failure within twenty (20) days after written notice of such failure to Tenant.

18.1.3 Tenant shall abandon or vacate any substantial portion of the Premises or cease continuously operating its business therein.

18.1.4 Tenant shall fail to vacate the Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only.

18.1.5 Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof.

18.1.6 A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within thirty (30) days from the date of entry thereof.

## 19. REMEDIES.

19.1. Except as otherwise provided in Article 20, upon the occurrence of any of the Events of Default described or referred to in Article 18, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, concurrently or consecutively and not alternatively:

19.1.1 Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease.

19.1.2 Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event and to repossess Landlord of the Premises as of Landlord's former estate and to expel or remove Tenant and any others who may be occupying or be within the Premises and to remove Tenant's signs and other evidence of tenancy and all other property of Tenant therefrom without being deemed in any manner guilty of

trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom, Tenant waiving any right to claim damages for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord under this Lease or by operation of law.

19.1.3 Upon any termination of this Lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including any amounts treated as Additional Rent under this Lease, and other sums due and payable by Tenant on the date of termination, plus as liquidated damages and not as a penalty, an amount equal to the sum of: (a) an amount equal to the then present value of the rent reserved in this Lease for the residue of the stated Term of this Lease including any amounts treated as Additional Rent under this Lease and all other sums provided in this Lease to be paid by Tenant, minus an amount equal to the then present value of the fair rental value of the Premises for such residue; (b) the value of the time and expense necessary to obtain a replacement tenant or tenants, and the estimated expenses described in Section 19.1.4 relating to recovery of the Premises, preparation for reletting and for reletting itself; and (c) the cost of performing any other covenants which would have otherwise been performed by Tenant.

19.1.4 Upon any termination of Tenant's right to possession only without termination of the Lease:

19.1.4.1 Neither such termination of Tenant's right to possession nor Landlord's taking and holding possession thereof as provided in Section 19.1.2 shall terminate the Lease or release Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as Additional Rent, under this Lease for the full Term, and if Landlord so elects Tenant shall pay forthwith to Landlord the sum equal to the entire amount of the rent, including any amounts treated as Additional Rent under this Lease, for the remainder of the Term plus any other sums provided in this Lease to be paid by Tenant for the remainder of the Term.

19.1.4.2 Landlord may, but need not, relet the Premises or any part thereof for such rent and upon such terms as Landlord, in its sole reasonable discretion, shall determine (including the right to relet the Premises for a greater or lesser term than that remaining under this Lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use made of the Premises). In connection with or in preparation for any reletting, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall, upon demand, pay the cost thereof, together with Landlord's expenses of reletting, including, without limitation, any commission incurred by Landlord. If Landlord decides to relet the Premises or a duty to relet is imposed upon Landlord by law, Landlord and Tenant agree that nevertheless Landlord shall at most be required to use only the same efforts Landlord then uses to lease premises in the Shopping Center generally and that in any case that Landlord shall not be required to give any preference or priority to the showing or leasing of the Premises over any other space that Landlord may be leasing or have available and may place a suitable prospective tenant in any such other space regardless of when such other space becomes available. Landlord shall not be required to observe any instruction given by Tenant about any reletting or accept any tenant offered by Tenant unless such offered tenant has a creditworthiness acceptable to Landlord and leases the entire Premises upon terms and conditions including a rate of rent (after giving effect to all expenditures by Landlord for tenant improvements, broker's commissions and other leasing costs) all no less favorable to Landlord than as called for in this Lease, nor shall Landlord be required to make or permit any assignment or

sublease for more than the current term or which Landlord would not be required to permit under the provisions of Article 10.

19.1.4.3 Until such time as Landlord shall elect to terminate the Lease and shall thereupon be entitled to recover the amounts specified in such case in Section 19.1.3, Tenant shall pay to Landlord upon demand the full amount of all rent, including any amounts treated as Additional Rent under this Lease and other sums reserved in this Lease for the remaining Term, together with the costs of repairs, alterations, additions, redecorating and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including attorney's fees and broker's commissions), as the same shall then be due or become due from time to time, less only such consideration as Landlord may have received from any reletting of the Premises; and Tenant agrees that Landlord may file suits from time to time to recover any sums falling due under this Article 19 as they become due. Any proceeds of reletting by Landlord in excess of the amount then owed by Tenant to Landlord from time to time shall be credited against Tenant's future obligations under this Lease but shall not otherwise be refunded to Tenant or inure to Tenant's benefit.

19.2. Landlord may, at Landlord's option, enter into and upon the Premises with, or if Tenant shall have vacated the Premises without, five (5) days' notice, if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible under this Lease and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom.

19.3. Tenant expressly waives any right to trial by jury.

19.4. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease.

19.5. No act or thing done by Landlord or its agents during the Term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid, unless in writing signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants contained in this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord in enforcing one or more of the remedies provided in this Lease upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to enforce any such remedies with respect to such default or any subsequent default.

19.6. Any and all property which may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law, to which Tenant is or may be entitled, may be handled, removed and/or stored, as the case may be, by or at the direction of Landlord but at the risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not retaken by Tenant from storage within thirty (30) days after removal from

the Premises shall, at Landlord's option, be deemed conveyed by Tenant to Landlord under this Lease as by a bill of sale without further payment or credit by Landlord to Tenant.

## 20. TENANT'S BANKRUPTCY OR INSOLVENCY.

20.1. If at any time and for so long as Tenant shall be subjected to the provisions of the United States Bankruptcy Code or other law of the United States or any state thereof for the protection of debtors as in effect at such time (each a "**Debtor's Law**"):

20.1.1 Tenant, Tenant as debtor-in-possession, and any trustee or receiver of Tenant's assets (each a "**Tenant's Representative**") shall have no greater right to assume or assign this Lease or any interest in this Lease, or to sublease any of the Premises than accorded to Tenant in Article 10, except to the extent Landlord shall be required to permit such assumption, assignment or sublease by the provisions of such Debtor's Law. Without limitation of the generality of the foregoing, any right of any Tenant's Representative to assume or assign this Lease or to sublease any of the Premises shall be subject to the conditions that:

20.1.1.1 Such Debtor's Law shall provide to Tenant's Representative a right of assumption of this Lease that Tenant's Representative shall have timely exercised and Tenant's Representative shall have fully cured any default of Tenant under this Lease.

20.1.1.2 Tenant's Representative or the proposed assignee, as the case shall be, shall have deposited with Landlord as security for the timely payment of rent an amount equal to the larger of: (a) three months' rent and other monetary charges accruing under this Lease; and (b) the amount of any Security Deposit (if any) described in this Lease; and shall have provided Landlord with adequate other assurance of the future performance of the obligations of the Tenant under this Lease. Without limitation, such assurances shall include, at least, in the case of assumption of this Lease, demonstration to the satisfaction of the Landlord that Tenant's Representative has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that Tenant's Representative will have sufficient funds to fulfill the obligations of Tenant under this Lease; and, in the case of assignment, submission of current financial statements of the proposed assignee, audited by an independent certified public accountant reasonably acceptable to Landlord and showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of all of the Tenant's obligations under this Lease.

20.1.1.3 The assumption or any contemplated assignment of this Lease or subleasing any part of the Premises, as shall be the case, will not breach any provision in any other lease, mortgage, financing agreement or other agreement by which Landlord is bound.

20.1.1.4 Landlord shall have, or would have had absent the Debtor's Law, no right under Article 10 to refuse consent to the proposed assignment or sublease by reason of the identity or nature of the proposed assignee or sublessee or the proposed use of the Premises concerned.

## 21. QUIET ENJOYMENT.

Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, while paying the rental and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Landlord subject to the terms and provisions of this Lease. Landlord shall not be liable for any

interference or disturbance by other tenants or third persons, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance.

## 22. DAMAGE BY FIRE, ETC.

22.1. In the event that the Premises are partially or totally destroyed by fire or any other peril covered by insurance maintained by Landlord, Landlord shall, within a period of one hundred eighty (180) days after the occurrence of such destruction, but only to the extent that proceeds of such insurance are available to Landlord for such purpose, commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect. In the event insurance proceeds are not sufficient to pay the cost of such reconstruction, or if the damage or destruction is due to the acts or omissions of Tenant, its agents, employees or contractors, or if Landlord is restricted by any governmental authority or any mortgagee of the Shopping Center, Landlord may elect to either terminate this Lease or pay the cost of such reconstruction. Such reconstruction shall be only to the extent necessary to restore the "Landlord's Work" in the Premises as described in Exhibit B, and Tenant shall be obligated, at Tenant's sole cost and expense, for the restoration and repair of all of the items specified as "Tenant's Work" in Exhibit B in the event of such reconstruction, as well as Tenant's other leasehold improvements, trade fixtures and other personal property on the Premises.

22.2. In the event that the Premises are partially or totally destroyed as a result of any casualty or peril not covered by Landlord's insurance, Landlord may within a period of one hundred eighty (180) days after the occurrence of such destruction (a) commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or (b) notify Tenant in writing that it elects not to so reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of service of such notice, unless Tenant is unable to continue the operation of its business after the occurrence of such destruction, in which event this Lease shall cease and terminate as of the date of such destruction. In the event of any reconstruction of the Premises by Landlord following destruction as a result of any casualty or peril not covered by Landlord's insurance, such reconstruction shall be only to the extent necessary to restore the "Landlord's Work" in the Premises as described in Exhibit B and Tenant shall be obligated for the restoration of all of the items specified as "Tenant's Work" in Exhibit B in the event of such reconstruction, as well as Tenant's other leasehold improvements, trade fixtures and other personal property on the Premises.

22.3. Notwithstanding anything to the contrary herein contained, in the event of a total destruction of the Shopping Center or a partial destruction of the Shopping Center, the cost of restoration of which would exceed one-quarter ( $\frac{1}{4}$ ) of the then replacement value of the Shopping Center, by any cause whatsoever, whether or not insured against and whether or not the Premises are partially or totally destroyed, Landlord may, within a period of one hundred eighty (180) days after the occurrence of such destruction, notify Tenant in writing that it elects not to so reconstruct or restore the Shopping Center, in which event this Lease shall cease and terminate as of the date of such destruction.

22.4. Notwithstanding the foregoing, in the event that the Premises are partially or totally destroyed during the last two (2) years of the Term of this Lease, Landlord shall have the option to terminate this Lease by giving written notice to Tenant of the exercise of such option within thirty (30) days after such destruction, in which event this Lease shall cease and terminate as of the date of service of such notice. For the purposes of this Article 22, partial destruction shall be deemed to be a destruction to an extent of at least one-quarter ( $\frac{1}{4}$ ) of the full replacement cost of the Premises as of the date of destruction.

22.5. In the event of any termination of this Lease in accordance with this Article 22, the parties shall be released thereby without further obligation to the other party coincidental with the surrender of

possession of the Premises to Landlord except for items which have theretofore accrued and are then unpaid or unperformed.

22.6. In the event of reconstruction and restoration as herein provided, and provided Tenant has maintained the business interruption or loss of income insurance required pursuant to Article 12, to the extent that the proceeds of such business interruption or loss of income insurance may be exhausted during the period of reconstruction and restoration, Annual Rent payable hereunder shall be thereafter abated proportionately with the degree to which Tenant's use of the Premises is impaired during the remainder of the period of reconstruction and restoration; provided, however, the amount of Annual Rent abated pursuant to this Section 22.6 shall in no event exceed the amount of loss of rental insurance proceeds actually received by Landlord. Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay Percentage Rent, Additional Rent and all other charges shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such destruction, reconstruction or restoration. Tenant hereby waives any statutory rights of termination, which may arise by reason of any partial or total destruction of the Premises, which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

### 23. EMINENT DOMAIN.

If all or any substantial part of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, or conveyance in lieu of such appropriation, either party to this Lease shall have the right, at its option, of giving the other, at any time within thirty (30) days after such taking, notice terminating this Lease, except that Tenant may only terminate this Lease by reason of taking or appropriation, if such taking or appropriation shall be so substantial as to materially interfere with Tenant's use and occupancy of the Premises. If neither party to this Lease shall so elect to terminate this Lease, the rental thereafter to be paid shall be adjusted on a fair and equitable basis under the circumstances. In addition to the rights of Landlord above, if any substantial part of the Shopping Center shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and regardless of whether the Premises or any part thereof are so taken or appropriated, Landlord shall have the right, at its sole option, to terminate this Lease. Landlord shall be entitled to any and all income, rent, award, or any interest whatsoever in or upon any such sum, which may be paid or made in connection with any such public or quasi-public use or purpose, and Tenant hereby assigns to Landlord any interest it may have in or claim to all or any part of such sums, other than any separate award which may be made with respect to Tenant's trade fixtures and moving expenses; Tenant shall make no claim for the value of any unexpired Term. The rights contained in this Article 23 shall be Tenant's sole and exclusive remedy in the event of a taking or condemnation. Landlord and Tenant each hereby waive any provisions of applicable law contrary to the terms and conditions of this Article 23.

### 24. SALE BY LANDLORD.

In event of a sale or conveyance by Landlord of the Shopping Center, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, contained in this Lease in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. Except as set forth in this Article 24, this Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. If any security has been given by Tenant to secure the faithful performance of any of the covenants of this Lease, Landlord may transfer or deliver said security, as such, to Landlord's successor in interest and thereupon Landlord shall be discharged from any further liability with regard to said security.

## 25. ESTOPPEL CERTIFICATES.

Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord or mortgagee or prospective mortgagee a sworn statement (“**Estoppel Certificate**”) certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications to this Lease, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant’s statement; and (e) such other matters as may be requested by Landlord. Landlord and Tenant intend that any Estoppel Certificate pursuant to this Article 25 may be relied upon by any mortgagee, beneficiary or purchaser and Tenant shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in such Estoppel Certificate. Tenant irrevocably agrees that if Tenant fails to execute and deliver the Estoppel Certificate within such ten (10) day period, Tenant shall be deemed to be in default under this Lease, and, in addition to any rights and remedies provided to Landlord under this Lease, and at law and equity, Landlord or Landlord’s beneficiary or agent may execute and deliver such certificate on Tenant’s behalf, and that such certificate shall be fully binding on Tenant. In addition, in the event Tenant does not comply with the requirements of this Article 25 and provide the Estoppel Certificate as and when required herein, for each day of delay, commencing upon the expiration of the foregoing ten (10) day period, and continuing until Tenant delivers the Estoppel Certificate as required under this Article 25, in addition to, and not in lieu of, Landlord’s other rights and remedies as herein provided, Tenant shall pay to Landlord an amount equal to \$500.00 per day of delay. Acceptance of such charges shall not constitute a waiver of Tenant’s default with respect to such nonperformance by Tenant nor prevent Landlord from exercising all other rights and remedies available to Landlord.

## 26. SURRENDER OF PREMISES.

26.1. Tenant shall, at least thirty (30) days before the last day of the Term, arrange to meet Landlord for a joint inspection of the Premises. In the event of Tenant’s failure to arrange such joint inspection to be held prior to vacating the Premises, Landlord’s inspection at or after Tenant’s vacating the Premises shall be conclusively deemed correct for purposes of determining Tenant’s responsibility for repairs and restoration.

26.2. At the end of the Term or any renewal of the Term or other sooner termination of this Lease, Tenant will peaceably deliver up to Landlord possession of the Premises, together with all improvements or additions upon or belonging to the same, by whomsoever made, in the same conditions received or first installed, broom clean and free of all debris, excepting only ordinary wear and tear. Tenant may, and at Landlord’s request shall, at Tenant’s sole cost, remove upon termination of this Lease, any and all furniture, furnishings, equipment, movable partitions of less than full height from floor to ceiling, trade fixtures, as well as all data/telecommunications cabling and wiring installed by or on behalf of Tenant, whether inside walls, under any raised floor or above any ceiling, and other property installed by Tenant, title to which shall not be in or pass automatically to Landlord upon such termination, repairing all damage caused by such removal. Property not so removed shall, unless requested to be removed, be deemed abandoned by the Tenant and title to the same shall thereupon pass to Landlord under this Lease as by a bill of sale. All other alterations, additions and improvements in, on or to the Premises shall be dealt with and disposed of as provided in Article 7 hereof.

26.3. All obligations of Tenant under this Lease not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term. In the event that

Tenant's failure to perform prevents Landlord from releasing the Premises, Tenant shall continue to pay rent pursuant to the provisions of Article 15 until such performance is complete. Upon the expiration or earlier termination of the Term, Tenant shall pay to Landlord the amount, as estimated by Landlord, necessary to repair and restore the Premises as provided in this Lease and/or to discharge Tenant's obligation for unpaid amounts due or to become due to Landlord. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant, with Tenant being liable for any additional costs upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied. Any otherwise unused Security Deposit shall be credited against the amount payable by Tenant under this Lease.

## 27. NOTICES.

Any notice or document required or permitted to be delivered under this Lease shall be addressed to the intended recipient, shall be transmitted personally, by fully prepaid registered or certified United States Mail return receipt requested, or by reputable independent contract delivery service furnishing a written record of attempted or actual delivery, and shall be deemed to be delivered when tendered for delivery to the addressee at its address set forth on the Reference pages, or at such other address as it has then last specified by written notice delivered in accordance with this Article 27, or if to Tenant at its aforesaid address.

## 28. TAXES PAYABLE BY TENANT.

In addition to rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse to Landlord, upon demand, any and all taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of the parties to this Lease: (a) upon, allocable to, or measured by or on the gross or net rent payable under this Lease, including without limitation any gross income tax or excise tax levied by the State, any political subdivision thereof, or the Federal Government with respect to the receipt of such rent; (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises or any portion thereof, including any sales, use or service tax imposed as a result thereof; (c) upon or measured by the Tenant's gross receipts or payroll or the value of Tenant's equipment, furniture, fixtures and other personal property of Tenant or leasehold improvements, alterations or additions located in the Premises; or (d) upon this transaction or any document to which Tenant is a party creating or transferring any interest of Tenant in this Lease or the Premises. In addition to the foregoing, Tenant agrees to pay, before delinquency, any and all taxes levied or assessed against Tenant and which become payable during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property of Tenant located in the Premises. All payments made pursuant to this Article 28 are intended to constitute Additional Rent hereunder.

## 29. RELOCATION OF TENANT.

Landlord, at its sole expense, on at least thirty (30) days' prior written notice, may require Tenant to move from the Premises to other space of comparable size and décor in the Shopping Center. In the event of any such relocation, Landlord will pay all expenses of improving the new premises so that they will be substantially similar to the Premises from which Tenant is moving, and Landlord will also pay Tenant's reasonable out-of-pocket expenses associated with moving Tenant's trade fixtures, inventory and equipment to the new premises. In such event this Lease and each and all of the terms, covenants and conditions hereof shall remain in full force and effect and thereupon be deemed applicable to such new premises except that a revised Reference Page (containing appropriately adjusted rental, square footage, proportionate share and others provisions) and a revised Exhibit A shall become part of this Lease and shall reflect the location of the new premises. Landlord shall use reasonable efforts to minimize any period when

the Premises shall be closed to the public as a result of relocation. Annual Rent shall abate from the date the Premises is closed until the date the new premises is open for business. Tenant agrees to use reasonable efforts to open for business in the new premises as quickly as is reasonably possible under the circumstances. Except as provided above, Landlord shall not be liable or responsible in any way for damages or injuries suffered by Tenant pursuant to relocation in accordance with this provision including, but not limited to, loss of good will, business or profits.

30. [INTENTIONALLY OMITTED].

31. DEFINED TERMS AND HEADINGS.

The Article headings shown in this Lease are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Lease. Any indemnification or insurance of Landlord shall apply to and inure to the benefit of all the following “**Landlord Entities**”, being Landlord, Landlord’s investment manager, and the trustees, boards of directors, officers, general partners, beneficiaries, stockholders, employees and agents of each of them and any Holder of a Superior Interest. Any option granted to Landlord shall also include or be exercisable by Landlord’s trustee, beneficiary, agents and employees, as the case may be. In any case where this Lease is signed by more than one person, the obligations under this Lease shall be joint and several. The terms “Tenant” and “Landlord” or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and each of their respective successors, executors, administrators and permitted assigns, according to the context hereof. Tenant hereby accepts and agrees to be bound by the Premises Area specified on the Reference pages.

32. TENANT’S AUTHORITY/REPRESENTATIONS AND COVENANTS.

32.1. If Tenant signs as a corporation, partnership, trust or other legal entity each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant has been and is qualified to do business in the state in which the Premises is located, that the entity has full right and authority to enter into this Lease, and that all persons signing on behalf of the entity were authorized to do so by appropriate actions. Tenant agrees to deliver to Landlord, simultaneously with the delivery of this Lease, a corporate resolution, proof of due authorization by partners, opinion of counsel or other appropriate documentation reasonably acceptable to Landlord evidencing the due authorization of Tenant to enter into this Lease. Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury (“**OFAC**”); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: “List of Specially Designated Nationals and Blocked Persons.” If the foregoing representation is untrue at any time during the Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

32.2. Tenant acknowledges that Gerrity Retail Fund 2 Holdings 1, LLC and Gerrity Retail Fund 2, Inc. (each, the “**Company**”), affiliates of Landlord, may elect to be taxed as a real estate investment trust (a “**REIT**”) under the Code. Tenant shall not take or omit to take any action, or permit any status to exist at the Premises, which would adversely affect the Company’s status as a REIT. Tenant hereby agrees to modifications of this Lease required to retain or clarify the Company’s status as a REIT, provided such modifications: (a) are reasonable, (b) do not adversely affect in a material manner Tenant’s use of the

Premises as herein permitted, and (c) do not increase the Annual Rent, Additional Rent and other sums to be paid by Tenant or Tenant's other obligations pursuant to this Lease, or reduce any rights of Tenant under this Lease, then Landlord may submit to Tenant an amendment to this Lease incorporating such required modifications, and Tenant shall execute, acknowledge and deliver such amendment to Landlord within ten (10) days after Tenant's receipt thereof.

### 33. RIGHT OF LANDLORD TO PERFORM FOR TENANT.

If Tenant fails to make any payment required hereunder (other than Annual Rent) or fails to perform any other of its obligations hereunder, Landlord may, but shall not be obliged to, and without waiving any default of Tenant or releasing Tenant from any obligations to Landlord hereunder, make any such payment or perform any other such obligation on Tenant's behalf. All sums so paid by Landlord and all necessary incidental costs in connection with the performance by Landlord of an obligation of Tenant (together with interest thereon from the date of such payment by Landlord until paid at the Interest Rate (as defined in Section 4.1.1) shall be payable by Tenant to Landlord upon demand, and Tenant's failure to make such payment upon demand shall entitle Landlord to the same rights and remedies provided Landlord in the event of non-payment of rent.

### 34. FORCE MAJEURE.

If performance by a party of any portion of this Lease is made impossible by any prevention, delay or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor or materials or reasonable substitutes for those items; government actions; civil commotions; fire or other casualty; or other causes beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay or stoppage is excused; provided, however, that in no event shall Tenant's obligation timely to pay Annual Rent as set forth in Article 2, Additional Rent as set forth in Article 4, or any other expenses, costs or charges payable by Tenant under this Lease be excused by this Article 34.

### 35. COMMISSIONS.

Each of the parties represents and warrants to the other that it has not dealt with any broker, finder or other representative in connection with this Lease, except as described on the Reference pages.

### 36. TIME AND APPLICABLE LAW.

Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by the laws of the state in which the Shopping Center is located. Tenant consents to personal jurisdiction and venue in the state and judicial district in which the Shopping Center is located.

### 37. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Article 10, the terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties to this Lease.

### 38. ENTIRE AGREEMENT.

This Lease, together with its exhibits, contains all agreements of the parties to this Lease and supersedes any previous negotiations. There have been no representations made by Landlord or understandings made

between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease.

39. EXAMINATION NOT OPTION.

Submission of this Lease shall not be deemed to be a reservation of the Premises. Landlord shall not be bound by this Lease until it has received a copy of this Lease duly executed by Tenant and has delivered to Tenant a copy of this Lease duly executed by Landlord, and until such delivery Landlord reserves the right to exhibit and lease the Premises to other prospective tenants.

40. RECORDATION.

Tenant shall not record or register this Lease or a short form memorandum hereof without the prior written consent of Landlord, and then shall pay all charges and taxes incident to such recording or registration.

41. [INTENTIONALLY OMITTED].

42. ATTORNEY FEES.

In the event it becomes necessary for either party hereto to file suit to enforce this Lease or any provision contained herein, the prevailing party in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, the costs of litigation, which shall include reasonable attorneys' fees, incurred in connection with such suit. The prevailing party is that party which receives substantially the relief sought in the litigation.

43. LIMITATION OF LANDLORD'S LIABILITY.

Redress for any claim against Landlord under this Lease shall be limited to and enforceable only against and to the extent of Landlord's interest in the Shopping Center. The obligations of Landlord under this Lease are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of its trustees or board of directors and officers, as the case may be, its investment manager, the general partners thereof, or any beneficiaries, stockholders, employees, or agents of Landlord or the investment manager. Any claim, defense or other right of Tenant arising in connection with this Lease shall be barred unless Tenant files an action or interposes a defense based thereon within one hundred eighty (180) days after the date of the alleged event on which Tenant is basing its claim, defense or right. Notwithstanding any other provision of this Lease, Landlord shall not be liable for any consequential damages for interruption or loss of business, income or profits, or claims of constructive eviction.

44. SEVERABILITY.

Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

*[SIGNATURES FOLLOW ON NEXT PAGE]*

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the Lease Reference Date.

LANDLORD:

TENANT:

REDONDO SQUARE GRF2, LLC,  
a Delaware limited liability company

THE CITY OF DES MOINES,  
a Municipal corporation

By: Gerrity Retail Fund 2 Holdings I, LLC,  
a Delaware limited liability company,  
its Manager

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

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

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

By: Gerrity Retail Fund 2, Inc.,  
a Delaware corporation,  
its Manager

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

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

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

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

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

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

*[SIGNATURES SHALL BE NOTARIZED]*

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

I certify that I know or have satisfactory evidence that **(Name of Person)** is the person who appeared before me, and said person acknowledged that HE/SHE signed this instrument, on oath stated that HE/SHE was authorized to execute the instrument and acknowledged it as the **(type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed)** to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated \_\_\_\_\_.

(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Name: \_\_\_\_\_  
NOTARY PUBLIC, State of \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

I certify that I know or have satisfactory evidence that **(Name of Person)** is the person who appeared before me, and said person acknowledged that HE/SHE signed this instrument, on oath stated that HE/SHE was authorized to execute the instrument and acknowledged it as the **(type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed)** to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated \_\_\_\_\_.

(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Name: \_\_\_\_\_  
NOTARY PUBLIC, State of \_\_\_\_\_  
My appointment expires \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

COUNTY OF SAN DIEGO } SS.

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

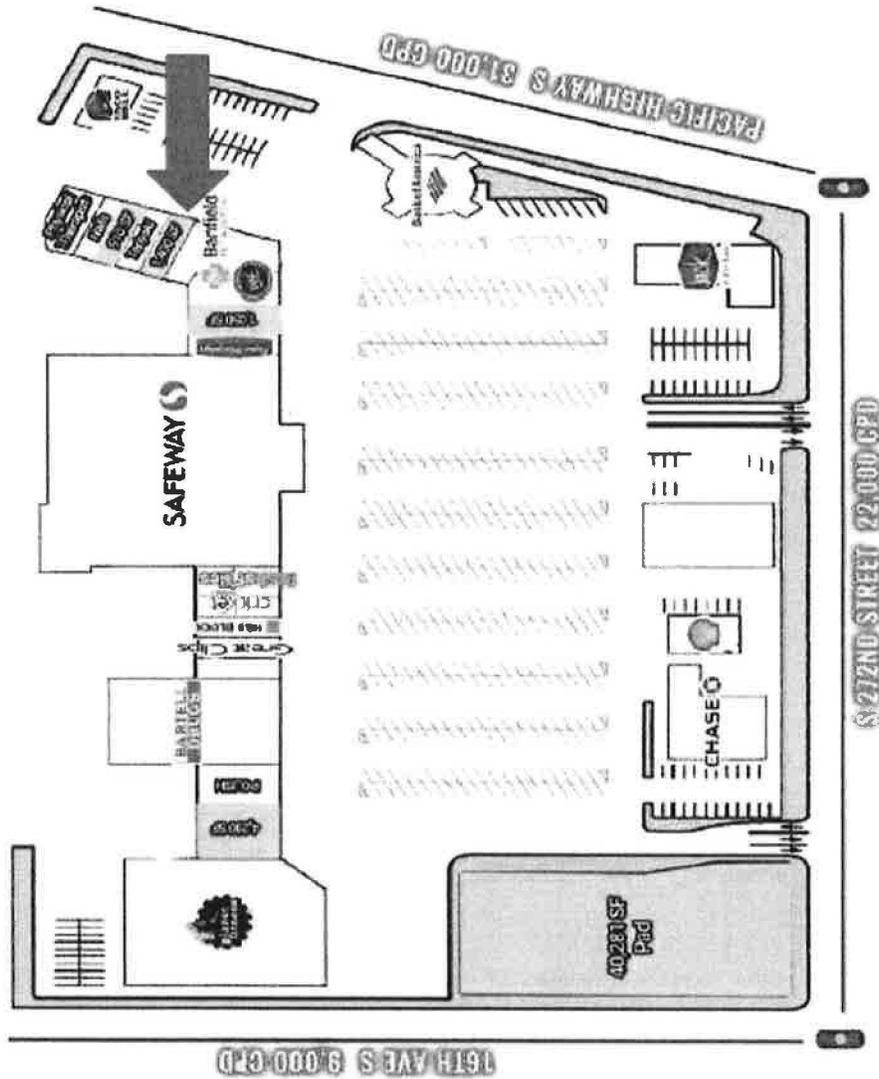
WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Seal)

### EXHIBIT A SHOPPING CENTER AND PREMISES

Exhibit A is intended only to show the general layout of the Shopping Center and the Premises as of the Lease Reference Date. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Shopping Center and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate. References to tenants heron are not and shall not be deemed representations of existing or future tenancies.



A

## EXHIBIT A-1

## LEGAL DESCRIPTION OF SHOPPING CENTER

## PARCEL A:

LOT A, CITY OF DES MOINES LOT LINE ADJUSTMENT LUA NO. LLA 99-034 AS RECORDED UNDER KING COUNTY RECORDING NUMBER 19990706900018, BEING A PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WEST OF STATE ROAD NO. 1.

## PARCEL B:

REVISED PARCEL B OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L93L0143, RECORDED UNDER KING COUNTY RECORDING NUMBER 9410119002, BEING A REVISION OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. S92L0107, RECORDED UNDER KING COUNTY RECORDING NUMBER 9208042231 OUT OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

## PARCEL C:

REVISED PARCEL C OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L93L0143, RECORDED UNDER KING COUNTY RECORDING NUMBER 9410119002, BEING A REVISION OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. S92L0107, RECORDED UNDER KING COUNTY RECORDING NUMBER 9208042231 OUT OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

## PARCEL D:

REVISED PARCEL D OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L93L0143, RECORDED UNDER KING COUNTY RECORDING NUMBER 9410119002, BEING A REVISION OF KING COUNTY BOUNDARY LINE ADJUSTMENT NO. S92L0107, RECORDED UNDER KING COUNTY RECORDING NUMBER 9208042231 OUT OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

## PARCEL E:

LOT E, CITY OF DES MOINES LOT LINE ADJUSTMENT LUA NO. LLA 99-034 AS RECORDED UNDER KING COUNTY RECORDING NUMBER 19990706900018, BEING A PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WEST OF STATE ROAD NO. 1.

EXHIBIT B  
INITIAL ALTERATIONS

I. Landlord's Work

Tenant shall accept the Premises in their "AS IS" condition upon the Delivery Date; provided, however, the HVAC, plumbing and electrical installations, shall be in working condition. Except as specifically set forth in this paragraph, Landlord shall not be obligated to perform any work in, to or upon the Premises. Landlord makes no representation as to the suitability of the Premises for Tenant's use. Tenant shall be responsible for all improvements and governmental requirements necessary for the operation of Tenant's business and to obtain a valid Certificate of Occupancy from the applicable governmental authority.

Storefront Sign Allowance

Landlord agrees to contribute a sum (the "**Storefront Sign Allowance**") not to exceed Ten Thousand Dollars (\$10,000.00), in the aggregate, toward the out-of-pocket cost incurred by Tenant for the design, purchase and installation of Tenant's storefront sign. Upon written request, Landlord shall pay Tenant the Storefront Sign Allowance within sixty (60) days after the Tenant has installed Tenant's sign as part of Tenant's Work under this Exhibit B, opened for business in the Premises and delivered to Landlord the following:

1. Copies of all invoices for the design, purchase and installation of Tenant's storefront sign, which Tenant has paid;
2. All mechanics' lien releases or other lien releases on account of Tenant's Work, including the contractor performing the installation of Tenant's storefront sign, which are notarized, unconditional and in recordable form or in such form as Landlord shall have approved;
3. Copies of all building permits, indicating inspection and approval of the Premises by the issuer of said permits; and
4. Tenant shall sign and deliver to Landlord the Commencement Date Memorandum within ten (10) days after Landlord has completed and provided the Commencement Date Memorandum to Tenant.

Landlord shall pay the Storefront Sign Allowance to Tenant as provided herein, reduced by the amount of all costs of Tenant's Work performed by Landlord or, if Tenant is then in default under this Lease, any sums Landlord deems necessary to cure such default; provided, however, that the Storefront Sign Allowance shall not, in any event, be in excess of the out-of-pocket cost incurred by Tenant for the design, purchase and installation of Tenant's storefront sign. Notwithstanding anything to the contrary contained herein, the Storefront Sign Allowance shall not be payable if Tenant is not current on rent or other payments due and payable under this Lease or if Tenant is in default under this Lease. Landlord shall be entitled to offset the amount of any outstanding amounts and to pay the net amount in accordance with this paragraph. Upon an early termination of this Lease for Tenant's default, Tenant shall reimburse to Landlord, no later than the termination date, the unamortized balance of the Storefront Sign Allowance. Should Tenant fail to request, in writing (along with all the information and documentation required herein), payment of the Storefront Sign

Allowance within one hundred eighty (180) days after its initial opening for business in the Premises, Tenant shall be deemed to have waived its right to the Storefront Sign Allowance and Landlord shall have no obligation to pay Tenant the Storefront Sign Allowance.

## II. Tenant's Work

- (A) Tenant's Work. Tenant agrees to perform or cause to be performed any and all acts necessary or appropriate to completely construct and furnish the Premises to permit the same to be fully utilized for the Permitted Use and in accordance with all of the terms of the Lease ("**Tenant's Work**"), including, but not limited to, the work described below, which shall be completed by Tenant to Landlord's reasonable satisfaction, at Tenant's sole expense. Tenant's Work shall include without limitation all of the following:

**All work necessary for the conduct of Tenant's business in the Premises.**

Notwithstanding the foregoing, all roof penetrations and roof restoration, all work affecting supporting walls, columns and other support elements, the foundation or the fire sprinkler or life safety systems, if any of the same shall be permitted by Landlord, shall be performed at Tenant's expense by such contractor as Landlord may designate. Upon completion of such work, Tenant shall cause said contractor to furnish a letter addressed to Landlord stating that Tenant's Work has been performed and completed in accordance with Tenant's plans and specifications as approved by Landlord and applicable governmental authority and, if applicable, that the same has not affected the bondability of the Shopping Center roof.

## (B) Tenant's Plans and Specifications.

- (1) Within fifteen (15) days following the date of execution of this Lease by both parties, Tenant, at its sole expense, shall prepare and submit to Landlord plans and specifications for all of Tenant's Work. Tenant shall provide Landlord with four (4) sets of such plans and specifications duly sealed and signed by a registered architect licensed in the state in which the Shopping Center is located containing the following information (unless otherwise specifically agreed in writing by Landlord):

- |     |   |            |
|-----|---|------------|
| (a) | Floor Plan  | 1/8" scale |
| (b) | Overall Sections  | 1/8" scale |
| (c) | Storefront and Interior Elevations  | 1/8" scale |
| (d) | Sections of Partition Types   | 1/2" scale |
| (e) | Details of Special Conditions   | 1½" scale  |
| (f) | Door Schedule w/Door & Head Details   | 1½" scale  |
| (g) | Finish Schedule   | 1½" scale  |
| (h) | Sign Drawings and Details   | 1½" scale  |
| (i) | Electrical, Plumbing and Mechanical Plans indicating items not presently existing.  |            |
| (j) | Outline specifications covering all Tenant's Work, including additional plans drawn to suitable scale indicating additional items of construction not specifically mentioned above. |            |
| (k) | Sprinkler plans (if applicable)   |            |
| (l) | Electrical Load calculations and riser diagrams, if other than existing.  |            |
| (m) | HVAC load calculations and air conditioning unit specifications, if other than existing.  |            |

- (n) Number, location and size of all proposed roof openings and penetrations, with complete data on the operating weight and load support plan for all equipment located within the Shopping Center.
- (2) Landlord shall either: (a) evidence its approval of said plans and specifications; or (b) refuse such approval if Landlord shall determine that said plans and specifications are not acceptable to Landlord. If Landlord does not approve said plans and specifications, Landlord shall advise Tenant of those revisions or corrections which Landlord requires and Tenant shall, within ten (10) days thereafter, submit proposed plans and specifications, so revised or corrected as to satisfy Landlord's requirements, to Landlord for its approval. Tenant shall furnish to Landlord any further information reasonably required by Landlord concerning plans and specifications within ten (10) days after Landlord's request therefor. Tenant shall make no changes in such approved plans and specifications without Landlord's prior written consent.
- (3) Tenant, at its sole expense, shall obtain all necessary demolition, building and other permits and approvals from the applicable governmental authorities having jurisdiction, based upon the approved plans and specifications. Tenant, at its sole expense, shall also obtain any necessary permits and approvals from all utility companies for any connections required by Tenant and shall pay any fees relating thereto. Upon issuance of such permits and approvals and payment of fees therefor, Tenant shall supply Landlord with copies of all of the same, together with a complete set of Tenant's plans and specifications, properly stamped and approved by the aforementioned governmental authorities and utility companies, and a complete set of Tenant's "As Built" plans and specifications.
- (4) If the final plans and specifications approved by the relevant governmental authorities are in conflict with this Exhibit B, then any changes to the plans and specifications resulting in such conflicts shall be subject to Landlord's approval. If Landlord does not approve such changes, then either Landlord or Tenant may cancel this Lease by giving notice to such effect to the other party.

(C) Tenant's Construction.

- (1) All Tenant's Work shall be performed and constructed in accordance with plans and specifications fully approved as provided in Section (B) of this Exhibit B and with any other criteria furnished by Landlord.

All construction by Tenant shall comply in every respect with all applicable building, fire and underwriter's codes and shall be completed in a first class, workmanlike manner, using new materials, fixtures and equipment. All Tenant's Work will be performed by contractors selected by Tenant duly licensed in the state in which the Shopping Center is located; provided that they are approved in writing in advance by Landlord, which approval shall not be unreasonably withheld or delayed.

- (2) Tenant shall commence construction of the Premises not later than thirty (30) days after either of the following dates, whichever shall be the later to occur: (a) the date of delivery of possession, or (b) the date on which Landlord approves plans and specifications for the Premises. If Landlord determines that Landlord and Tenant are unable to agree upon plans and specifications, Landlord shall have the option, upon ten (10) days' prior written notice to Tenant, to declare this Lease null and void and of no further force or effect, in which event this Lease shall terminate on the date specified in such notice.

- (3) All Tenant's Work and all disbursements of money, shall be effectuated in accordance with the following procedures and conditions:
- (a) Tenant's contractor and Tenant shall prepare or cause to be prepared a contract wherein the contractor shall agree to complete Tenant's Work in accordance with the approved plans and specifications.
  - (b) Said contract shall be in the form of the current edition of Document A107 of the American Institute of Architects and shall provide, among other things, as follows:
    - (i) That notwithstanding anything contained in the contract documents to the contrary, the contractor will perform the work and furnish the materials required therefore on the sole credit of Tenant; that no lien for labor or materials will be filed or claimed by the contractor against the Premises or the Shopping Center of which the Premises are a part;
    - (ii) That said contractor shall furnish a bond in compliance with the terms of Section 2(C)(7) of this Exhibit B, if required by Landlord.
    - (iii) That said contractor shall furnish Tenant and Landlord with certificates of insurance evidencing (a) insurance against claims under worker's compensation acts and other employee benefits acts, in compliance with statutory limits; (b) insurance against claims for damages because of bodily injury, including death, to said contractor's employees and all others, with limits of \$2,000,000.00 per person and \$2,000,000.00 per occurrence; and damage to property with limits of \$2,000,000.00, if any or all of the foregoing arise out of or result from the contractor's operations under the contract whether such operations (including operation of automobile vehicles) be by the contractor or any subcontractor or anyone directly or indirectly employed by either; and (c) All Risk builders risk casualty and liability insurance in the full amount of the contract sum. All of said certificates of insurance shall name as additional named insured parties Landlord and other parties designated by Landlord, and shall carry an endorsement insuring the following contractual liability, which shall be imposed upon the contractor by the construction contract.

The contractor shall be responsible from the time of its signing the contract or from the time of the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind to person or property resulting from the work, in addition to the liability imposed upon the contractor on account of personal injury (including death) or property damage suffered through the contractor's negligence, which liability is not impaired or otherwise affected hereby. The contractor hereby assumes the obligation to save the Landlord harmless and to protect, defend and indemnify the Landlord from every expense, liability, or payment arising out of or through injury (including death) to any person or persons or damage to property or any person at any place in which work is located arising out of or suffered through any act or omission of the contractor or any subcontractor, or any one either directly or indirectly employed by or

under the supervision of any of them in the prosecution of the work included in this contract;

- (iv) That the contractor at all times shall keep the Premises and adjacent areas free from accumulation of waste materials or rubbish caused by its operation and shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the work and shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (a) all employees on the work site and other persons who may be affected thereby, (b) all the work and all materials and equipment to be incorporated therein, and (c) other property at the work site adjacent thereto, such precautions to include, without limitation, the furnishing of guard rails and barricades and the securing of the Premises; and
  - (v) That the terms hereof shall bind and inure to the benefit of said contractor and Landlord, and their respective heirs, personal representatives, successors and assigns.
- (4) No construction shall be commenced by Tenant prior to Tenant's full compliance with the requirements of this Exhibit B and Landlord's consent to commence work in the Premises. Tenant shall cooperate fully with Landlord, and shall cause its contractor to cooperate fully with Landlord, in the scheduling of delivery of materials to the Premises and performance and construction of Tenant's Work so as to minimize interference with and disturbance of the operations of other tenants and occupants of the Shopping Center and their customers and invitees.
  - (5) At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Premises for the purpose of inspecting construction and progress of the Tenant's Work. Landlord, in its reasonable discretion, and otherwise for any non-compliance by Tenant shall have the right to order Tenant to terminate any construction work at any time (i.e., either in the initial construction of the Premises or at any time during the Term) being performed by or on behalf of Tenant in the Premises. Upon notification from Landlord to Tenant to cease any such work, Tenant shall forthwith remove from the Premises all agents, employees, contractors and subcontractors of Tenant performing such work, until such time as Landlord shall have given its written consent for the resumption of such construction work, and Tenant shall have no claim for damages of any nature whatsoever against Landlord in connection therewith. Landlord shall have the right to perform, on behalf of and for the account of Tenant, subject to reimbursement by Tenant, any of Tenant's Work that Landlord deems necessary to be done on an emergency basis or which pertains to structural components, the general utility systems for the Shopping Center, or the erection of temporary barricades and temporary signs, during construction. In the event of any dispute relating to Tenant's Work, the certificate of Landlord's architect shall be conclusive as against Tenant.
  - (6) All Tenant's Work shall comply with all standards established by Landlord as of the date of execution of this Lease by both parties.
  - (7) Tenant is obligated to verify conditions pertaining to the Premises from time to time prior to and after commencement of construction of the Premises. Tenant shall coordinate its work

with the work of Landlord, if any, and other tenants and with existing conditions in, above and below the Premises, and shall make changes from time to time as required to accommodate such work or conditions.

- (8) All work performed by Tenant shall be performed so as to cause no interference with other tenants and the construction and operation of the Shopping Center. Tenant will take all precautionary steps to protect its facilities and the facilities of others affected by Tenant's Work and properly police same. Construction equipment and materials are to be located in confined areas and truck traffic is to be routed in and from the site, all as directed by Landlord and so as not to burden the construction and operation of the Shopping Center.
  - (9) Upon and from the completion of Tenant's Work in the Premises, a minimum one-year warranty on all work, materials and equipment is hereby provided by Tenant and shall be assigned to Landlord by Tenant's contractors and subcontractors.
  - (10) Landlord shall have the right to order any tenant or Tenant's contractor who willfully violates any of the above requirements to cease work, and to remove himself and his equipment and employees from the Shopping Center.
  - (11) No approval by the Landlord is valid unless in writing, signed by the Landlord.
  - (12) Tenant shall erect reasonable dust barriers and take whatever other steps are necessary to ensure that no dust of any type from construction escapes from the Premises into any common area of the Shopping Center or into any finished tenant space.
  - (13) Tenant shall not cause or permit any items of Tenant's initial construction, re-construction, alterations, additions, improvements, changes and/or remodeling of the Premises and the fixtures and appurtenances therein, and the removal of the same, as well as all items of Tenant's repairs to the Premises and the replacement and repair of fixtures and appurtenances therein to be performed in violation of any labor agreement or collective bargaining agreement to which Landlord, or its contractors or suppliers is a party or which in any way affect the Shopping Center.
- (D) Completion of Construction. Within thirty (30) days following the earlier of opening the Premises for business or completion of Tenant's Work, Tenant shall deliver to Landlord the following: (i) Tenant's affidavit stating the Tenant's Work has been completed in strict compliance with Exhibit B, and waivers of lien executed by Tenant's contractor and by every subcontractor, sub-subcontractor, laborer and material supplier; (ii) Tenant's written acceptance of the Premises stating that Landlord has completed all of Landlord's Work required to be performed by Landlord pursuant to the terms of this Lease, if any, and that Tenant reserves no claims, offsets or backcharges, or stating those claimed; (iii) any monies owing to Landlord for the cost of any of Tenant's Work done for or on behalf of Tenant; and (iv) all certificates and approvals with respect to Tenant's Work that may be required by any governmental authorities as a condition for the issuance of a certificate of occupancy for the Premises, and such certificate of occupancy.

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## EXHIBIT C

## RULES AND REGULATIONS

Unless otherwise stated in the Lease, the use of the Common Area by Tenant and Tenant's agents, employees, servants, visitors and invitees shall be subject to the following rules and regulations:

1. Landlord shall have the right and authority to designate specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles and other transportation vehicles owned by Tenant, Tenant's employees, servants, agents, licensees and concessionaires shall be parked. Tenant shall furnish to Landlord upon request a complete list of all license numbers of all automobiles and other transportation vehicles operated by Tenant, Tenant's employees, servants, agents, licensees and concessionaires.
2. Landlord reserves the right to change from time to time the format of the signs or lettering on the signs, and to require Tenant to replace any signs previously approved to conform to Landlord's new standard sign criteria established by Landlord for the Shopping Center.
3. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances as shall be designated from time to time for such purposes by Landlord. In no event, shall delivery trucks be permitted to obstruct driveways, entries, or parking aisles in front of any building within the shopping center.
4. The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the sole discretion of Landlord shall be necessary for the proper operation of the Shopping Center.
5. Tenant shall not use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which such area is designated.
6. Except as permitted by Landlord's prior written consent, no person shall within the Common Area:
  - a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
  - b) Exhibit any sign, placard, banner, notice or other written material;
  - c) Distribute any circular, booklet, handbill, placard or other materials;
  - d) Solicit membership in any organization, group or association or contribution for any purposes;
  - e) Parade, patrol, picket, demonstrate, or engage in any conduct that might tend to interfere with or impede the use of the Common Area by Landlord or any occupant or any employee, or invitee of any occupant of the Shopping Center, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interests of any business establishments within the Shopping Center;
  - f) Use of the Common Area for any purpose other than employee parking when none of the business establishments within the Shopping Center are open for business or employment;

- g) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind;
  - h) Deface, damage or demolish any sign, light, standard or fixture, landscaping material or other improvements within, or property situated within the Common Area or the Shopping Center; or
  - i) Solicit any other business or display any merchandise.
7. The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant to the complete satisfaction of Landlord.
  8. The Common Area plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.
  9. All floor area, including vestibules, entrances and exits, doors, fixtures, windows and plate glass shall be maintained in a neat and clean condition by Tenant.
  10. No portion of the Common Area shall be used for any lodging or illegal purposes.
  11. The sidewalks, hall passages, exits, entrances, elevators, shopping malls and stairways of the Common Area or the Shopping Center shall not be obstructed by any tenant or used by any tenant for any purposes other than for ingress to and egress from their respective premises. The halls, passages, exits, entrances, elevators, shopping malls and stairways are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interest of the Shopping Center and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not go upon the roof of the Premises.
  12. In the case of any invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's sole discretion, Landlord reserves the right to prevent access to the Common Area and Shopping Center during the continuance of the same by such action as Landlord may deem appropriate, including closing entrances to the Shopping Center and Common Area.
  13. Tenant shall not place or permit any radio or television antenna, loudspeaker, amplifier or other device outside of the Premises, in the Common Area or anywhere that the same can be seen or heard in the Common Area without prior written consent of Landlord.
  14. No person shall use any part of the Common Area for any purpose other than those for which the Common Area is intended, as determined by Landlord.
  15. Tenant shall not use the Common Area for storing or maintaining any material or property, whether on a temporary basis or otherwise and no action shall be taken in the Common Area which in the exclusive judgment of Landlord would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective Premises

of the Common Area, nor do anything which would tend to injure the reputation of the Shopping Center.

16. Any repairs, maintenance or replacements to the Common Area required to be made by Landlord which are occasioned by the act or negligence of Tenant, its agents, employees, sub-tenants, licensees and concessionaires, shall be paid for by Tenant.
17. Tenant shall not make any alteration, addition or improvement to or remove any portion of the Common Area, and Tenant shall not make any changes to or paint any portion of the Common Area, or install any lighting, decorations or paintings in or to the Common Area, or erect or install any signs, banners, placards, decorations or advertising media of any type in the Common Area.
18. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or lessee, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant or lessee, nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Shopping Center.
19. Landlord shall at all times have the right to change these rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for the management, care or cleanliness of the Shopping Center, for preservation or good order therein, or for other purposes, all of which rules and regulations, changes and amendments shall be carried out and observed by Tenant.
20. Tenant shall further be responsible for the compliance with these rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. In the event any provisions of these rules and regulations shall conflict with any specific provisions of the, the provisions of the Lease shall control.

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## EXHIBIT D

### SIGNAGE CRITERIA

**Tenant shall use existing signage. Should Tenant ever want to change the existing signage the following sign criteria will be followed:**

These criteria have been established for the purpose of assuring a coordinated sign program. Conformance will be strictly enforced. Any non-conforming or approved sign installed by Tenant must be brought into conformance at Tenant's expense.

The Landlord's architect shall administer and interpret these sign criteria, but is not empowered to authorize any departure from the criteria. ALL DEPARTURES FROM THESE CRITERIA MUST BE APPROVED BY LANDLORD. In the event Landlord does not have an architect, then Landlord shall administer and interpret those criteria.

These criteria shall not imply that any governmental approvals will automatically be granted.

Tenant is solely responsible for obtaining any and all required approvals from governmental agencies.

#### A. GENERAL REQUIREMENTS

1. Background color, sign trim color and shape of signs shall be approved by Landlord's architect.
2. EACH TENANT SHALL SUBMIT OR CAUSE TO BE SUBMITTED TO LANDLORD AND LANDLORD'S ARCHITECT FOR APPROVAL, BEFORE FABRICATION, AT LEAST THREE (3) COPIES (OF WHICH ONE COPY IS FULLY COLORED) OF DETAIL DRAWINGS INCLUDING ALL LETTERING AND/OR GRAPHICS AND SHOWING ANY ADJACENT SIGNS.
3. All permits for signs and their installations shall be obtained by Tenant or his representative at Tenant's expense.
4. Tenant shall be responsible for the fulfillment of all requirement and specifications and compliance with all applicable governmental laws and ordinances.

#### B. DESIGN REQUIREMENTS

1. Signs shall be permitted only within the area as shown as "Max. Sign Height Limit" on Plan A attached hereto. "Max. Sign Height Limit" is defined as a 24-inch band as measured from a point 9 inches from the bottom edge of the sign fascia. The sign band shall end at least 18 inches from each end of a tenant's store frontage and shall be entirely within such frontage. No sign, or any portion thereof, may project above the parapet, top wall or fascia on which it is mounted.
2. Height of each letter in a sign shall be determined by measuring from the lowest point on the letter at the bottom to the highest point at the top including any periods, dots, apostrophes, or other forms of punctuation over, under or adjacent to the letter.
3. Total area of the sign shall be the sum of the area of each letter. The area of each letter is determined by drawing a rectangle around each letter, i.e. across the top and bottom and to the mid-point of the open space between letters. For the first and last letters in the sign, the rectangle only encompasses the right or left side of these letters. For the space between words in the sign, one-half of this space shall be included within the area of each of the adjacent letters so that all of the space between words is included in the total area of the sign.
4. The total area of each Tenant's sign shall be limited to a maximum area equal to one square foot for each lineal foot of the Tenant's store frontage.

5. The ends of each Tenant's store frontage and the length of each Tenant's frontage shall be determined by Landlord's architect when necessary.

6. Stacking of letters is not permitted in any sign.

7. Tenant with frontage of more than one side at a corner of the building as determined by Landlord's architect will be allowed a maximum of two signs (one for each frontage) according to the total area allowed for the sign on each frontage.

8. No signs of any sort shall be permitted on the building roof.

9. SIGNS SHALL BE COMPRISED OF INDIVIDUAL LETTERS (CHARACTERS).

10. EACH LETTER (CHARACTER SHALL BE PLASTIC-FACED AND INTERNALLY ILLUMINATED WITH SHEET ALUMINUM SIDES, PAINTED A MEDIUM BRONZE COLOR AND SHALL HAVE A MAXIMUM PROJECTION OF 6 INCHES FROM THE FASCIA.

### **C. GENERAL SPECIFICATIONS**

1. Painted lettering will not be permitted.

2. Flashing, moving or audible signs will not be permitted.

3. All electrical signs shall bear the UL label, and their installation must comply with all local building and electrical codes.

4. No exposed conduit, tubing or raceways will be permitted except as approved by Landlord's architect prior to installation.

5. No exposed neon lighting shall be used on signs, symbols or decorative elements and the transformer secondary shall be 30 M.A. maximum unless expressly approved by Landlord and Landlord's Architect.

6. All conductors, transformers and other equipment shall be concealed.

7. Electrical service to all signs shall be on Tenant's meters and shall be part of Tenant's construction and operation costs.

8. All bolts, fastenings, clips, etc., shall be hot-dipped galvanized iron, stainless steel, aluminum, brass or bronze. No black iron material of any type will be permitted.

9. No signmaker's label or other identification will be permitted on exposed surfaces of sign, except for those required by local ordinance in which case shall be placed in and inconspicuous location.

10. All penetrations of the building structure required for sign installation shall be neatly sealed in a watertight condition.

11. Tenant's sign contractor shall repair any damage caused by his work. Damage to structure that is not repaired by Tenant's sign contractor shall be Tenant's responsibility to correct at Tenant's sole cost.

12. Tenant shall be fully responsible for the operation of Tenant's sign contractor.

**D. MISCELLANEOUS REQUIREMENTS**

1. Tenant will be permitted to place upon each entrance of the premises not more than 144 square inches of gold leaf or decal application lettering, not to exceed two inches (2") in height, indicating hours of business, emergency telephone number, etc.

2. If Tenant has a non-customer door for receiving merchandise, Tenant may have uniformly applied on said door, in the location specified by Landlord's architect, in two-inch (2") high block letters, Tenant's name and address. In the case that more than one tenant uses the same door, each Tenant's name and address shall be applied. Color of letters will be selected by Landlord's architect.

3. Tenant may install the street address numbers of the premises on the store front only in required by the U.S. Postal Service or local fire authorities. If required, street address numbers shall be 3-inch high numbers with the bottom 6 feet above the finished floor and centered on the glass entrance door. Numbers shall match lettering in item D.1.

**E. ADMINISTRATION**

1. In the event any conflict of interpretation between Tenant and the Landlord's architect as to the application of these criteria cannot be satisfactorily resolved, Landlord's architect shall submit the design to the Landlord, and Landlord's decision shall be final and binding upon Tenant.

*[REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY OMITTED]*

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EXHIBIT A – SHOPPING CENTER AND PREMISES

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EXHIBIT B – INITIAL ALTERATIONS

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# AGENDA ITEM

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

SUBJECT: 2019 Legislative Priorities and Intergovernmental Polices and Positions

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 15, 2019

ATTACHMENTS:

1. Draft 2019 Legislative Priorities
2. Draft 2019 Intergovernmental Policies and Positions

CLEARANCES:

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

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

- Legal *TG* \_\_\_\_\_
- Finance \_\_\_\_\_
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: 

**Purpose and Recommendation**

The purpose of this agenda item is to allow the City Council to adopt the City’s Legislative Priorities and Intergovernmental Polices and Positions for 2019.

**Suggested Motion**

**Motion:** “I move to adopt the 2019 Legislative Priorities and Intergovernmental Polices and Positions as submitted.”

**Background**

From time to time the City will actively advocate for legislative positions that will benefit the City. These can be pieces of legislation establishing state of Washington policies and/or appropriations that provide resources for the City, in addition to other issues that arise in the State Legislature.

The 2019 Intergovernmental Policies and Positions were discussed by the Council at a study session on November 1, 2018. The 2019 Legislative Priorities were discussed with the Council and state legislators that represent the City on December 6, 2018.

### **Discussion**

The 2019 State Legislative session began on January 14, 2019. There are several issues critical to the well-being of the City and discussed below. The three major priorities the City has identified as 2019 legislative priorities are:

1. Reauthorization of funding for Marina North Bulkhead Project.
2. Updating Department of Corrections incarceration rates at SCORE (South Correctional Entity Regional Jail).
3. Siting a second regional airport in Washington.

Additional items that the Council has expressed interest in for 2019 include statewide issues as well as local concerns.

#### **Statewide**

The Council has expressed support for additional funding to the Criminal Justice Training Center to allow for a quicker turnaround time for the training of new officers. This matter is being pursued by a broad coalition of jurisdictions and also by the Washington State Association of Police Chiefs, of which the Des Moines Police Chief is the President.

The Council has also voiced objection to the recent changes to prevailing wage laws in the state. This matter is also being addressed by a coalition of jurisdictions including the Association of Washington Cities which Des Moines is currently a member.

#### **Local Issues**

The Council has identified two projects involving the Department of Natural Resources in 2019 that are a priority. The Council has publicly stated their support for the permitting and approval of Redondo Reef Project in association with Washington Scuba Alliance. Additionally, the Council has expressed concern about the potential removal of the armor rockery at Saltwater State Park. Both of these matters are currently administrative at this time and staff will continue to monitor and keep the Council informed.

Additionally, the City's lobbyist will continue to push for the following:

- Furthering issues identified in the City Council Intergovernmental Policies and Positions for 2019.
- Any additional items that come up during the Legislative Session that can further the City Council Goals and Objectives.

### **Alternatives**

Council may choose to make changes to the Legislative Priorities or leave them as they are.

### **Financial Impact**

The 2019 Budget includes funding to continue utilizing our lobbyist to champion the city's interests.

### **Recommendations**

Staff recommends that Council adopt these Legislative Priorities and Intergovernmental Policies and Positions for 2019.

## **LEGISLATIVE PRIORITIES FOR 2019**

### **1. MARINA**

Re-authorization of \$2 million in funds authorized by the Legislature in 2018 for the North Bulkhead replacement. The authorization was delayed due to the State's capital budget process. The City is requesting re-authorization of these resources as the funds have not been expended. The North Bulkhead Project is currently at about 60% design, and working through complex permitting process with multiple agencies.

### **2. SCORE (South Correctional Entity Regional Jail)**

Under existing state law, the state has capped what the Department of Corrections (DOC) can pay for the cost of incarceration to \$85 per day per offender. DOC currently contracts with SCORE to house inmates who are serving short term incarcerations due to an administrative violation of a previous sentence. The amount that DOC pays SCORE for these inmates is well below the market rate and results in a member/host City subsidy of DOC. Options that could address this issue are:

- A. Due to the different economic conditions between the west side of the state and eastside, one option is to lobby the Legislature to create two different maximum rates to account for the difference in costs. DOC from an operational and logistics perspective would not be able to work with only an eastside jail.
- B. Cafeteria Style Model – Legislative fix to increase fees based on programing. i.e. Medically Assisted Treatment (Methadone), medical services, etc.

### **3. SITING A SECOND REGIONAL AIRPORT IN WASHINGTON**

Des Moines and City's surrounding Sea-Tac International Airport receive disproportionate impacts of aircraft operations as a result of their proximity to the airport. As Sea-Tac prepares for significant growth in the future and after experiencing significant growth in the past 6 years, it is imperative that a balance be struck between regional economic benefit and the direct impacts felt by Des Moines and our neighboring cities.

We believe that a critical aspect of providing relief for these impacts and also of enhancing regional economic benefit is an active commitment to site a second regional airport. The City also continues to support legislation that addresses airport impacts identified in 2018's Legislative Priorities.

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**City of Des Moines**  
**2019 Intergovernmental Policies and Positions**  
**\* DRAFT \***

A. State of Washington Intergovernmental Positions

1. The City supports investigations into whether or not Streamlined Sales Taxes are being properly collected and remitted to cities into which purchased items are delivered.
2. The City supports added state funding to meet local and regional transportation maintenance and capacity needs and supports providing cities and counties additional councilmanic revenue authority to fund local transportation needs.
3. The City supports restoring state-shared liquor revenues to 2011 levels.
4. The City supports legislative review of the Growth Management Act in an effort to restore local control.
5. The City supports legislation that treats City leases of DNR aquatic lands equal to Port leases and/or eliminates or reduces rental rates. The City opposes legislation that increases the City's current lease rate.
6. The City supports Association of Washington Cities' (AWC) position that the State of Washington should fund and clarify new city responsibilities from the recent changes to state laws regarding recreational marijuana and marijuana taxation.
7. The City supports restoration of and additional funding for the planning, acquisition, restoration and development of recreational and boating facilities and wildlife habitat.
8. The City opposes legislation which reduces the authority of cities to assume special purpose districts.
9. The City supports additional state funding for local criminal justice needs and training.
10. The City supports proposals that will help cities manage public records requests.
11. The City supports the restoration of historic levels of Public Works Trust Fund and Transportation Improvement Board funds and re-authorization of funding for the Community Economic Revitalization Board (CERB) and the Local Infrastructure Financing Tool (LIFT) program for local government infrastructure projects.

12. The City supports tort reform that reduces municipal liability and exposures.
13. The City opposes legislation that preempts local zoning control, including the following: siting of essential public facilities for mental health services, addiction services, and resources to respond to homelessness.
14. The City opposes personnel and labor relations legislation which diminishes its management rights or mandates additional unfunded programs and benefits. (This policy also applies at the federal level.) The City supports legislation providing civil immunity from reference checks.
15. The City supports legislation which would abolish the 1889-1890 right-of-way vacation by operation of law statutes.
16. The City supports legislation that requires either sponsors of essential public facilities or jurisdictions in which EPF's are located to fully mitigate environmental, social, and economic impacts of the EPF in neighboring impacted jurisdictions.
17. The City opposes legislation that would reduce municipal control over city streets and rights-of-way.
18. The City supports legislation to elect Port commissioners by district.
19. The City opposes mandatory requirements for affordable housing, housing growth, and residential density targets.
20. The City supports legislation clarifying the right of cities to exercise use and zoning powers with respect to gambling activities, including the power to adopt moratoria, interim zoning controls, and prohibit gambling activities.
21. The City supports legislation to increase the local share of municipal court fines and forfeits.
22. The City supports legislation to allocate any surplus LEOFF I pension funds to local government to assist in meeting LEOFF I medical and long term care obligations.
23. The City supports legislation establishing a state process for siting an additional major airport at a location at least 40 miles from SeaTac International Airport and other essential public facilities of a regional nature.
24. The City supports legislation returning to Des Moines at no cost and with no conditions any portions of the SR-509 right-of-way south of South 216<sup>th</sup> Street not used for traffic improvements.
25. The City supports legislation and legal appeals that overrule Washington Utilities and Transportation Commission decisions regarding city rights-of-

way and Puget Sound Energy. Cities should not be required to purchase private easements for utilities and rules regarding utility relocates and undergrounding should be re-enacted.

26. The City supports retention of full local authority to operate municipal courts. Additionally, the City supports the position that cities may contract with another city to provide municipal court services and opposes legislation that would erode or eliminate this ability.
27. The City supports flexible use of Real Estate Excise Taxes.
28. The City opposes any legislation which directly or indirectly aids in the expansion of Sea-Tac International Airport or the lengthening of any of its runways. (This policy also applies at regional and federal levels.)
29. The City supports State tax policies that assist cities in meeting infrastructure needs for new development in airport noise impacted areas.
30. The City supports amendments to binding interest arbitration criteria that require arbitrators to have a minimum level of experience and training, particularly in public finances, and allows arbitrators to consider a city's ability to pay when making arbitration rulings.
31. The City opposes the State's proposal to streamline the collection of B&O taxes and issuance of business licenses unless the new processes are revenue neutral to cities.
32. The City supports legislation that creates a true tax increment financing mechanism to support economic development and infrastructure investment.
33. The City supports full state funding for Shoreline Management Plan updates.
34. The City supports continued implementation of court mandated K-12 funding reforms to provide adequate and equitable educational opportunities that prepare all students for college, career, and citizenship, support the unique demographic needs of Southwest King County and the state's long-term economic vitality, and do so without negatively impacting existing funding levels for higher education or health and human services programs.
35. The City supports legislation that allows all cities to impose a moorage fee and not incur any liability.

B. Federal Intergovernmental Positions

1. The City supports passage of the Maritime Goods Movement Act (S. 1509) to keep the Ports of Seattle and Tacoma competitive with west coast

Canadian ports and east coast U.S ports by changing how the Harbor Maintenance Tax is assessed and what projects/activities it funds.

2. Airport – The City supports expansion of the noise mitigation program to provide insulation to all buildings within the noise contours that trigger such action for single-family homes. The City supports construction of a Ground Run-up Enclosure but only if the hours ground run-ups are allowed are not expanded. See Policy A.28.
3. Personnel – see Policy A.14.
4. The City supports continued Community Development Block Grant funding.
5. The City opposes legislation that nationalizes cable television and telecommunications franchising, reduces or eliminates cities’ ability to manage their rights-of-way, or reduces or eliminates cities’ ability to impose franchise fees and utility taxes.
6. The City supports increasing federal funding of emergency preparedness for local first responders.
7. The City supports declassifying marijuana as a schedule 1 drug, as defined by the Controlled Substances Act.

C. Metropolitan King County Intergovernmental Positions

1. The City supports continued King County funding of regional human service needs from current or future county revenues. The City should remain a provider of local human services.
2. Any King County budget or service reductions should treat residents of incorporated and unincorporated areas equally.
3. King County Metro should provide the following transit services to Des Moines residents.
  - a. Existing routes.
  - b. Metro should restore service lost to cutbacks since 2000.
  - c. Enhance and increase east-west connections for Des Moines residents to transit service provided on Pacific Highway South, and with proposed service by Sound Transit.
  - d. Provide service to the Woodmont and Redondo areas of Des Moines to include the future 272<sup>nd</sup> Street Sound Transit Station at I-5.
  - e. Provide Dial-a-Ride service to the citizens of Des Moines.
  - f. Continue to fund the Access Transit Program.

- g. Continue to fund the Senior Services Des Moines/Normandy Park Shuttle.
  - h. Provide service from the Des Moines Creek Business Park to the Angle Lake Light Rail Station.
4. If the Legislature authorizes King County Metro to councilmanically enact a revenue stream to fund transit, then Metro should restore and enhance services in Des Moines
  5. The City supports completion of the Lake to Sound Trail System in south King County.
  6. The City will participate in the WRIA9 water quality improvement process. Any changes in or new sources of revenue from Des Moines residents to support projects should be subject to City Council review and authorization.
  7. The City supports other suburban cities in their negotiations to have King County fund infrastructure improvements in unincorporated areas prior to annexation. New unincorporated developments should provide urban level improvements such as adequate right-of-way, curb, gutter, underground utilities, etc.
  8. King County should respect previous agreements regarding regional governance.

D. Interjurisdictional and Regional Intergovernmental Positions

1. The City supports a phased approach to the extension of SR-509 and Legislative efforts ensuring the full funding and timely completion of the project. Phase I should guarantee completion of the route from I-5 to SR-509 and include the following features: the I-5 collector/distributor lanes, a grade-separated interchange at South 200<sup>th</sup> Street, the planned South Access with interchange to SeaTac International Airport and provisions for 24<sup>th</sup>/28<sup>th</sup> Avenues to continue uninterrupted beneath or over SR-509.
2. The City supports clear, transparent, planning efforts on the part of Sound Transit that create positive, cooperative relationships and result in all stakeholders having in depth knowledge of all potential Sound Transit plans, studies, and projects such that they can provide Sound Transit with timely and thoughtful input.
3. The City supports completion of the higher speed south access route from the SR-509 extension to the south end of the airport, to be funded by the Port of Seattle.
4. The City supports the development and implementation of a comprehensive regional and state Emergency Management, Response, and Communication System.

5. The City supports straightening the Kent-Des Moines boundary on Highway 99 south of Kent-Des Moines Road so that Highway 99 would be the dividing boundary between the two cities.
6. The City generally supports local, state, and regional efforts to proactively improve salmon habitat to avoid imposition of more restrictive and less flexible federal standards and efforts to continually improve and upgrade surface water capital facilities.
7. The City supports and encourages local water districts to engage in regional and local efforts to ensure adequate future water through conservation and development of new supplies.
8. The City supports retention of local control over its roads.
9. The City supports interlocal agreements with its neighboring cities to coordinate the collection of traffic impact fees and imposition of appropriate environmental mitigation for development projects near our respective boundaries.
10. The City supports continued coordination with utility and other special districts to plan for capital improvements within the City limits.
11. The City opposes any proposal extending Kent's cross-valley connector (South 228<sup>th</sup> Street) any further west than the south bound I-5/SR 509 proposed right-of-way.

#### General Policies

1. Any new law, regulation, or requirement from the county, state, or federal levels should be matched with ongoing secure sources of revenue sufficient to fund the mandate.
2. Decisions affecting Des Moines are best made at the local level. Therefore, county, state and federal legislation or mandates should not erode or curtail local authority.
3. The City opposes any federal, state or regional actions which reduce the fiscal capacity of the City to provide services to its citizens.

Adopted by the  
Des Moines City Council  
At an open public meeting  
January XX, 2019

## A G E N D A I T E M

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

**SUBJECT:**

Consultant Services Agreement with Avenu MuniServices to perform an audit of Utility Tax Payments and/or Utility Franchise Fees

**ATTACHMENTS:**

- Consultant Services Agreement

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Finance Department

DATE SUBMITTED: January 16, 2019

**CLEARANCES:**

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

CHIEF OPERATIONS OFFICER: DSB

- Legal JB
- Finance Faw
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: DSB for M.H.

**Purpose and Recommendation**

The purpose of this agenda item is for City Council to consider an agreement between the City of Des Moines and Avenu MuniServices to perform an audit of Utility Tax Payments and/or Utility Franchise Fees.

**Suggested Motion**

**Motion 1:** "I move to approve the consultant services agreement with Avenu MuniServices to perform an audit of Utility Tax Payments and/or Utility Franchise Fees and to authorize the City Manager to sign the consultant services agreement substantially in the form as attached."

**Background**

The City of Des Moines levies and collects a utility occupation tax (Des Moines Municipal Code Chapter 3.68) on businesses providing the following utility services:

- Electric – A 6% tax on gross income of selling or furnishing electric energy; and

- Natural Gas – A 6% tax on gross income of selling, furnishing or transmitting natural gas for domestic, business or industrial consumption; and
- Telephone - A 6% tax on gross income of selling or furnishing telephone service; and
- Solid Waste – A 18% tax on gross income of solid waste collection; and
- Cable TV – A 10% tax on gross income of transmitting television or audit services by cable or wire; and
- Cellular Phone – A 6% tax on gross income of selling or furnishing cellular telephone service.

In addition, the City of Des Moines has franchise agreements with various utilities.

### **Discussion**

In comparing utility tax revenue from year to year we are not seeing increases we would expect to see based on the development of the business park. It does not appear an audit of utility tax payments has been done within the last few years. It is a good practice to perform an audit to ensure we are receiving the correct amount of revenue. Also, the City of Des Moines' zip code has been associated with Seattle and in the past some revenue due to the city has been remitted to other jurisdictions.

The program with Avenue MuniServices is designed to help secure lost revenue and to ensure correct revenue collection into the future.

### **Alternatives**

Do not move forward with the audit services, in which case, the City's revenue collection would remain status quo.

### **Financial Impact**

Avenue MuniServices will be compensated on a performance based pricing approach for their audit services. The City will pay a contingent fee compensation of 35% for the additional revenue received by the City as a result of the audit services. The City will pay the contingent fee compensation from the new revenues as they are received. The City will not incur any out of pocket expenses unless we contract for additional work outside this agreement.

### **Recommendation**

Staff recommends approval of the motion.

## Consultant Services Agreement

This Consultant Services Agreement (the "Agreement") is made as of the \_\_\_\_\_ day of December, 2018 ("Effective Date") by and between The City of Des Moines, a municipal corporation of the State of Washington ("CITY") and Avenu MuniServices, LLC, a Delaware limited liability company ("CONSULTANT"), collectively the Parties. In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

### A. Services

1. CONSULTANT will provide CITY with the services described in EXHIBIT A which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

### B. Compensation

1. In consideration for the services to be performed by CONSULTANT, CITY agrees to pay CONSULTANT the fees outlined in Exhibit B of this Agreement. CITY shall pay CONSULTANT within thirty (30) days of receipt of CONSULTANT's invoice.

### C. General Provisions

1. Term of the Agreement: The initial term of this Agreement shall be for a period of one (1) year following the date of execution, and automatically renew for three (3) subsequent one-year terms or CITY shall have the option to renew for successive one (1) year terms, if neither party has cancelled (the "Term"). Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days' notice. Notwithstanding the foregoing, either party may terminate the Agreement at any time and for any reason by providing thirty-days (30) written notice to the other party; provided however, that if CONSULTANT has not breached the Agreement and has commenced services identified in EXHIBIT A prior to the date of termination, CONSULTANT shall be entitled to payment as described in EXHIBIT B.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to CONSULTANT' fee, the CITY shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the CITY.
3. Independent Contractor: It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the CITY. CITY understands that CONSULTANT may perform similar services for others

during the term of this Agreement and agrees that CONSULTANT representation of other government sector clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

4. **Subcontractors:** CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding-taxes or income taxes.
5. **Notice:** Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first-class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

**If to CITY:**

City of Des Moines  
 Attn: Beth Anne Wroe, Finance Director  
 21630 11th Avenue S, Suite A  
 Des Moines, WA 98198  
 Phone: 206-870-6532  
 Email: [bawroe@desmoineswa.gov](mailto:bawroe@desmoineswa.gov)

**If to CONSULTANT:**

Avenu MuniServices, LLC  
 Attn: Contract Department  
 7625 N. Palm Ave., Ste. 108  
 Fresno, CA 93711  
 Phone: 559.271.6852  
 Email: [contracts@avenuinsights.com](mailto:contracts@avenuinsights.com)

6. **Representative or designees:** CONSULTANT's Primary Representative/Project Manager shall be:

Tracy Vesely, Director Client Services  
 7625 N. Palm Ave., Ste. 108, Fresno, CA 93711  
 Phone: 925.330.2958 / Email: [Tracy.vesely@avenuinsights.com](mailto:Tracy.vesely@avenuinsights.com)

For the convenience of the CITY, a short list of helpful contacts is attached and incorporated herein as EXHIBIT C.

7. **Indemnity:** CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT's negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the CITY. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.
8. **Limitation of Liability:** In no event shall CONSULTANT, its employees, contractors, directors, affiliates and/or agents be liable for any special, incidental, or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not CONSULTANT has been advised of the possibility of any such loss or damage. In addition, CONSULTANT's total liability hereunder, including reasonable attorneys' fees and costs, shall in no event exceed an amount equal to the fees described in EXHIBIT B. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks

between CONSULTANT and the CITY and CONSULTANT's pricing reflects the allocation of risk and limitation of liability specified herein.

9. **Insurance**: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the CITY, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the CITY, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
10. **Equal Opportunity to Draft**: The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
11. **Assignment**: This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
12. **Ownership of Documents**: Except for CONSULTANT preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the CITY at the moment of their completed preparation.
13. **Intellectual Property Rights**: The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.
14. **Public Release and Statements**: Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In

addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

15. Force Majeure: CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
16. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties.
17. Counterparts: This Agreement may be signed in separate counterparts including facsimile copies. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties.
18. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Effective Date") for the performance of services under the terms of this Agreement.

***[Signatures on following page]***

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

**"CITY"**

**City of Des Moines**  
a Municipal Corporation

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

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

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

**ATTEST:**

\_\_\_\_\_

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

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

**APPROVED AS TO FORM:**

\_\_\_\_\_

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

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

**"CONSULTANT"**

**Avenu MuniServices, LLC,**  
a Delaware limited liability company

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

Doug Jensen  
Senior Vice President

## EXHIBIT A - SCOPE OF WORK

### UTILITY TAX AUDIT SERVICES

In collaboration with the City, Avenu/MuniServices will perform an audit of a particular utility provider related to Utility Tax payments and/or Utility Franchise Fees (if applicable). The focus of the audit is the compliance of the selected utility provider with the City's Utility Tax ordinance and/or Franchise Fee agreement. This service includes an actual request for, and review of the utility provider's books and records. The City and Avenu shall discuss the parameters of each proposed audit and agree upon which of the following shall be included in the city-specific audit:

1. Documentation
  - a. Submit Audit Notification Letter along with a Letter of Authorization (LOA) from the City.
  - b. If necessary, attempt to obtain a waiver on the Statute of Limitations for the audit.
  - c. Submit a Request for Information (RFI) outlining the information needed to complete the audit to the Provider(s). If necessary, the City may issue a subpoena to the Provider(s) to obtain the needed information to complete the audit.
2. Review and Analysis
  - a. Review the work papers and supporting documentation used in the computation of the Utility Tax and/or Franchise Fee payments.
  - b. Compare the utility provider's payments, exclusions and other computations as related to the Utility Tax and/or franchise agreement. Compare the actual payments made to the City for timeliness and accuracy.
  - c. Review and analyze the provider's general ledger and financial statements. Compare and analyze the data for reasonableness, completeness and accuracy as related to the Utility Tax and/or Franchise Fee.
  - d. Review and analyze the Provider's major revenue accounts in detail to:
    - i. Determine revenues that are to be included or excluded from the Utility Tax and/or Franchise Fee computations.
    - ii. Review the revenues excluded from the computations, if any.
    - iii. Determine whether exclusions are permitted by the City's ordinance and/or franchise agreement.
  - e. Determine if a utility provider or any of its subsidiaries receives any revenues from customers or third-parties for the use of the utility provider's facilities located on the City's right-of-way authorized by the franchise agreement that are not included in the Franchise Fee calculation used to determine the payment to the City.
  - f. Analyze the number of customers reported in the City by rate classification and obtain and review the utility provider's procedures to code new customers to the proper jurisdictions and the procedures used to address annexations.
3. Exemption Review
  - a. Obtain and review the list of any exempted customers, if any, from the Utility Tax and/or Franchise Fee computation.
  - b. For a Cable TV provider's PEG Fees, if any, request the supporting documentation on the provider's payments to the City.
  - c. The schedules should include a composition of the number of subscribers such as basic, non-standard and free subscribers, by month, for each of the calendar years included in the review period.
4. Geo-Code Review
  - a. Sample test the geo-coding system by selecting customer accounts within the City boundaries and in the immediate vicinity to review if those accounts are properly coded as assessed. Avenu will request that the utility provider provide the customer account information in an electronic format for all customers located in the City and surrounding areas.
  - b. Avenu will concentrate the sampling in problematic geographical areas, such as those that might overlap with a neighboring city or where multiple zip codes exist.
  - c. Avenu will also sample heavily test annexations to ensure that proper procedures are in place to identify and properly code these areas within the Franchisee's system.
5. Exit Interview
  - a. Conduct an Exit Interview with the utility provider to review findings and obtain the provider's position on the issues identified during the review.
  - b. Seek to obtain an agreement and/or payment of any amounts due to the City (to be sent directly to the City).
6. Reports
  - a. Prepare a written report with findings that describe and explain the following:

- i. Results of Avenu's review
  - ii. Potential additional monies due to the City
  - iii. Provider's position of the issues
  - iv. Any applicable penalties and interest
- b. Provide all necessary schedules and supporting documents to assist the City in collecting any underpaid Utility Taxes and/or Franchise Fees.

This audit service for Utility Tax compliance covers the following utility types: Cable, Electricity, Natural Gas, Telephone Business and Wireless Telephone Service.

## FRANCHISE FEE AUDIT

Avenu's Franchise Fee reviews are designed to verify that our clients receive the appropriate franchise revenues due for any eligible audit periods. We obtain and review available documents, reports, work papers, and any prior reports concerning franchise fee computation, review franchise agreements or governing ordinances/regulations relating to the jurisdiction's franchise fees and analyze the customer base to verify that customers are correctly coded to the proper jurisdiction, that the utilities are properly interpreting and applying the levies to their revenues, and that the utility providers' reporting strategies are appropriate for the intended purpose, scope and application of the governments' tax and fee levies.

The audit begins with a review of customer statements to determine completeness, accuracy, and that all monies collected are submitted to the city. The audit steps we take include:

- Compare the franchisee's payments, exclusions, and other computations related to the franchise agreement, or relevant state law.
- Compare the actual payments made to the city for timeliness and accuracy.
- Review findings with providers and obtain the franchisee's position on the findings.
- Report and present the results, potential monies due, and any applicable penalties and interest.
- Provide supporting documents to assist the city to collect underpaid franchise fees.

### 1. Reports and Deliverables

- a. Accomplishments to date, with next step options and a timeline
- b. Open items needing attention, with identification of the responsible party
- c. Outstanding issues requiring city attention
- d. Reviews of findings with Franchisees and their positions, including data of all exceptions in formats required by utilities
- e. Identification of residents and businesses that are not paying the appropriate level of taxes or fees, potential additional monies due based upon erroneous interpretations of governing regulations, and any applicable penalties and interest

2. City Assistance. Avenu needs letters of authorization from the city clearly establishing our authority to conduct examinations on the city's behalf. We also require copies of franchise agreements, any amendments or subsequent agreements relating to franchise fee collection, any prior reports prepared by the internal or external auditors concerning how fees are calculated, and a five-year history of franchise payments made by the franchisee.

3. Additional Reviews as Needed (Optional). While performing franchise fee or utility user tax reviews, Avenu may discover discrepancies or other evidence of non-compliance by a specific utility or franchisee. In such as case we may request permission to conduct a city-specific compliance review of a service provider. The city and Avenu would agree to the parameters of these audits beforehand.

## EXHIBIT B – COMPENSATION

### Utility Tax Audits

Avenu shall be entitled to contingent fee compensation where Avenu's Utility Tax audit activities result in the City receiving additional revenues from such City-specific compliance review activity. Accordingly, the City shall pay Avenu thirty-five percent (35%) of the additional revenues, including interest and penalties, that has resulted from its Utility Tax audit activities. Avenu will seek to recover or assist the City in recovering all revenue due the City from prior periods, if any, and Avenu will receive 35% of any retroactive recovery. Said 35% also applies to the additional revenue received by the City for the first three years following the correction of the error/omission.

### Franchise Fee Audits

Avenu shall be entitled to contingent fee compensation where Avenu's Franchise Fee audit activities result in the City receiving additional revenues from such compliance review activity. Accordingly, the City shall pay Avenu thirty-five percent (35%) of the additional revenues, including interest and penalties, that has resulted from its Franchise Fee audit activities. Avenu will seek to recover or assist the City in recovering all revenue due the City from prior periods, if any, and Avenu will receive 35% of any retroactive recovery. Said 35% also applies to the additional revenue received by the City for the first three years following the correction of the error/omission.

**EXHIBIT C**  
**Avenu Helpful Contacts**

<b>Contact</b>	<b>Project Role</b>	<b>Phone</b>	<b>Email</b>
Doug Jensen	SVP Client Services	559.288.8943	<a href="mailto:doug.jensen@avenuinsights.com">doug.jensen@avenuinsights.com</a>
Tracy Vesely	Director Client Services	925.330.2958	<a href="mailto:tracy.vesely@avenuinsights.com">tracy.vesely@avenuinsights.com</a>
Jonathan Gerth	VP Tax Audit	205.423.4177	<a href="mailto:jonathan.gerth@avenuinsights.com">jonathan.gerth@avenuinsights.com</a>
Steve Quon	Manager, Utility Tax	818.661.5517	<a href="mailto:steve.quon@avenuinsights.com">steve.quon@avenuinsights.com</a>
Jaimie Lewis	Billing Department	571.485.7875	<a href="mailto:billing@avenuinsights.com">billing@avenuinsights.com</a>
Francesco Mancia	VP Government Relations	559.288.7296	<a href="mailto:fran.mancia@avenuinsights.com">fran.mancia@avenuinsights.com</a>
Brenda Narayan	Dir. Government Relations	916.261.5147	<a href="mailto:brenda.narayan@avenuinsights.com">brenda.narayan@avenuinsights.com</a>
Patricia A. Dunn	Contracts Manager	559.271.6852	<a href="mailto:patricia.dunn@avenuinsights.com">patricia.dunn@avenuinsights.com</a>

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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:** Citywide Arterial Traffic Calming  
Project– Equipment Purchase

**ATTACHMENTS:**

1. Traffic Safety Supply Quote
2. WSDOT Master Contract Usage Agreement

**FOR AGENDA OF:** January 24, 2019

**DEPT. OF ORIGIN:** Planning, Building & Public Works

**DATE SUBMITTED:** January 16, 2019

**CLEARANCES:**

- Community Development N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Public Works RBC

**CHIEF OPERATIONS OFFICER:** DSB

- Legal TG
- Finance BAW
- Courts N/A
- Police N/A

**APPROVED BY CITY MANAGER  
FOR SUBMITTAL:** DSB For M.p.

### Purpose and Recommendation

The purpose of this agenda item is for City Council to approve an equipment purchase (Attachment 1) with Traffic Safety Supply for (12) solar powered driver speed radar feedback signs. The following motion will appear on the Consent Agenda:

### Suggested Motion

**Motion 1:** “I move to approve the equipment purchase with Traffic Safety Supply for twelve solar powered driver speed radar feedback signs, in the amount of \$80,201.00, and further authorize the City Manager to sign said Purchase Order substantially in the form as submitted.”

## **Background**

Excessive vehicle speeding on arterial roadways is a concern expressed by the community. Past practices by the City to manage speeding issues included the use of portable driver speed radar feedback signs with great success and community support. Acknowledging the effectiveness of the portable radar feedback signs, staff is pursuing permanent driver speed radar feedback signs to address speeding concerns on arterial roadways based on community input and traffic volume/speed data acquired.

Staff is currently evaluating different prioritized locations for potential permanent driver speed radar feedback sign installation. Concurrence was provided for this approach and potential locations by the Transportation Committee on October 11<sup>th</sup>, 2018.

## **Discussion**

Staff has received a quote from Traffic Safety Supply for driver radar feedback signs (Attachment 1). The quote includes:

1. 12 solar powered driver radar feedback signs, 90% assembly.
2. 12 aluminum 14 FT post package with included necessary hardware

Staff will be using a Washington State Department of Transportation Master Contract Usage Agreement to make the purchase (Attachment 2).

All permanent radar speed signs will be installed by the City Street crew throughout 2019 and serviced by WSDOT.

## **Alternatives**

Council may direct staff to re-submit for another equipment quote at a later time. However, Traffic Safety Supply informed the City that an approximate total of 10% increase in costs should be expected on the revised quote.

## **Financial Impact**

The City's CIP Budget Worksheet includes revenues to achieve full funding for the Citywide Arterial Traffic Calming project.

## **Recommendation or Conclusion**

Staff recommends adoption of the Motion.



Traffic Safety Supply  
 2324 SE Umatilla Street  
 Portland, OR 97202  
 Phone: (503) 235-8531  
 Fax: (503) 235-5112

CSR: Jeremiah Cananua

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# SALES QUOTE

Quote Number	Date	Customer Number
SQN00007168	01-11-19	C000626
Quote valid for 30 days.		

## Customer:

City of Des Moines  
 2255 S 223rd St  
 Seattle, WA 981987936  
 Contact Name: Khai Le  
 Phone Number: (206) 870-6537

Freight Terms: PREPAID

Project: WA State Contract 04616

Product	Description	Quantity	Price	Extended Price
DP03107	SPEEDCHECK, SC-15, SOLAR, 30" X 42", YOUR SPEED, HIP, BLK/WHT	12.00 EA	\$3,202.00	\$38,424.00
DP03137	SPEEDCHECK, PKG-02, SCH PRO, TRAFFIC ANALYZER, DEVICE MGR	12.00 EA	\$317.00	\$3,804.00
DP03134	SPEEDCHECK, SOLAR SYSTEM, 110-WATT, 55 AHR, BATTERY, POLE MOUNTED ENCLOSURE, WIRING	12.00 EA	\$1,430.00	\$17,160.00
KIT-PP-45-AL-14-30	ALUMINUM POST PACKAGE, 14' X 4.5" OD, W/ 30" J-BOLTS	12.00 EA	\$675.00	\$8,100.00
DP00760	POST, ALUM ROUND PIPE, THREADED, 4.5" SCH 40, 14FT	12.00 EA	\$0.00	\$0.00
DP00747	POST, PEDESTAL BASE	12.00 EA	\$0.00	\$0.00

All materials used in this contract are guaranteed to be as specified, and the entire job is to be done in a neat and workmanlike manner. Any deviation or alteration from the specifications herein agreed upon involving extra cost of labor and/or materials will be accepted only upon a written order of instructions, and will become an extra charge over costs as mentioned in this contract.

Will call orders will be invoiced and customer will be notified upon completion.



Traffic Safety Supply  
2324 SE Umatilla Street  
Portland, OR 97202  
Phone: (503) 235-8531  
Fax: (503) 235-5112

CSR: Jeremiah Cananua

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# SALES QUOTE

Quote Number	Date	Customer Number
SQN00007168	01-11-19	C000626
Quote valid for 30 days.		

Product	Description	Quantity	Price	Extended Price
DP00750	HDW, GALVANIZED J BOLT 3/4" X 30" X 4" X 6"	48.00 EA	\$0.00	\$0.00
DP00751	HDW, GALVANIZED HEX NUT, 3/4"	96.00 EA	\$0.00	\$0.00
DP00752	HDW, GALVANIZED PLATE WASHER 3/4" X 3"OD X 1/4"	96.00 EA	\$0.00	\$0.00
BL03104	TEMPLATE FOR J-BOLT, ALUMINUM	12.00 EA	\$0.00	\$0.00
DP00748	POST, LOCKING COLLAR FOR PEDESTAL BASE	12.00 EA	\$0.00	\$0.00
DP00746	POST, CAP FOR 4.5" ROUND POST W/3EA 1/4" X 3/4" SS HEX BOLT *Included with the post package.	12.00 EA	\$0.00	\$0.00

All materials used in this contract are guaranteed to be as specified, and the entire job is to be done in a neat and workmanlike manner. Any deviation or alteration from the specifications herein agreed upon involving extra cost of labor and/or materials will be accepted only upon a written order of instructions, and will become an extra charge over costs as mentioned in this contract.

Will call orders will be invoiced and customer will be notified upon completion.



Traffic Safety Supply  
 2324 SE Umatilla Street  
 Portland, OR 97202  
 Phone: (503) 235-8531  
 Fax: (503) 235-5112

**CSR:** Jeremiah Cananua

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# SALES QUOTE

Quote Number	Date	Customer Number
SQN00007168	01-11-19	C000626
<b>Quote valid for 30 days.</b>		

Total Before Tax	\$67,488.00
DES Fee	\$512.91
Assembly Chg	\$5,400.00
Tax	\$6,800.09
<b>Order Total</b>	<b>\$80,201.00</b>

\*Pricing reflects discount allowed on  
 WA State Contract #04616.  
 For Intelligent Transportation System Equipment 2.  
 This is delivered price to Des Moines, WA.

**Notes:**

1. 90% Assembled without the solar panel.
2. Lead time is 8-9 weeks after receive of order.
3. Solar powered equipment requires no shading or obstructions.
4. Lead time may be subject to change ARO

All materials used in this contract are guaranteed to be as specified, and the entire job is to be done in a neat and workmanlike manner. Any deviation or alteration from the specifications herein agreed upon involving extra cost of labor and/or materials will be accepted only upon a written order of instructions, and will become an extra charge over costs as mentioned in this contract.

Will call orders will be invoiced and customer will be notified upon completion.

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Agreement Number: \_\_\_\_\_

*DES Use Only***MASTER CONTRACT USAGE AGREEMENT**

This Master Contract Usage Agreement (the "Agreement") is made pursuant to Chapter 39.34 of the Revised Code of Washington, and other applicable laws, by and between the state of Washington (the "State"), acting by and through the Department of Enterprise Services ("DES"), an agency of the State, and CITY OF DES MOINES,

*Organization Name*

a state agency, local, federal agency or entity, or public benefit nonprofit corporation, or any tribe located in the State ("Buyer").

1. **Purpose:** The purpose of the Agreement is to establish the terms and conditions for when Buyer purchases or acquires goods and services for its direct use under contracts entered into by DES that permit such use ("Master Contracts").
2. **Duration:** This Agreement will become effective on date of execution, and will continue in full force and effect until 30 days following receipt of written notice from either party cancelling this Agreement.
3. **Agreement Contact Information:** Contact person to whom contract documents and related communications are to be e-mailed.

Organization Name: CITY OF DES MOINES		
Tax Identification Number: 91-6016496		
Unified Business Identifier: <i>Required for Non-Profit.</i>		
Contact Name: R. BRANDON CARVER, P.E., P.T.O.E		
Title: PUBLIC WORKS DIRECTOR		
Address: 21650 11TH AVE S		
City: DES MOINES	State: WA	Zip: 98198
Phone Number: (206)-870-6543		
Email Address: BCARVER@DESMOINESWA.GOV		

4. **Cancellation of Agreement:** This agreement can be terminated by either party upon 30 days written notice provided to DES at:  
**Email to:** [mcua@des.wa.gov](mailto:mcua@des.wa.gov) or **Mail to:** WA Dept. of Enterprise Services  
Attn: Contracts Resource Center  
P.O. Box 41411  
Olympia, WA 98504-1411
5. **Financial Responsibility:** Buyer will deal directly with Master Contract contractor, supplier, or service supplier ("Contractor") for any purchases Buyer makes pursuant to this Agreement and under a Master Contract. DES does not accept any responsibility, financial or otherwise, for any purchase Buyer makes under a Master Contract.

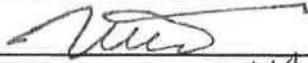
Agreement Number: \_\_\_\_\_  
**DES Use Only**

- 6. Compliance with Other Laws: Each of the parties will comply with all applicable federal, state, and local laws and regulations governing its own purchases.
- 7. Master Contract Audits: Buyer agrees to cooperate with DES, Office of the State Auditor, federal officials, or any third party authorized by law, rule, regulation or contract, in any audit conducted by such party related to any Master Contract(s) that Buyer has made purchases from pursuant to this Agreement, including providing records related to any purchase from a Master Contract. In addition, Buyer agrees to provide, upon request from DES, documentation to confirm its eligibility to use Master Contracts.
- 8. Dispute Resolution: If there are any disputes between Buyer and a Contractor, Buyer agrees to (a) provide DES written notice of the nature of the dispute; and (b) unless otherwise provided in the Master Contract or as set forth below, work in good faith with the Contractor to resolve the dispute without the involvement of DES. DES may, upon request, review and assist in the resolution of a dispute, and if DES chooses to do so, the Buyer will cooperate with DES in that resolution process.  
  
In its sole discretion, DES may, but is not obligated to, upon written notice to Buyer, resolve disputes with a Contractor on behalf of Buyer and all other state, local, and federal agencies, local governments, and public benefit nonprofit corporations with similar or related disputes with such Contractor.
- 9. No Separate Entity: No separate legal or administrative entity is intended to be created by, or for the administration of, this Agreement.
- 10. Hold Harmless: Each party agrees to defend, indemnify, and hold the other party harmless from any claim arising from such party's sole negligent, reckless, or willful misconduct.
- 11. Entire Agreement: This Agreement sets forth the entire agreement between the parties, and supersedes any other prior written agreements between the parties, with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties having read this Agreement, agree to it in each and every particular, and have executed it below.

**APPROVED**

**WASHINGTON STATE DEPARTMENT  
OF ENTERPRISE SERVICES**

<b>Name:</b>	<b>Organization Name:</b> City of Des Moines
<b>Assistant Director Signature:</b>	<b>Signature:</b> 
<b>Name/Title:</b>	<b>Name/Title:</b> Michael Matthias / City Manager
<b>Date:</b>	<b>Date:</b> 1/16/19

# AGENDA ITEM

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

**SUBJECT:** South 216<sup>th</sup> Street – Segment 3:  
Construction Contract Award and  
Consultant On-Call Agreement Task  
Assignment for Construction Services

**ATTACHMENTS:**

1. CIP Project Budget Worksheet(s)
2. Public Works Contract
3. Ceccanti Inc Bid Proposal
4. 2018-2019 On-call General Civil  
Engineering Services, KPG Consulting  
Engineers, Inc., Task Order #2018-06
5. Contract Bid Tabulation
6. Award Recommendation Letter
7. TIB Award Letter
8. ILA Port of Seattle

**AGENDA OF:** January 24, 2019

**DEPT. OF ORIGIN:** Public Works

**DATE SUBMITTED:** January 17, 2019

**CLEARANCES:**

- Community Development \_\_\_\_\_  
 Finance Baw  
 Marina N/A  
 Parks, Recreation & Senior Services N/A  
 Public Works PHC

**CHIEF OPERATIONS OFFICER:** DJB

- Legal TS  
 Finance Baw  
 Courts N/A  
 Police N/A

**APPROVED BY CITY MANAGER**  
**FOR SUBMITTAL:** DJB for M.M.

**Purpose and Recommendation:**

The purpose of this agenda item is for City Council to direct an amendment to the 2019-2024 Capital Improvement Plan and 2019 Capital Budget, Attachment 1, approve a Public Works Contract, Attachment 2, with Ceccanti Inc., and to approve a 2018-2019 On-call General Civil Engineering Services Task Order with KPG Inc. for construction services, Attachment 4, for the South 216<sup>th</sup> Street – Segment 3 (11<sup>th</sup> Avenue S and 20<sup>th</sup> Avenue S) project.

### Suggested Motions

**Motion 1:** “I move to direct staff to bring forward a budget amendment to the 2019 - 2024 Capital Improvement Plan and the 2019 Capital Budget to include the South 216<sup>th</sup> Street – Segment 3 Project, associated project modifications to: S 223<sup>rd</sup> Walkway Improvements, Marina Dynamic Messaging Signs, Arterial Street Paving, North Hill Elementary Walkway Improvements 24<sup>th</sup> Ave Sidewalk (223<sup>rd</sup> – Kent Des Moines Rd), and Founders’ Lodge Improvements as shown in Attachment 1, and include such amendment in the next available budget amendment ordinance.”

**Motion 2:** “I move to approve the Public Works Contract with Ceccanti Inc. (Contractor), for the South 216<sup>th</sup> Street – Segment 3 Project, in the amount of \$6,102,221.00, not award Ceccanti Inc.’s Proposal Additive Bid – Temporary Traffic Control in the amount of \$152,000.00, authorize a construction project contingency in the amount of \$600,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.”

**Motion 3:** “I move to approve the 2018-2019 On-call General Civil Engineering Services Task Order #2018-06 with KPG Inc. for Construction Administration and Inspection Services for the South 216<sup>th</sup> Street – Segment 3 Project in the amount of \$636,775.53, and further authorize the City Manager to sign said Task Order substantially in the form as Submitted.”

### Background

The South 216<sup>th</sup> Street - Segment 3 improvements are part of a series of roadway capital improvements collectively referred to as the Transportation Gateway Project. These arterial improvements link Marine View Drive to Pacific Highway S. and connects 24<sup>th</sup> Avenue S. to S. 200<sup>th</sup> Street (in partnership with the City of SeaTac). The South 216<sup>th</sup> Street improvements include a context sensitive streetscape theme, widened roadway, enhanced pedestrian crosswalks, utility undergrounding, center turn lane, bicycle lanes, sidewalks, curb & gutter, street lighting with decorative features, landscaping, and other urban design features. Designed to implement the City’s Comprehensive Plan, these multi-modal improvements provide a transportation gateway to the downtown Marina District supporting sustainable economic growth and development in the North and Central parts of the City.

Per direction of the City Council and thru strategic local, state, federal, and private partnerships, four arterial segments of the Transportation Gateway project are now complete. In order of completion, the following were designed, constructed and completed between 2009 and 2017:

- South 216<sup>th</sup> Street - Segment 4 (between Marine View Drive and 11<sup>th</sup> Avenue S.)
- South 216<sup>th</sup> Street - Segment 2 (between 24<sup>th</sup> Avenue S. and 18<sup>th</sup> Avenue S.)
- 24<sup>th</sup> Avenue South (between S. 208<sup>th</sup> Street and S. 216<sup>th</sup> Street)
- South 216<sup>th</sup> Street - Segment 1A (between SR 99 and 24<sup>th</sup> Avenue S)

South 216<sup>th</sup> Street - Segment 3 is the final missing link in the Transportation Gateway Project and a notable gap in multi-modal amenities between 11<sup>th</sup> Avenue S and 20<sup>th</sup> Avenue S. The existing roadway section has characteristics of a rural 2 lane roadway with discontinuous and open roadside ditches. Design of the proposed South 216<sup>th</sup> Street improvements transition from a 5 lane section at 20<sup>th</sup> Avenue S. (Segment 2) to 3 lanes, connecting the improved arterial segment at 11<sup>th</sup> Avenue S (Segment 4). These combined improvements will create a complete, multi-modal street along the S. 216<sup>th</sup> St. corridor between Pacific Highway and Marine View Drive.

A significant portion of project funding is thru a Transportation Improvement Board (TIB) grant and an Interlocal Agreement (ILA) with the Port of Seattle (Port). TIB has supported all project phases including preliminary engineering, Right-of-Way acquisition, and construction totaling approximately 40% of the total project cost excluding construction contingency, Attachment 7. The ILA with the Port establishes funding for the project in an amount of \$1,500,000 for frontage improvements and traffic impact fee credit for future development of Des Moines Creek West, Attachment 8.

**Design and Public Involvement Process:** The effort obtaining public concurrence in the design process for this project was fairly intense. Public notices were provided to the neighboring community and an open house was held on July 17, 2017 to review the proposed improvements and receive preliminary comments on the design. The project also was assessed under the guidance of the Washington State Environmental Policy Act (SEPA) and a Declaration of Non-Significance was finalized on November 8, 2017, including distribution to all adjoining properties. Another public meeting was held on December 17, 2017 in the Council Chambers inviting adjoining property owners to review design details for each property. No objections to the overall improvements have been received to date.

Engineering efforts included preparation of a “Design Report”, December 8, 2017, incorporating design recommendations and findings from the survey, special engineering studies, right of way (ROW) planning, utility coordination, cost estimates, cultural resource assessment and environmental review. The Washington State Historic Preservation Office found that the project would not negatively impact historic properties.

A project Geotechnical Engineering Report was also prepared to investigate and evaluate the subsurface conditions in the vicinity of the proposed improvements which include new retaining walls, luminaires, pavement rehabilitation and widening, utility installation, and storm water management to provide recommendations for the proposed design. Additional subsurface investigation was conducted in coordination with franchise utility providers where apparent utility conflicts exist based on field locates and as-built plans. This report and recommendations meet industry engineering standards appropriate to the size of this project.

Plans, specifications, and estimates (85% PS&E phase) were completed and the ROW plan was approved by the City Council January 11, 2018. Individual meetings were held with adjoining property owners to review the project as well as request permanent and temporary property rights required by the City to make the improvements. Similar to other Transportation Gateway Project improvements, the City agreed to underground selected secondary electrical connections where necessary in order to expedite construction and comply with City code. All negotiations were successfully completed without the need to exercise the City Council adopted condemnation ordinance No. 18-098. The ROW plan has been certified as complete on November 2, 2018 and complies with the City’s plan and right of way acquisition procedures.

**Utility and Agency Agreements:** The City Council approved agreements with franchise utilities to underground overhead utilities as part of the project on October 4, 2018. An agreement with King County Metro to improve transit stops associated with the Rapid Rectangular Flashing Beacon (RRFB) pedestrian crossing, midway near 14<sup>th</sup> Avenue S. was approved on October 30, 2018. An additional RRFB crossing is planned in the vicinity of 18<sup>th</sup> Avenue S.

The Project was advertised utilized Seattle Times and the Daily Journal of Commerce on November 11<sup>th</sup> and 15<sup>th</sup>, 2018 with Bid opening on December 11<sup>th</sup>, 2018.

## Discussion

### Budget Amendment (Motion #1)

On January 14, 2019, the City Council under New Business discussed the South 216<sup>th</sup> Street – Segment 3 project and provided concurrence in support of a recommended full funding strategy for the project. First, it was noted that national, state, and regional strained resources and current policy along with a robust economy are driving up construction costs. Impacts can be observed throughout the industry impacting materials, labor, and equipment. Second, it was discussed that the apparent Low Bid for the project was within expectations (higher side), while the majority of Bids were much higher than expected. Across public works, Bids are experiencing cost escalation. Last, given the Apparent Low Bid and recommended 10% contingency, the project is experiencing an approximate \$1,600,000 funding shortfall.

The recommended full funding strategy for the project includes the following added revenue and as part of the strategy, multiple CIP projects have been identified for funding reduction and a delay in implementation, Attachment 1. If the project contingency does not get expended for the South 216<sup>th</sup> – Segment 3 project, funding will be re-appropriated to these projects. In order of precedence, the following approach will be utilized for a future budget amendment as directed by the City Council:

<u>Additional Revenue</u>	
Traffic Impact Fees (TIF)	\$225,000
REET 1	\$95,000
REET 2	\$105,000
One Time Sales Tax	\$200,000
 <u>CIP Project Reductions</u>	
S 216 <sup>th</sup> – Segment 3 Additive Bid Item	\$152,000
24 <sup>th</sup> Ave Sidewalks (223 <sup>rd</sup> – KDM)	\$75,000 (TIF)
S 223 <sup>rd</sup> Walkway Improvements	\$150,000 (ASE) Automated Speed Enforcement
S 200 <sup>th</sup> Street Walkway Improvements	\$40,000 (ASE)
Marina Dynamic Messaging Signs	\$50,000 (GF) General Fund
Founders Lodge	\$200,000 (REET 1)
Arterial Street Paving	<u>\$280,000 (TBD) Transportation Benefit District</u>
<b>TOTAL</b>	<b>\$1,572,000</b>

### Construction Contract (Motion #2)

On October 31, 2018, the Transportation Improvement Board (TIB) reviewed the City plans and authorized bidding for a South 216<sup>th</sup> Street - Segment 3 public works contract. Based upon TIB grant funding commitments, approximately \$2,756,000 in state funds will be available for construction and construction engineering/inspection services.

The improvements were advertised for bid in accordance with state law, WSDOT LAG Manual, and requirements for competitive bidding of public works contracts. Bids from the eight (8) contractors were received. Bids were publicly opened and read on December 11, 2018 by the City Clerk and are summarized below and in the bid tabulation Attachment 5.

South 216<sup>th</sup> Street – Segment 3  
BID RESULTS

Engineer's Estimate	\$5,916,849.50
<u>Contractor Name</u>	<u>Bid Proposal</u>
Ceccanti, Inc (Responsive Low Bidder)	\$6,254,221.00
Scarsella Bros. Inc	\$6,454,121.57
Pacific Civil & Infrastructure	\$7,040,011.85
NW Cascade	\$7,080,363.00
Active Construction	\$7,450,450.00
Johansen Excavating Inc.	\$7,517,721.13
Marshbank Construction	\$7,586,733.40
Tucci & Sons, Inc	\$7,674,766.55

Ceccanti, Inc. was the apparent low bidder at \$6,254,221.00. The bid tabulation and pre-bid documentation, as well as the contractor qualifications and references, have been reviewed, Attachment 3, and KPG Consulting Engineers (KPG) finds that the low bid is responsive and recommends award of the contract to Ceccanti, Inc., Attachment 6.

As part of the project Bid Proposal, bidders were required to provide an Additive Bid, a cost for enhanced traffic control during construction in which the City retained the ability not to award. Based on staff recommendations and Council direction provided at the January 10<sup>th</sup>, 2018 Council meeting, the Additive Bid will be removed from the Contract.

Construction Services (Motion #3):

Engineering consultants are needed in order to supplement and expand the capability of City staff for Construction Administration and Inspection of the Project. These services are proposed to be provided by KPG Inc., the Engineer of Record for the project, as provided in Attachment 4. Staff believes that KPG Inc. has satisfactorily met engineering expectations for the project as originally envisioned in the solicitation for services, has demonstrated their qualifications for these services on other projects within the City of Des Moines, and will be able to maintain valuable overall project history and consistency with the previous phases of work. All construction support shall comply with the Washington State Department of Transportation (WSDOT) Local Agency Guidelines (LAG) for construction contract administration to maintain the City's Certification Acceptance (CA) status.

Oversight of the contractor will include, but is not limited to, conducting a pre-construction conference involving utilities and key stakeholders; working with property owners and businesses to coordinate construction and minimize impacts; preparing daily diaries documenting issues and progress in meeting construction schedule commitments; review and approval of proposed material submittals; responding to contractor requests for information to clarify construction requirements; preparing change orders and work instructions; engineer solutions to unforeseen problems; reviewing materials testing to meet specifications; and performing daily inspections to ensure quality workmanship. Tracking of actual quantities of work is required as well as maintenance of record drawings.

Utility coordination is a significant undertaking on this project. Electrical distribution and communication wires are being undergrounded in a joint utility trench, as depicted in project schedules

B, C, D, E and F, requiring management of multiple schedules of work along with the significant City's work schedule (A).

The City's past experience for CE services indicates that fees generally run between 10% and 20% of the estimated cost of road construction. Listed below for comparison are recent construction contracts and approximate CE fee ratios:

<u>Year</u>	<u>Project</u>	<u>Firm</u>	<u>Cost</u>	<u>CE Fee Ratio</u>
2006	*PAC HWY	Ceccanti Construction	\$ 11,171,333	
		CH2M HILL	\$ 1,613,397	14%
2008	16TH AVE SOUTH	Scarcella Construction	\$ 6,013,708	
		KPG/DMJM Harris	\$ 877,491	15%
2011	*DM CREEK TRAIL	Archer Construction	\$ 921,298	
		INCA (TetraTech)	\$ 424,926	22%
2012	*NORTH TWIN BRIDGE	CA Carey Construction	\$ 1,623,140	
		EXELTECH	\$ 608,364	37%
2012	S. 216 St. Seg. 4	TUCCI & SONS	\$ 2,216,391	
		KPG	\$ 439,612	20%
2014	S. 216 <sup>th</sup> St, Seg. 2	SCI, Inc	\$ 4,851,767	
		KPG	\$ 559,923	11.5%
2015	*24 <sup>th</sup> Avenue S	DPK, Inc	\$ 5,234,007	
		KPG	\$ 796,332	15.2%
2017	*S. 216 <sup>th</sup> St, Seg. 1-A	SCI, Inc	\$ 3,226,440	
		KPG	\$ 503,871	15.6%
2019	S. 216 <sup>th</sup> St, Seg. 3	Ceccanti, Inc (proposed)	\$ 6,254,221	
		KPG (Proposed)	\$ 636,776	10.2%

\*Indicates a Federally Funded construction and/or involves WSDOT authorization. These projects include significant utility work. Typically there is more project documentation and testing required by FHWA and WSDOT, therefore construction management costs are often higher as a percentage of the overall construction costs.

KPG assisted in the design, right of way acquisition and construction of all phases of the Transportation Gateway project. They completed all South 216<sup>th</sup> Street - Segment 3 improvements design and ROW tasks, helped maintain an ambitious schedule, and satisfactorily accomplished this work within budget.

KPG also demonstrated qualifications for CE services on the other segments of the Transportation Gateway project. The firm's overall project history is valuable including work in negotiating agreements with property owners and utilities.

The negotiated CE fee is estimated at \$636,775.53 or 10.2% of the lowest bid (including the additive bid item).

### Alternatives

*(Motion #1)*

The City Council could elect to not act on the motion, thereby deferring the project to a later time. This is not advisable given the strategic partnership and associated funding thru the Transportation Improvement Board (TIB) and current extremely busy bidding climate.

*(Motion #2)*

The City Council could direct staff to re-submit for construction bids at a later time. However, there is no reason to believe project bids would be lower given the present extremely busy bidding climate.

The City Council could elect to award Ceccanti Inc.'s Proposal Additive Bid – Temporary Traffic Control in the amount of \$152,000.00.

*(Motion #3)*

The City Council could elect not to approve the 2018-2019 On-call General Civil Engineering Services Task Order #2018-06 with KPG Inc. for Construction Administration and Inspection Services. The City does not have adequate resources to perform complete Construction Administration and Inspection in compliance with the general project requirements or the WSDOT LAG Manual. Council could direct staff to solicit for proposals, but this will cause project delay and need to re-bid. Additionally, solicitation for proposals will result in potentially (3) additional separate project contracts; Construction management, Engineer of Record, and Materials testing.

**Financial Impact**

The City's CIP Budget Worksheet includes revenues to achieve full project funding and fund consultant services (Attachment 1).

**Recommendation**

Staff recommends adoption of the motion(s).

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South 216th - Segment 3

Project # 319.334

Summary Project Description:

TOTAL PROJECT SCOPE				PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN										
Expenditures	7/26/18	CIP	Revised	Project to Date 12/31/17	Estimated Year End 2018	2018	Planned	2019	Planned	Planned	Planned	Planned	Planned	
	Current CIP Budget	Supplemental Request	CIP Budget Estimate			Appropriated Budget	Year 2019	Appropriated Budget	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	
<b>Design</b>														
External Engineering	630,000	(90,000)	540,000	475,018	64,982									
Internal Engineering/Project Mgmt		10,000	10,000	3,069	6,931									
Other Professional Services - Len Madsen		77,956	77,956	37,693	40,263									
Other Misc (Advertise, Postage, Etc.)		3,300	3,300	1,800	1,500									
<b>Prop/ROW/Easements</b>														
External Engineering	130,000	(51,822)	78,178	-	78,178									
Internal Engineering		2,000	2,000	-	2,000									
Other Professional Services - Len Madsen	30,000	-	30,000	-	30,000									
Land		61,873	61,873	-	61,873									
Other Miscellaneous		-	-	-	-									
<b>Construction</b>														
External Engineering	6,395,000	(5,758,224)	636,776	-	-		636,776	500,000						
Internal Engr-Proj Mgmt/ Inspect		40,000	40,000	-	-		40,000	35,000						
Construction Contract 1		6,102,221	6,102,221	-	-		6,102,221	5,400,000						
Construction Contract Contingency		600,000	600,000	-	-		600,000	400,000						
Other Miscellaneous		-	-	-	-		-	-						
<b>Other</b>														
Interfund Financial Services	7,000	79,634	86,634	5,176	2,858		78,600	60,000						
NonCity Utilities - PSE		323,000	323,000	-	-		323,000							
Contingencies	100,000	(69,597)	30,403	-	-		30,403	100,000						
<b>Total Project Expense Budget:</b>	<b>7,292,000</b>	<b>1,330,341</b>	<b>8,622,341</b>	<b>522,756</b>	<b>288,585</b>	<b>288,600</b>	<b>7,811,000</b>	<b>6,495,000</b>						

Funding Sources	7/26/18	CIP	Revised	Project to Date 12/31/17	Scheduled Year 2018	2018	Scheduled Year 2019	2019	Scheduled Year 2020	Scheduled Year 2021	Scheduled Year 2022	Scheduled Year 2023	Planned Year 2024
	Current CIP Budget	Supplemental Request	CIP Budget Estimate			Appropriated Budget		Appropriated Budget					
One Time Sales Tax	-	200,000	200,000	-	-		200,000						
Traffic Impact Fees - City Wide	1,916,000	297,246	2,213,246	242,333	148,913	152,000	1,822,000	1,522,000					
TIB Grant	3,157,000	19,095	3,176,095	280,423	139,672	120,000	2,756,000	2,756,000					
Traffic In Lieu	1,500,000	-	1,500,000	-	-		1,500,000	1,500,000					
Surface Water Utility	279,000	-	279,000	-	-		279,000	279,000					
State of Washington Grants	440,000	(420,000)	20,000	-	-		20,000	20,000					
Franchise PSE Fiber	-	58,000	58,000	-	-		58,000	75,000					
Franchise Centurylink	-	75,000	75,000	-	-		75,000	96,000					
Franchise Comcast	-	181,000	181,000	-	-		181,000	249,000					
REET 1	-	295,000	295,000	-	-		295,000						
REET 2	-	105,000	105,000	-	-		105,000						
ASE	-	190,000	190,000	-	-		190,000						
General Fund	-	50,000	50,000	-	-		50,000						
Transportation Benefit District	-	280,000	280,000	-	-		280,000						
<b>Total Project Revenue Budget:</b>	<b>7,292,000</b>	<b>1,330,341</b>	<b>8,622,341</b>	<b>522,756</b>	<b>288,585</b>	<b>272,000</b>	<b>7,811,000</b>	<b>6,497,000</b>					

Committed Cash:

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Attachment #1

TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES			BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN								
Expenditures	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project To Date 12/31/2018	2018 Year to Date 12/31/2018	2018 Remaining Budget	Estimated Year End 2018	2018 Appropriated Budget	Planned Year 2019	2019 Appropriated Budget	Planned Year 2020	Planned Year 2021	Planned Year 2022	Planned Year 2023	Planned Year 2024
<b>Design</b>																
External Engineering	-	100,000	100,000	-	-	-	-			100,000						
Internal Engineering/Project Mgmt	25,000	(25,000)	-	-	-	-	-			-						
<b>Prop/ROW/Easements</b>																
<b>Construction</b>																
External Engineering	100,000	(100,000)	-	-	-	-	-			-						
Internal Engr.-Proj Mgmt/ Inspect		-	-	-	-	-	-									
Construction Contract	-	300,000	300,000	-	-	-	-			300,000						
Const Contract 1 - Contract Contingency		-	-	-	-	-	-									
<b>Other</b>																
Interfund Financial Services	1,500	(1,500)	-	-	-	-	-			-						
Contingencies	23,500	(23,500)	-	-	-	-	-			-						
<b>Total Project Expense Budget:</b>	<b>150,000</b>	<b>250,000</b>	<b>400,000</b>							<b>400,000</b>	<b>150,000</b>					
<b>Funding Sources</b>	<b>7/26/18 Current CIP Budget</b>	<b>CIP Supplemental Request</b>	<b>Revised CIP Budget Estimate</b>	<b>Project to Date 12/31/17</b>	<b>Project to Date 12/31/2018</b>	<b>2018 YTD</b>	<b>2018 Remaining Budget</b>	<b>Scheduled Year 2018</b>	<b>2018 Appropriated Budget</b>	<b>Scheduled Year 2019</b>	<b>2019 Appropriated Budget</b>	<b>Scheduled Year 2020</b>	<b>Scheduled Year 2021</b>	<b>Scheduled Year 2022</b>	<b>Scheduled Year 2023</b>	<b>Planned Year 2024</b>
ASE (Automatic Speed Enforcement) GF X-fer	150,000	(150,000)	-	-	-	-	-				150,000					
TIB Complete Streets -State of Washington Grants	-	400,000	400,000	-	-	-	-			400,000						
<b>Total Project Revenue Budget:</b>	<b>150,000</b>	<b>250,000</b>	<b>400,000</b>							<b>400,000</b>	<b>150,000</b>					

Committed Cash: - Cash on hand -

24th Ave Sidewalk (223rd - Kent Des Moines Rd)  
(Formerly Midway Elem Sidewalks)

Project # 319.606

Summary Project Description:

TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES				BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN							
Expenditures	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project To Date 12/31/2018	2018 Year to Date 12/31/2018	2018 Remaining Budget	Estimated Year End 2018	2018 Appropriated Budget	Planned Year 2019	2019 Appropriated Budget	Planned Year 2020	Planned Year 2021	Planned Year 2022	Planned Year 2023	Planned Year 2024
<b>Design</b>																
External Engineering (Parametric)	537,000	(114,443)	422,557	27,557	56,238	28,681	(28,681)	-				395,000				
Internal Engineering/Project Mgmt		31,353	31,353	31,353	32,726	1,373	(1,373)	-								
Other Professional Services		7,622	7,622	7,622	7,622	-	-	-								
<b>PropROWEasements</b>																
External Engineering	65,000	-	65,000	-	-	-	-	-					65,000			
Internal Engineering		-	-	-	-	-	-	-								
<b>Construction</b>																
External Engineering	4,660,000	-	4,660,000	-	-	-	-	-						4,660,000		
Internal Engr-Proj Mgmt/ Inspect		-	-	-	-	-	-	-								
Construction Contract 1		-	-	-	-	-	-	-								
Const Contract 1 - Contract Contingency		-	-	-	-	-	-	-								
<b>Other</b>																
Interfund Financial Services		419	419	419	419	-	-	-								
Contingencies	450,000	(20,000)	430,000	-	-	-	-	-				10,000	10,000	410,000		
<b>Total Project Expense Budget:</b>	<b>5,712,000</b>	<b>(95,049)</b>	<b>5,616,951</b>	<b>66,951</b>	<b>97,005</b>	<b>30,054</b>	<b>(30,054)</b>	<b>-</b>	<b>38,380</b>	<b>-</b>	<b>436,000</b>	<b>405,000</b>	<b>75,000</b>	<b>5,070,000</b>	<b>-</b>	<b>-</b>

Funding Sources	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project to Date 12/31/2018	2018 YTD 12/31/2018	2018 Remaining Budget	Scheduled Year 2018	2018 Appropriated Budget	Scheduled Year 2019	2019 Appropriated Budget	Scheduled Year 2020	Scheduled Year 2021	Scheduled Year 2022	Scheduled Year 2023	Planned Year 2024
Traffic Safety Program (ASE) Use 2nd	358,000	(295)	357,705	207,705	207,705	-	-	-							150,000	
Traffic Impact Fees - City Wide Use 1st	947,000	(169,754)	777,246	1,578	31,633	30,055	(30,055)	-		75,000			23,000	752,668		
Surface Water Utility	808,000	-	808,000	-	-	-	-	-			64,000			744,000		
State of Washington Grants	3,599,000	75,000	3,674,000	-	-	-	-	-			332,000	407,000	45,000	3,222,000		
<b>Total Project Revenue Budget:</b>	<b>5,712,000</b>	<b>(95,049)</b>	<b>5,616,951</b>	<b>209,283</b>	<b>239,338</b>	<b>30,055</b>	<b>(30,055)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>407,000</b>	<b>471,000</b>	<b>68,000</b>	<b>4,688,668</b>	<b>-</b>	<b>-</b>
<b>Committed Cash:</b>				<b>142,332</b>		<b>142,333</b>	Cash on hand	<b>142,332</b>		<b>142,332</b>		<b>208,332</b>	<b>201,332</b>			

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North Hill Elementary Walkway Improvements				Project # 319.620				Summary Project Description:								
TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES			BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN								
Expenditure Categories	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project To Date 12/31/2018	2018 Year to Date 12/31/2018	2018 Remaining Budget	Estimated Year End 2018	2018 Appropriated Budget	Planned Year 2019	2019 Appropriated Budget	Planned Year 2020	Planned Year 2021	Planned Year 2022	Planned Year 2023	Planned Year 2024
<b>Design</b>																
External Engineering	90,000	242,000	332,000	-	-	-	-						332,000			
Internal Engineering/Project Mgmt.		20,000	20,000	-	-	-	-						20,000			
Other Misc (Advertise, Postage, Etc.)		5,000	5,000	-	-	-	-						5,000			
<b>Prop/ROW/Easements</b>																
External Engineering	20,000	90,000	110,000	-	-	-	-							110,000		
Internal Engineering		10,000	10,000	-	-	-	-							10,000		
Land		725,000	725,000	-	-	-	-							725,000		
Other Miscellaneous		5,000	5,000	-	-	-	-							5,000		
<b>Construction</b>																
External Engineering	700,000	(480,000)	220,000	-	-	-	-									220,000
Internal Eng- Proj Mgmt/ Inspect		20,000	20,000	-	-	-	-									20,000
Construction Contract 1		1,890,000	1,890,000	-	-	-	-									1,890,000
Const Contract 1 - Contingency		180,000	180,000	-	-	-	-									180,000
<b>Other</b>																
Interfund Financial Services		35,470	35,470	-	-	-	-						3,870	8,500	23,100	
Contingencies	80,000	(65,000)	15,000	-	-	-	-							5,000	10,000	
<b>Total Project Expense Budget:</b>	<b>890,000</b>	<b>2,677,470</b>	<b>3,567,470</b>								120,000		360,870	853,500	2,343,100	

Funding Sources	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project to Date 12/31/2018	2018 YTD 12/31/2018	2018 Remaining Budget	Scheduled Year 2018	2018 Appropriated Budget	Scheduled Year 2019	2019 Appropriated Budget	Scheduled Year 2020	Scheduled Year 2021	Scheduled Year 2022	Scheduled Year 2023	Scheduled Year 2024
ASE (Automatic Speed Enforcement) GF X-ler	160,000	(40,000)	120,000	-	-	-	-				40,000					120,000
Federal Grants	730,000	1,070,000	1,800,000	-	-	-	-				80,000		360,000	250,000	1,190,000	
Surface Water Management		500,000	500,000	-	-	-	-								500,000	
Other (City Funds)		897,470	897,470	-	-	-	-						870	613,500	283,100	
State (TIB Unsecured)		250,000	250,000	-	-	-	-								250,000	
<b>Total Project Revenue Budget:</b>	<b>890,000</b>	<b>2,677,470</b>	<b>3,567,470</b>								120,000		360,870	853,500	2,343,100	

Committed Cash: - Cash on hand  
A/R outstanding

TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES			BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN								
Expenditures	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project To Date 12/31/2018	2018 Year to Date 12/31/2018	2018 Remaining Budget	Estimated Year End 2018	2018 Appropriated Budget	Planned Year 2019	2019 Appropriated Budget	Planned Year 2020	Planned Year 2021	Planned Year 2022	Planned Year 2023	Planned Year 2024
Designs																
Internal Engineering/Project Mgmt	3,000	(3,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Prop/ROW/Easements																
Construction																
Internal Engr-Proj Mgmt/ Inspect		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Construction Contract 1	42,000	(42,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other																
Interfund Financial Services	500	(500)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contingencies	4,500	(4,500)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Project Expense Budget:</b>	<b>50,000</b>	<b>(50,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>50,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Funding Sources</b>	<b>7/26/18 Current CIP Budget</b>	<b>CIP Supplemental Request</b>	<b>Revised CIP Budget Estimate</b>	<b>Project to Date 12/31/17</b>	<b>Project to Date 12/31/2018</b>	<b>2018 YTD 12/31/2018</b>	<b>2018 Remaining Budget</b>	<b>Scheduled Year 2018</b>	<b>2018 Appropriated Budget</b>	<b>Scheduled Year 2019</b>	<b>2019 Appropriated Budget</b>	<b>Scheduled Year 2020</b>	<b>Scheduled Year 2021</b>	<b>Scheduled Year 2022</b>	<b>Scheduled Year 2023</b>	<b>Planned Year 2024</b>
General Fund	50,000	(50,000)	-	-	-	-	-	-	-	-	50,000	-	-	-	-	-
<b>Total Project Revenue Budget:</b>	<b>50,000</b>	<b>(50,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>50,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

Committed Cash:

Founders' Lodge Improvements				Project # 506,714				Summary Project Description:									
TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES			BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN									
Expenditure Categories	7/26/18	CIP	Revised	Project to	Project	2018	2018	Estimated	2018	Planned	2019	Planned	Planned	Planned	Planned	Planned	
	Current CIP Budget	Supplemental Request	CIP Budget Estimate	Date 12/31/17	To Date 12/31/2018	Year to Date 12/31/2018	Remaining Budget	Year End 2018	Appropriated Budget	Year 2019	Appropriated Budget	Year 2020	Year 2021	Year 2022	Year 2023	Year 2024	
Design																	
External Engineering		19,012	19,012	-	-	-	19,012	19,012									
Internal Engineering/Project Mgmt		-	-	-	-	-	-	-									
Prop/ROW/Easements																	
Construction																	
External Engineering	200,000	(200,000)	-	-	-	-	-	-									
Internal Engr-Proj Mgmt/ Inspect																	
Construction Contract 1																	
Other																	
Interland Financial Services																	
Contingencies																	
<b>Total Project Expense Budget:</b>	<b>200,000</b>	<b>(180,988)</b>	<b>19,012</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>19,012</b>	<b>19,012</b>	<b>-</b>	<b>200,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Funding Sources</b>	<b>7/26/18 Current CIP Budget</b>	<b>CIP Supplemental Request</b>	<b>Revised CIP Budget Estimate</b>	<b>Project to Date 12/31/17</b>	<b>Project to Date 12/31/2018</b>	<b>2018 YTD 12/31/2018</b>	<b>2018 Remaining Budget</b>	<b>Scheduled Year 2018</b>	<b>2018 Appropriated Budget</b>	<b>Scheduled Year 2019</b>	<b>2019 Appropriated Budget</b>	<b>Scheduled Year 2020</b>	<b>Scheduled Year 2021</b>	<b>Scheduled Year 2022</b>	<b>Scheduled Year 2023</b>	<b>Scheduled Year 2024</b>	
REET 1	200,000	(180,988)	19,012	-	-	-	19,012	19,012			200,000						
<b>Total Project Revenue Budget:</b>	<b>200,000</b>	<b>(180,988)</b>	<b>19,012</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>19,012</b>	<b>19,012</b>	<b>-</b>	<b>200,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Committed Cash:</b>				<b>-</b>				<b>- Cash on hand</b>				<b>-</b>					
								<b>A/R outstanding</b>									

Arterial Street Paving				Project # 102.102				Summary Project Description:								
TOTAL PROJECT SCOPE				ACTUAL EXPENDITURES			BUDGET	PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN								
Expenditures	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project To Date 12/31/2018	2018 Year to Date 12/31/2018	2018 Remaining Budget	Estimated Year End 2018	2018 Appropriated Budget	Planned Year 2019	2019 Appropriated Budget	Planned Year 2020	Planned Year 2021	Planned Year 2022	Planned Year 2023	Planned Year 2024
<b>Design</b>																
External Engineering -KPG	503,000	(434,486)	68,514	68,102	71,341	3,239	(2,827)	412								
Internal Engineering/Project Mgmt		29,018	29,018	14,994	30,018	15,024	(1,000)	14,024								
Other Misc (Advertise, Postage, Etc.)		973	973	-	973	973	-	973								
<b>Proprietary Assessments</b>																
Other Professional Services		-	-	-	-	-	-	-								
<b>Construction</b>																
External Engineering		169,925	169,925	-	179,870	179,870	(9,945)	169,925								
Internal Eng-Proc Mgmt/ Inspect		30,000	30,000	-	40,143	40,143	(10,143)	30,000								
Construction Contract 1 - Scarsella Bro's Emergency Repair		16,918	16,918	16,918	16,918	-	-	-								
Construction Contract 2	6,291,000	(5,482,628)	808,372	-	930,126	930,126	(121,754)	808,372								
Const Contract 2 - Contract Contingency		335,000	335,000	-	-	-	335,000	335,000								
<b>Other</b>																
Interfund Financial Services	13,335	6,665	20,000	1,000	1,000	-	19,000	19,000								
NonCity Utilities - Highline Water District		485,768	485,768	-	503,362	503,362	(17,594)	485,768								
Non-Capitalizable Services - Scarsella Bro's Emergency Repair		-	-	-	-	-	-	-								
Contingencies	62,665	5,214,620	5,277,285	-	-	-	3,645	3,645		648,640		925,000	925,000	925,000	925,000	925,000
<b>Total Project Expense Budget:</b>	<b>6,870,000</b>	<b>371,773</b>	<b>7,241,773</b>	<b>101,014</b>	<b>1,775,070</b>	<b>1,674,061</b>	<b>193,055</b>	<b>1,867,119</b>	<b>1,867,119</b>	<b>648,640</b>	<b>926,000</b>	<b>925,000</b>	<b>925,000</b>	<b>925,000</b>	<b>925,000</b>	<b>925,000</b>

Funding Sources	7/26/18 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/17	Project to Date 12/31/2018	2018 YTD 12/31/2018	2018 Remaining Budget	Scheduled Year 2018	2018 Appropriated Budget	Scheduled Year 2019	2019 Appropriated Budget	Scheduled Year 2020	Scheduled Year 2021	Scheduled Year 2022	Scheduled Year 2023	Planned Year 2024
Transportation Benefit District (Transferred into 102)	3,900,000	59,825	3,959,825	796,685	1,196,098	399,414	65,586	465,000	467,500	192,640	472,000	481,500	491,000	501,000	511,000	521,000
Interest Income		19,463	19,463	4,463	19,715	15,252	(252)	15,000	15,000		6,000					
FRANCHISE FEES - WATER DISTRICT #54	2,802,618	(2,762,618)	40,000	5,000	10,000	5,000	-	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
FRANCHISE FEES - HIGHLINE WATER	455,000	2,102,165	2,557,165	200,000	488,168	288,168	(33,168)	255,000	330,000	385,000	333,300	336,633	339,999	343,399	346,833	350,301
FRANCHISE FEES - SW SUBURBAN	35,098	90,000	125,098	16,298	33,231	16,933	1,867	18,800	18,800	15,000	15,000	15,000	15,000	15,000	15,000	15,000
FRANCHISE FEES - MIDWAY SEWER	425,284	1,550,885	1,976,169	175,284	402,443	227,159	22,841	250,000	250,000	250,000	252,500	255,025	257,575	260,151	262,753	265,381
PRIVATE CONTRIBUTION - HIGHLINE WATER		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ARTERIAL STREET FUND BALANCE		16,918	16,918	16,918	16,918	-	-	-	-	-	-	-	-	-	-	-
Interlocal Agreement - Highline Water		260,300	260,300	-	694,871	694,871	(434,571)	260,300	746,068							
Interlocal Agreement - Highline Water (Bid Item Port		485,768	485,768	-	-	-	485,768	485,768	-							
<b>Total Project Revenue Budget</b>	<b>7,618,000</b>	<b>1,822,706</b>	<b>9,440,706</b>	<b>1,214,848</b>	<b>2,861,445</b>	<b>1,646,797</b>	<b>108,071</b>	<b>1,754,868</b>	<b>1,832,368</b>	<b>847,640</b>	<b>1,063,800</b>	<b>1,093,158</b>	<b>1,108,574</b>	<b>1,124,550</b>	<b>1,140,569</b>	<b>1,155,682</b>
<b>Committed Cash:</b>				<b>1,113,634</b>		<b>1,086,367</b>		<b>1,001,383</b>		<b>1,200,383</b>		<b>1,368,541</b>		<b>1,552,115</b>		<b>1,751,665</b>

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**PUBLIC WORKS CONTRACT**  
**between CITY OF DES MOINES and**

**CECCANTI, INC.**

THIS CONTRACT is made and entered into by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Ceccanti, Inc. organized under the laws of the State of Washington, located and doing business at 4116 Brookdale Rd East, Tacoma, WA 98446, (253) 537-2990, Jon David Vandergriend (hereinafter the "Contractor").

**AGREEMENT**

The parties agree as follows:

**I. DESCRIPTION OF WORK.**

Contractor shall perform the following services for the City in accordance with the following described plans and/or specifications incorporated herein by reference:

Transportation Gateway Project South 216<sup>th</sup> Street – Segment 3

- Widening roadway and constructing curb, gutter, and sidewalk along both sides of South 216<sup>th</sup> Street from 11<sup>th</sup> Avenue South to 20<sup>th</sup> Avenue South
- Clearing, grubbing, roadway and structure excavation
- Paving with hot mix asphalt and cement concrete
- Constructing storm drainage improvements
- Adjustment of surface utilities to grade
- Installing lane markers, signs, and other channelization
- Overhead utility conversion
- Providing irrigation, landscaping, fencing, and property restoration
- Installation of illumination systems
- Construction of structural earth walls with concrete block facing
- Construction of soldier pile wall and fascia
- And all incidental items necessary to complete the Work as described in the Plans and Specifications

The contractor agrees to furnish all materials, tools, labor, equipment, and other incidentals, and to perform all services and work as described in this Contract and the contract documents, which consist of this Contract and the following items, which are by this reference incorporated herein:

Standard Specifications for Road, Bridge and Municipal Construction, 2018 prepared by the Washington State Department of Transportation and the American Public Works Association – Washington State Chapter

This is a Public Works Project which is subject to Prevailing Wage and Sales Tax rules. A current City of Des Moines Business License is required for all contractors and subcontractors that perform work under this contract. These licenses shall be in place prior to the issuance of any Notice to Proceed. Retainage will be withheld.

Exhibit A: Bid Documents

Exhibit B: Contract Documents

Exhibit C: Amendments to the Standard Specifications

Exhibit D: Special Provisions

Appendix A: Standard Plans

Appendix B: Prevailing Wage Rates

Appendix C: RCW 19.122

Appendix D: Geotechnical Report

Appendix E: Franchise Utility Standard Plans and Details

Appendix F: Construction Stormwater General Permit

- a. Contractor represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.
- b. The Contractor shall provide and furnish any and all labor, materials, tools, equipment and utility and transportation services along with all miscellaneous items necessary to perform this Contract except for those items mentioned therein to be furnished by the City.
- c. All work shall be accomplished in a workmanlike manner in strict conformity with the attached plans and specifications including any and all Addenda issued by the City, City Regulations and Standards, other Contract Documents hereinafter enumerated.

In addition, the work shall be in conformance with the following documents which are by reference incorporated herein and made part hereof:

(i) The Standard Specifications of the Washington State Department of Transportation (WSDOT) (2018 edition);

(ii) The American Public Works Association (APWA) (current edition);

- (iii) The Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (current edition);
  - (iv) The Standard Plans for Road, Bridge and Municipal Construction (as prepared by the WSDOT/APWA current edition);
  - (v) The American Water Works Association Standard (AWWA) (current edition), and;
  - (vi) Any changes in the Work in accordance with the Contract Documents.
- d. Any inconsistency in the parts of the Contract and the documents referenced in Section I (c) above shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):
1. Terms and provisions of the Contract,
  2. Addenda,
  3. Proposal Form,
  4. Special Provisions, including APWA General Special Provisions, if they are included,
  5. Contract Plans,
  6. Amendments to the Standard Specifications,
  7. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
  8. Contracting Agency's Standard Plans (if any), and
  9. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

**II. TIME OF COMPLETION.** The parties agree that work on the tasks described in Section I above and more specifically detailed in the Plans and Specifications attached hereto or incorporated herein by reference will begin within 10 days of issuance of the Notice to Proceed for this project. The Contractor shall complete the Work described in Section I within **200 working days** based upon the start date specified in the Notice to Proceed for this project. If said work is not completed within the time specified, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

**III. COMPENSATION.** The City shall pay the Contractor a total amount not to exceed **\$6,050,632.00**, plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract. Total amount of contract, including applicable sales tax, not to exceed **\$6,102,221.00 for Schedules A through F**. The Contractor shall invoice the City monthly. The City shall pay to the Contractor, as full consideration for the performance of the Contract, an amount equal to the unit and lump sum prices set forth in the bid. The Contractor will submit requests for Progress payments on a monthly basis. The Contractor's Record Drawings, per the Contract Provisions, for the Work completed each week shall be attached to each monthly progress payment request submitted by the Contractor. The monthly progress payment requests submitted by the Contractor will not be considered complete without the required Record Drawings. The City will make progress payment within 45 days after receipt of the Contractor's complete progress request until the work is complete and accepted by the City. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

A. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60)

days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 20 calendar days upon entering into this Contract, through a bonding company meeting standards established by the City.

B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.

C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

**IV. INDEPENDENT CONTRACTOR.** The parties understand and agree that Contractor is a firm skilled in matters pertaining to construction and will perform independent functions and responsibilities in the area of its particular field of expertise. Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the City. As such, they have no authority to bind the City or control employees of the City, contractors, or other entities. The City's Planning, Building and Public Works Director or his or her designated representative shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

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

**V. TERMINATION.** The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Agreement.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Contract.

If the City terminates this Contract for good cause, the Contractor shall not receive any further money due under this Contract until the Contract work is completed. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

**VI. LIQUIDATED DAMAGES.** This section of the Contract shall apply only in the event of a delay in the completion of the work within the timeframe specified in the Contract. This being a Public Works project performed for the benefit of the public, and there being a need for the completion of the project in the time specified in the Contract, City and Contractor agree that damages for delay in the performance or completion of the work are extremely difficult to ascertain. However, City and Contractor agree that due to the expenditure of public funds for the work specified in this Contract, and the need to provide the work for the benefit of the health, safety and welfare of the public, the failure to complete the work within the time specified in the Contract will result in loss and damage to City. City and Contractor agree that a delay will result in, but not be limited to, expense to the City in the form of salaries to City employees, the extended use of City equipment, delays in other portions of the project on which Contractor is working, increased cost to the City for the project, delays in other projects planned by City, and loss of use and inconvenience to the public.

Although difficult to quantify and ascertain, City and Contractor agree that the sum listed as liquidated damages represents a fair and reasonable forecast of the actual damage caused by a delay in the performance or completion of the work specified in the Contract. In addition, City and Contractor agree that the liquidated damages set forth below are intended to compensate the City for its loss and damage caused by delay. The liquidated damages are not intended to induce the performance of Contractor.

Contractor declares that it is familiar with liquidated damages provisions, and understands their intent and purpose. By signing this Contract, Contractor further declares that it understands the liquidated damages provision of this contract, that it is a product of negotiation, and that it is a fair estimation of the damage and loss that City will suffer in the event of delay.

City and Contractor further agree that the contractor shall not be charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes.

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$4,576.67** shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

In the event that the Contract is terminated by City for cause pursuant to the general conditions of the contract, this liquidated damages section shall apply, but only to the extent that the contract is delayed. In addition to liquidated damages, City shall be permitted to recover from Contractor the cost of completion of the work if the cost of completion exceeds the original sum of money agreed upon.

When the Contract Work has progressed to Substantial Completion as defined in the Contract, the Engineer may determine that the work is Substantially Complete. The Engineer will notify the Contractor in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established, the formula for liquidated damages shown above will not apply. For overruns in Contract time occurring after the Substantial Completion Date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work.

The Contractor shall complete the remaining Work as promptly as possible. Upon request by the Engineer, the Contractor shall furnish a written schedule for completing the physical Work on the Contract.

**VII. PREVAILING WAGES.** Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work and an Affidavit of prevailing wages paid after completion of the work. The Statement of Intent to Pay Prevailing Wages," shall include Contractor's registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries must be submitted to the City by Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

**VIII. HOURS OF LABOR.** Contractor shall comply with the "hours of labor" requirements and limitations as set forth in Chapter 49.28 RCW. It shall be the responsibility of Contractor to require all subcontractors to comply with the provisions of Chapter 49.28 RCW and this section of the Contract. The Contractor shall pay all reasonable costs (such as over-time of crews) incurred by the City as a result of work beyond eight (8) hours per day or forty (40) hours per week. Additional hours beyond a forty (40)-hour workweek will be pro-rated against contractual workdays.

**IX. COMPLIANCE WITH WAGE, HOUR, SAFETY, AND HEALTH LAWS.** The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 294 U.S.C. 201 et seq, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq, the Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

**X. DAYS AND TIME OF WORK.** Unless otherwise approved by the City, the working hours for this project will be limited to the following hours:

Monday through Friday: 7:00 a.m. to 7:00 p.m.  
Saturday, Sunday and Holidays: 8:00 a.m. to 5:00 p.m.

**XI. WORKERS' COMPENSATION.** The Contractor shall maintain Workers' Compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of Workers' Compensation Laws. In jurisdictions not providing complete Workers' Compensation protection, the Contractor shall maintain Employer's Liability Insurance in the amount, form and company satisfactory to the City for the benefit of all employees not protected by Workers' Compensation Laws.

The Contractor shall make all payments arising from the performance of this Contract due to the State of Washington pursuant to Titles 50 and 51 of the Revised Code of Washington.

Whenever any work by the Contractor under the authority of this Contract is on or about navigable waters of the United States, Workers' Compensation coverage shall be extended to include United States Longshoreman and harbor worker coverage. The Contractor shall provide the City with a copy of the necessary documentation prior to the start of any activity.

**XII. CHANGES.** The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XXII(C), within seven (7) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section XIII, Claims, below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

Upon completion of the work, and prior to project closeout, the City may execute a 'CLEAR-ALL' change order to increase the final budget authority to include the field recorded increased and decreased unit bid quantities throughout the project. This 'CLEAR-ALL' change order increases the budget authority to match the actual amount earned and paid to the Contractor and represents the difference between the Additional Amount Earned Over Original Contract and Increased Budget Authority From Approved Project Change Orders. ***This is merely an accounting tool, and does not adjust the total contract time, or authorize additional payment to the Contractor***

**XIII. CLAIMS.** The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this Section provides. A change order that is not protested as provided in this Section shall be full payment and final settlement of all claims for Contract time and for all costs of any kind, including costs of delays, related to any Work either covered or affected by the change. By not protesting as this Section provides, the Contractor also waives any additional entitlement and accepts from the Engineer any written or oral order (including directions, instructions, interpretations, and determinations).

If in disagreement with anything required in a change order, another written order, or an oral order from the Engineer, including any direction, instruction, interpretation, or determination by the Engineer, the Contractor shall:

1. Immediately give a signed written notice of protest to the Project Engineer or the Project Engineer's field Inspectors before doing the Work;
2. Supplement the written protest within 14 calendar days with a written statement and supporting documents providing the following:
  - a. The date and nature of the protested order, direction, instruction, interpretation, or determination;
  - b. A full discussion of the circumstances which caused the protest, including names of persons involved, time, duration and nature of the Work involved, and a review of the Plans and Contract Provisions referenced to support the protest;
  - c. The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined;
  - d. An analysis of the project schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption; and
  - e. If the protest is continuing, the information required above shall be supplemented upon request by the Project Engineer until the protest is resolved.

Throughout any protested Work, the Contractor shall keep complete records of extra costs and time incurred. The Contractor shall permit the Engineer access to these and any other records related to the protested Work as determined by the Engineer.

The Engineer will evaluate all protests provided the procedures in this Section are followed. If the Engineer determines that a protest is valid, the Engineer will adjust payment for Work or time by an equitable adjustment in accordance with WSDOT Standard Specifications Section 1-09.4. Extensions of time will be evaluated in accordance with WSDOT Standard Specifications Section 1-08.8. No adjustment will be made for an invalid protest.

If the Engineer determines that the protest is invalid, that determination and the reasons for it will be provided in writing to the Contractor. The determination will be provided within 14 calendar days after receipt of the Contractor's supplemental written statement (including any additional

information requested by the Project Engineer to support a continuing protest) described in item 2 above.

If the Contractor does not accept the Engineer's determination then the Contractor shall pursue the dispute and claims procedures set forth in WSDOT Standard Specifications Section 1-09.11. In spite of any protest or dispute, the Contractor shall proceed promptly with the Work as the Engineer orders.

By failing to follow the procedures of WSDOT Standard Specifications Sections 1-04.5 and 1-09.11, the Contractor completely waives any claims for protested Work.

**XIV. LIMITATION OF ACTIONS.** Contractor must, in any event, file any lawsuit arising from or connected with this Contract, within 120 calendar days from the physical completion date issued by the Engineer or Contractors' ability to file that claim or suit shall be forever barred. This section further limits any applicable statutory limitations period.

**XV. WARRANTY.** Upon acceptance of the contract work, Contractor must provide the City a warranty bond for one year in the amount of the contract value specified in Section III above and in a form acceptable to the City. In the event any defects are found within the first year, the warranty bond shall be extended for an additional year. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

**XVI. DISCRIMINATION.** In the hiring of employees for the performance of work under this Contract or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

**XVII. INDEMNIFICATION.** Contractor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

***The indemnification required for the Work is contained in Exhibit D (Special Provisions) Section 1-07.18(6).***

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract 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 the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Contract.

**XVIII. INSURANCE.** The Contractor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

**No Limitation.** Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

***The scope of insurance required for the Work is contained in Exhibit D (Special Provisions) Section 1-07.18.***

#### **A. MINIMUM SCOPE OF INSURANCE**

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

## **B. MINIMUM AMOUNTS OF INSURANCE**

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

## **C. OTHER INSURANCE PROVISIONS**

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

## **D. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

## **E. VERIFICATION OF COVERAGE**

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing insurance of the Contractor before commencement of the work.

## **F. SUBCONTRACTORS**

The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

## **G. NOTICE OF CANCELLATION**

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

## **H. FAILURE TO MAINTAIN INSURANCE**

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

**XIX. WORK PERFORMED AT CONTRACTOR'S RISK.** Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be

responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

**XX. BOND - SEPARATE PAYMENT AND PERFORMANCE BONDS REQUIRED.** Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish both a performance bond and a payment bond to the City, both in the full amount of the bid with a surety company as surety. The purpose of the bonds is to ensure that the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such Contractor or subcontractors with provisions and supplies for the carrying on of such work. Such bonds shall provide that any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original Contractor. In addition, the surety company/companies providing such bonds shall agree to be bound to the laws of the State of Washington, and subjected to the jurisdiction of the State of Washington and the King County Superior Court in any proceeding to enforce the bond. This Contract shall not become effective until said bonds are supplied and approved by the Engineer and filed with the City Clerk.

In the event that the Compensation called for in Section III of this Contract is less than \$150,000.00, which sum shall be determined after the addition of applicable Washington State sales tax, the Contractor may, prior to the execution to this contract and in lieu of the above mentioned bonds, elect to have the City retain 10% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

**XXI. DEBARMENT.** The Contractor must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Contractor or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

**XXII. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. 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.

2. **Applicable Law and Jurisdiction.** This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Contract, 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 right to indemnification under Section XVII of this Contract.

C. **Written Notice.** All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of the Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. **Assignment.** Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. **Modification.** No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.

F. **Compliance with Laws.** The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

G. **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

H. **Business License.** Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Des Moines Municipal Code.

I. **Records Retention and Audit.** During the progress of the Work and for a period not less than three (3) years from the date of completion of the Work or for the retention period required by law, whichever is greater, records and accounts pertaining to the Work and accounting therefore are to be kept available by the Parties for inspection and audit by representatives of the Parties and copies of all records, accounts, documents, or other data pertaining to the Work shall be furnished upon request. Records and accounts shall be maintained in accordance with applicable state law and regulations.

J. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, then the order of precedence shall be in accordance with Section I c of this Contract.

K. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.

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

<p><b>CONTRACTOR:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____              Its _____  <i>(Title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF DES MOINES:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: <u>Michael Matthias</u>              Its <u>City Manager</u>  <i>(Title)</i></p> <p>DATE: _____</p>  <p style="text-align: right;">Approved as to Form:</p> <p style="text-align: right;">_____              City Attorney</p> <p style="text-align: right;">DATE: _____</p>
--	---

<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONTRACTOR:</b></p> <p>Jon David Vandergriend              Ceccanti, Inc.              4116 Brookdale Rd East              Tacoma, WA 98446              (253) 537-2990 (telephone)              jon@ceccantiinc.com (e-mail)</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF DES MOINES:</b></p> <p>Scott J. Romano              City of Des Moines              21650 11<sup>th</sup> Avenue South              Des Moines, WA 98198              (206) 870-6539 (telephone)              sromano@desmoineswa.gov (email)</p>
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At the direction of the Des Moines City Council taken at an open Public Meeting on \_\_\_\_\_

## Separate Performance and Payment Bonds

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**PUBLIC WORKS PAYMENT BOND  
to City of Des Moines, WA**

Bond No. \_\_\_\_\_

The City of Des Moines, Washington, (City) has awarded to \_\_\_\_\_ (Principal), a contract for the construction of the project designated as \_\_\_\_\_ (Contract), and said Principal is required under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and \_\_\_\_\_ (Surety), a corporation organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of \_\_\_\_\_ US Dollars (\$ \_\_\_\_\_) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW Titles 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in four (4) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature \_\_\_\_\_ Date \_\_\_\_\_ Surety Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Name, address, and telephone of local office/agent of Surety Company is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PERFORMANCE BOND  
to City of Des Moines, WA**

Bond No. \_\_\_\_\_

The City of Des Moines, Washington, (City) has awarded to \_\_\_\_\_ (Principal), a contract for the construction of the project designated as \_\_\_\_\_, (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and \_\_\_\_\_ (Surety), a corporation, organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of \_\_\_\_\_ US Dollars (\$ \_\_\_\_\_) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all the terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in four (4) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature \_\_\_\_\_ Date \_\_\_\_\_ Surety Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Name, address, and telephone of local office/agent of Surety Company is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**LANDSCAPING AND  
IRRIGATION WARRANTY  
AND DEFECT BOND TO CITY  
OF DES MOINES**

NAME OF PROJECT: \_\_\_\_\_ BOND NO: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned,  
as Principal, and \_\_\_\_\_  
a Corporation organized and existing under the laws of the State of Washington, as a Surety Corporation, and qualified under the laws of the State of Washington to become Surety upon bonds of Contractors with Municipal Corporations, as Surety, are jointly and severally held and firmly bound to the CITY OF DES MOINES in the penal sum of \$ \_\_\_\_\_, representing the sum of 100% of the "Plant Establishment-1 Year" lump sum Bid Item and 50% of the "Automatic Irrigation System Complete" lump sum Bid Item as shown in the Proposal, together with any adjustments, up or down because of changes in the contract work, for the payment of which sum on demand we bind ourselves and our successors, heirs, administrators or personal representatives, as the case may be.

WHEREAS, the Principal has completed the project in the CITY OF DES MOINES, and the Principal has constructed certain improvements in connection with said project and intends to secure the successful operation of said improvements pursuant to RCW 58.17 and the CITY OF DES MOINES Code.

As part of acceptance of the contract work, Contractor has provided the City the attached one-year warranty and defect bond in the amount specified above and in a form acceptable to the City. The Principal shall perform end sure the proper operation of the irrigation system and Plant Establishment as specified in the Contract and as identified in the approved Plant Establishment Plan for one (1) year from the date of final acceptance of the Contract work by the City of DES MOINES. When plants are replaced, the warranty for that plant shall extend for one (1) year from the date such replacement is complete and accepted by the City. The Principal shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Principal does not complete the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Principal shall pay all costs incurred by the City in order to accomplish the correction.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their separate seals. The name and corporate seal (if required by law) of each corporate party is hereto affixed and duly signed by its undersigned representatives pursuant to authority of its governing body.

**TWO WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

**PRINCIPAL** (enter principal's name above)

\_\_\_\_\_

**BY:** \_\_\_\_\_

\_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

\_\_\_\_\_

**CORPORATE SEAL:**

\_\_\_\_\_  
**PRINT NAME**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**SURETY**

**CORPORATE SEAL:**

**BY:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

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## **City of Des Moines**

Public Works Department

**21650 11<sup>th</sup> Avenue South  
Des Moines, WA 98198-6317**

**City of Des Moines  
South 216<sup>th</sup> Street – Segment 3  
11<sup>th</sup> Avenue South to 20<sup>th</sup> Avenue South**

**Bid Documents  
November 2018**

**Prepared By:**

**KPG**  
SEATTLE · TACOMA

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Officials of The City of Des Moines

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**MAYOR**

Matt Pina

**City Council**

Robert K. Back

M. Luisa Bangs

Traci Buxton

Matt Mahoney

Jeremy Nutting

Vic Pennington

**City Manager**

Michael Matthias

**Public Works Director**

Brandon Carver, P.E., P.T.O.E.

Exhibit A: Bld Documents

### Engineer's Statement

These Specifications and Special Provisions have been prepared, except as noted otherwise, under the direction of a Professional Engineer, registered in the State of Washington, whose seal(s) and signature(s) appear below:



*Terry Earl Wright*

Engineer's Signature

11-07-18

Date



*Janessa M. Donato*

Engineer's Signature

11-07-18

Date



Approved For Construction

*R. Brandon Carter*

Public Works Director

11-7-18

Date

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Exhibit A: Bid Documents

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**South 216<sup>th</sup> Street – Segment 3**

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Statement of Proposed Subcontractors and Material Suppliers .....26

## Advertisement for Bids

NOTICE IS HEREBY GIVEN that sealed bids will be received by the Engineering Department of the City of Des Moines, Washington, until 1 P.M. on December 11, 2018 in the Engineering Building, 21650 11<sup>th</sup> Avenue South, Des Moines, WA 98198.

Bid opening will occur at approximately 2 P.M. on December 11, 2018 in the Public Works Service Center, 2255 South 223<sup>rd</sup> Street, Des Moines, WA 98198, at which time all bids will be publicly opened and read aloud for:

**City of Des Moines  
South 216<sup>th</sup> Street – Segment 3  
(Between 11<sup>th</sup> Avenue S and 20<sup>th</sup> Avenue S)**

Work to be performed under this contract is as follows:

- Widening roadway and constructing curb, gutter, and sidewalk along both sides of South 216<sup>th</sup> Street from 11<sup>th</sup> Avenue South to 20<sup>th</sup> Avenue South
- Clearing, grubbing, roadway and structure excavation
- Paving with hot mix asphalt and cement concrete
- Constructing storm drainage improvements
- Adjustment of surface utilities to grade
- Installing lane markers, signs, and other channelization
- Overhead utility conversion
- Providing irrigation, landscaping, fencing, and property restoration
- Installation of illumination systems
- Construction of structural earth walls with concrete block facing
- Construction of soldier pile wall

And all incidental items necessary to complete the Work as described in the Plans and Specifications

Access to bidding information (plans, specifications, addenda, and Bidders List) is available through City of Des Moines' on-line plan room. Free-of-charge access is provided to Prime Bidders, Subcontractors, and Vendors by going to [www.bxwa.com](http://www.bxwa.com) and clicking on "Posted Projects", "Public Works", and "City of Des Moines". This on-line plan room provides Bidders with fully usable on-line documents; with the ability to: download, view, print, order full/partial plan sets from numerous reprographic sources, and a free on-line digitizer/take-off tool. Bidders must "Register" in order to receive automatic e-mail notification of future addenda and to place themselves on the "Self-Registered Bidders List". Bidders that do not register will not be automatically notified of addenda and will need to periodically check the on-line plan room for addenda issued on this project. Contact Builders Exchange of Washington at 425-258-1303 should you require assistance.

Bidders are not to contact the City of Des Moines or the Engineer to obtain bid documents. Any questions concerning the description of the work contained in the contract documents must be directed in writing to Terry Wright via email at Terry@kpg.com prior to the bid opening. Questions received after December 5, 2018 may not be responded to prior to bid opening. The Engineers estimated cost is in the range of \$5.5 M to \$6.2M.

All bid proposals shall be accompanied by a bid proposal deposit in cash, certified check, cashier's check, postal money order, or bid bond made payable to the City of Des Moines in an amount not less than five percent (5%) of the amount of such bid proposal. Bid bonds shall be in a form satisfactory to the City Attorney. Should the successful bidder fail to enter into such contract and furnish the satisfactory bond within the time stated in the specifications, the bid proposal deposit will be forfeited to the City of Des Moines.

The City of Des Moines hereby notifies all bidders that it will affirmatively ensure that minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex or national origin in consideration for an award.

"The (City of Des Moines) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award."

The City reserves the right to reject any or all bids and to waive informalities in the bidding and to make the award as deemed to be in the best interest of the City. No bidder may withdraw their bid for a period of thirty (45) days after the date set for the bid opening.

All schedules on the Bid Proposal must be completed, or the bid shall be considered non-responsive. Basis for award shall be total Bid for all Schedules included in the Proposal.

By order of the City Council of the City of Des Moines.

CITY OF DES MOINES  
Bonnie Wilkins, City Clerk

Published In the:

1. Seattle Times on November 8, 2018 and November 15, 2018
2. Daily Journal of Commerce on November 8, 2018, November 15, 2018 and November 22, 2018

## Instructions For Bidders

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- IB-1 **PREPARATION OF PROPOSALS.** All proposals shall be submitted on the proposal forms provided in the **Bid Documents** section of the Project Specifications. The Contract forms in the **Contract Documents** section of the Specifications **shall not be** filled in. All spaces on the bid form shall be appropriately and legibly filled in with ink, and all prices stated in words and figures. No alterations in proposals or in the printed forms therefore, by erasures, deletions, or interpolations, will be acceptable unless each alteration is signed or initialed by the person signing the bid; if initialed, the Owner may require the Bidder to identify the alteration so initialed.
- IB-2 **SUBMITTING PROPOSALS.** Each proposal shall be submitted in a sealed envelope bearing on the outside the name and address of the Bidder and addressed to the Owner, naming the Project for which the bid is submitted. Also, there shall appear conspicuously on the envelope the statement: "Bid -- To Be Opened at (specified hour) on (specified date)." It shall be the sole responsibility of the Bidder to see that his bid is received by the proper time. Any bid received after the scheduled time for opening bids will be returned to the Bidder unopened. The decision as to whether or not bids that have been delayed in the mails will be opened and considered shall rest with the Owner.
- IB-3 **MODIFICATION OF PROPOSALS.** Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modifications of the bid form which are not specifically called for in the contract documents may result in the Owner's rejection of the bid as not being responsive to the invitation. No oral or telephonic modification of any bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the Bidder was placed in the mail prior to the opening of the bids.
- IB-4 **WITHDRAWAL OF PROPOSAL.** Any Bidder may withdraw his bid, either personally, by written request, or by telegraphic request confirmed in the manner specified above, at any time prior to the scheduled closing time for receipt of bids.
- IB-5 **SIGNATURES OF BIDDERS.** Each Bidder shall sign his proposal, using his usual signature and giving his full business address. Bids by partnerships shall be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the individual signing. Bids by corporations shall be signed with the name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The names of all persons signing should also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president", "secretary", "agent", or other designation without disclosing his principal may be held to be the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing in behalf of the partnership or corporation shall be furnished.
- IB-6 **QUALIFICATION OF BIDDER.** Bidders are required to submit satisfactory evidence that they have a practical knowledge of the particular work bid upon, and that they have the necessary financial resources to complete the proposed work. Refer to the **Statement of Bidder Qualifications**.

In determining the lowest responsible bid, the following elements will be considered: Whether the Bidder involved (a) maintains a permanent place of business; (b) has adequate plant equipment to do the work properly and expeditiously; (c) has a suitable financial status to meet obligations incident to the work; (d) has appropriate technical experience.

Each bidder may be required to show that former work performed by him has been handled in such a manner that there are no just or proper claims pending against such work. No Bidder will be acceptable if he is engaged in any work that impairs his ability to finance this Contract or provide proper equipment for the proper execution of same. Each Bidder shall demonstrate his ability by meeting all requirements herein stipulated, if asked for them.

- IB-7 LOCAL CONDITIONS. Each Bidder shall visit the site of the work and thoroughly and fully inform himself relative to construction hazards and procedure, labor, and all other conditions and factors, local and otherwise, which would affect the prosecution and completion of the work and the cost thereof, including the availability and cost of labor, and available facilities for transportation, handling, and storage of materials and equipment. It must be understood and agreed that all such factors have been properly investigated and considered in the preparation of every proposal submitted, as there will be no subsequent financial adjustment to any Contract awarded thereunder which is based on the lack of such prior information or its effect on the cost of the work.
- IB-8 INTERPRETATION OF CONTRACT DOCUMENTS. If any person contemplating submitting a bid for the proposed Contract is in doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents, or finds discrepancies in or omissions from the Plans or Specifications, he may submit to the Owner a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the Contract Documents will be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such Contract Documents. The Owner will not be responsible for any other explanations or interpretations of the Contract Documents. No oral interpretations of any provision in the Contract Documents will be made to any Bidder.
- IB-9 ACCEPTANCE OF PROPOSAL. The Owner reserves the privilege of rejecting all bids and not making an award. The award of the Contract, if made by the Owner, will be made to the qualified Bidder submitting the lowest and best bid, but the Owner shall determine at his own discretion whether a Bidder is qualified to perform the Contract and what bid is the lowest and best and whether it is to the interest of the Owner to accept the bid.
- IB-10 BID AND PERFORMANCE GUARANTEES. Each bid shall be accompanied by a good faith token in the amount and form specified in the Notice to Contractors as evidence of good faith and as a guarantee that if awarded the Contract, the Bidder will execute the Contract and give bond as required. The successful Bidder's good faith token will be retained until he has entered into a satisfactory Contract and furnished the required 100% (one hundred percent) Performance Bond. The Owner reserves the right to hold the certified checks, cashier's checks, or bid bonds for the three (3) lowest bidders until the successful Bidder has entered into a Contract and furnished a Performance Bond.

Bid Bonds executed in the amount, form, and manner specified shall be furnished by a Corporate Surety satisfactory to the Owner and licensed to do business at the place where the Project is located. Should the successful Bidder fail to enter into a Contract and give bond

within ten (10) days after his proposal has been accepted, the Bidder shall pay the Owner as liquidated damages the amount specified for the good faith token.

- IB-11 AGREEMENT AND BONDS. The form of Agreement which the successful Bidder, as Contractor, will be required to execute, and the forms and amounts of Surety Bonds which he will be required to furnish at the time of execution of the agreement, are included in the Contract Documents and should be carefully examined by the Bidder. The Agreement and the Surety Bonds shall be executed in four (4) original counterparts.

## Bidders Checklist

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The Bidder's attention is called to the following forms which must be executed in full as required:

(a) Proposal

The unit prices bid must be shown in the space provided. Show unit prices in both words and figures. Final sheet on proposal must be filled in and signed by the bidder. Refer to Instructions for Bidders regarding submittal of proposals.

All schedules on the Bid Proposal must be completed, or the bid shall be considered non-responsive. Basis for award shall be total Bid for all Schedules A and B included in the Proposal.

All schedules on the Bid Proposal must be completed, or the bid shall be considered non-responsive. Basis for award shall be total Bid for all Schedules included in the Proposal.

The Owner will correct obvious mathematical errors in bid proposals.

b) Bond Accompanying Bid

This form is to be executed by the Bidder and the surety company unless bid is accompanied by a cashier's check or certified check. The amount of this bond shall be not less than five percent (5%) of the total bid, including sales tax, if applicable, and may be shown in dollars or on a percentage basis. On federally funded projects, a surety's name must also appear on the United States' Treasury Department's list of authorized sureties - Circular 570 as amended.

(c) Non-Collusion Affidavit

This form must be filled in, signed, and notarized.

(d) Statement of Bidder's Qualifications

(e) Statement of Proposed Subcontractors and Material Suppliers

All subcontractors must be approved in writing by the Engineer prior to commencing any work.

## Proposal

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### South 216<sup>th</sup> Street – Segment 3

TO: Honorable Mayor and City Council  
 City of Des Moines  
 21630 11th Avenue South  
 Des Moines, WA 98198

The undersigned Bidder hereby certifies that he has examined the site of all the proposed work under this Contract and that he has read and thoroughly understands the Plans, Specifications and other Contract Documents pertaining to this Contract, that he is fully aware of the construction problems and costs involved, and proposes to perform all work for the following stated prices.

The undersigned bidder hereby agrees to start construction within ten (10) days after the date stated in the Notice to Proceed, and to complete the contract within [200] working days thereafter. This period shall be known as the "Contract Time" for the purposes of the project.

The project is exempt from retail sales (sewer/water relocation) and use tax per WAC 458-20-171, commonly known as Rule 171. This rule exempts the sale of or charge made for labor and services rendered in respect to building, repairing or improving any street, place, road, highway, easement, right of way, bridge, tunnel or trestle which is owned by a municipal corporation that is used for foot or vehicle traffic. Bidders should note that only the labor and services costs are exempt from the sales tax. Tax for materials need to be included in their respective bid items.

All schedules on the Bid Proposal must be completed, or the bid shall be considered non-responsive. Basis for award shall be total Bid for all Schedules included in the Proposal.

The Owner will correct obvious mathematical errors in bid proposals.

Unit prices for all items, all extensions and the total amount of bid must be shown. All entries must be typed or entered in ink.

Show unit prices in figures. Where conflict occurs between the unit price and the total amount named for any item, the unit price shall prevail, and totals shall be corrected to conform thereto.

SCHEDULE A ROADWAY IMPROVEMENTS CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
A1	1-04	Minor Change	1	FA	\$ 50,000.00	\$ 50,000.00
A2	1-05	Roadway Surveying	1	LS	89,000.00	89,000.00
A3	1-05	Record Drawings (Minimum Bid \$5,000)	1	LS	5,000.00	5,000.00
A4	1-07	Spill Prevention, Control & Countermeasures Plan	1	LS	500.00	500.00
A5	1-08	Type B Progress Schedule (Minimum Bid \$5,000)	1	LS	5,000.00	5,000.00
A6	1-09	Mobilization	1	LS	450,000.00	450,000.00
A7	1-10	Project Temporary Traffic Control	1	LS	500,000.00	500,000.00
A8	2-01	Clearing and Grubbing	1	LS	100,000.00	100,000.00
A9	2-02	Removal of Structures and Obstructions	1	LS	50,000.00	50,000.00
A10	2-02	Asphalt Pavement Removal	13,860	SY	10.00	138,600.00
A11	2-02	Cement Conc. Sidewalk Removal	940	SY	10.00	9,400.00
A12	2-02	Cement Conc. Curb Removal	1,585	LF	1.00	1,585.00
A13	2-03	Roadway Excavation Incl. Haul	1	LS	315,000.00	315,000.00
A14	2-03	Unsuitable Foundation Excavation Including Haul	100	CY	37.00	3,700.00
A15	2-03	Gravel Borrow Including Haul	900	TON	24.00	21,600.00
A16	2-09	Shoring or Extra Excavation Class B	1	LS	5,000.00	5,000.00
A17	4-04	Crushed Surfacing Top Course	2,555	TON	24.00	61,320.00
A18	4-04	Crushed Surfacing Base Course	4,195	TON	24.00	100,680.00
A19	5-04	HMA Class 1/2" PG 64-22	5,440	TON	95.00	516,800.00
A20	5-04	Commercial HMA	200	TON	100.00	20,000.00
A21	5-04	Planing Bituminous Pavement	1,770	SY	8.00	14,160.00
A22	5-05	Stamped Cement Concrete Pavement	20	SY	400.00	8,000.00
A23	6-13	Modular Block Wall	636	SF	40.00	25,440.00
A24	6-13	Structural Earth Wall	810	SF	40.00	32,400.00
A25	6-13	Gravel Backfill for Structural Earth Wall Incl. Haul	140	CY	40.00	5,600.00
A26	6-16	Shaft - 30 Inch Diameter	1,035	LF	44.00	45,540.00
A27	6-16	Furnishing Soldier Pile - W14x30	455	LF	110.00	50,050.00
A28	6-16	Furnishing Soldier Pile - W14x43	250	LF	115.00	28,750.00
A29	6-16	Furnishing Soldier Pile - W14x82	354	LF	135.00	47,790.00
A30	6-16	Timber Lagging	2,380	SF	15.00	35,700.00

SCHEDULE A ROADWAY IMPROVEMENTS  
CITY OF DES MOINES  
SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH

Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
A31	6-16	Modular Block Facing	2,700	SF	40.00	108,000.00
A32	6-16	Cement Conc. Wall Cap	575	LF	37.00	21,375.00
A33	6-16	Cement Conc. Gutter	450	LF	30.00	13,500.00
A34	7-04	Storm Sewer Pipe, 6-In. Diam.	75	LF	30.00	2,250.00
A35	7-04	Storm Sewer Pipe, 8-In. Diam.	115	LF	30.00	3,450.00
A36	7-04	Storm Sewer Pipe, 12-In. Diam.	1,020	LF	40.00	40,800.00
A37	7-04	Storm Sewer Pipe, 18-In. Diam.	485	LF	50.00	24,250.00
A38	7-04	Storm Sewer Pipe, 24-In. Diam.	815	LF	60.00	48,900.00
A39	7-04	Storm Sewer Pipe, 30-In. Diam.	700	LF	74.00	51,800.00
A40	7-04	Storm Sewer Pipe, 36-In. Diam.	15	LF	100.00	1,500.00
A41	7-05	Catch Basin Type 1	23	EA	1,100.00	25,300.00
A42	7-05	Catch Basin Type 1-L	1	EA	1,200.00	1,200.00
A43	7-05	Catch Basin Type 2, 48-In. Diam.	10	EA	3,700.00	37,000.00
A44	7-05	Catch Basin Type 2, 54-In. Diam.	6	EA	5,000.00	30,000.00
A45	7-05	Catch Basin Type 2, 72-In. Diam.	2	EA	6,500.00	13,000.00
A46	7-05	Catch Basin Type 2, 72-In. Diam. with Weir	1	EA	8,000.00	8,000.00
A47	7-05	Concrete Inlet	4	EA	1,000.00	4,000.00
A48	7-05	Yard Drain	3	EA	800.00	2,400.00
A49	7-05	Connect to Existing Drainage Structure	14	EA	1,350.00	18,900.00
A50	7-05	Connect to Existing Storm Drain Pipe	17	EA	100.00	1,700.00
A51	7-05	Adjust Catch Basin	20	EA	350.00	7,000.00
A52	7-05	Adjust Sewer Manhole	6	EA	350.00	2,100.00
A53	7-05	Rotate Structure	3	EA	1,200.00	3,600.00
A54	7-05	Modify Existing Control Structure	1	LS	6,000.00	6,000.00
A55	7-06	Modular Wetland System (4' X 6')	2	EA	90,000.00	180,000.00
A56	7-08	Trench and Structure Backfill, Crushed Surfacing Top Course	1,810	CY	40.00	72,400.00
A57	7-10	Detention Pond Berm Modification	1	LS	6,500.00	6,500.00
A58	7-12	Adjust Water Valve	37	EA	350.00	12,950.00
A59	8-01	ESC Lead	200	DAY	1.00	200.00

SCHEDULE A ROADWAY IMPROVEMENTS CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
A60	8-01	Erosion/Water Pollution Control	1	LS	37,000.00	37,000.00
A61	8-01	Stormwater Pollution Prevention Plan	1	LS	500.00	500.00
A62	8-01	Inlet Protection	62	EA	50.00	3,100.00
A63	8-01	Temporary Reinforced Silt Fencing	440	LF	4.00	1,760.00
A64	8-01	Seeding, Fertilizing and Mulching	1	AC	4,500.00	4,500.00
A65	8-02	Topsoil Type A	600	CY	60.00	36,000.00
A66	8-02	Bark or Wood Chip Mulch	140	CY	60.00	8,400.00
A67	8-02	Seeded Lawn Installation	430	SY	3.00	1,290.00
A68	8-02	PS Acer truncatum x plananoides 'JFS-KW202/ Crimson Sunset Maple; 2.5" Cal., 12'-14' Ht.	22	EA	<del>500.00</del> 500.00	11,000.00
A69	8-02	PS Parrotia persica 'Vanessa'/ Vanessa Persian Parrotia; 2.5" Cal., 12'-14' Ht.	13	EA	500.00	6,500.00
A70	8-02	PS Cornus 'Eddie's White Wonder/ Eddie's White Wonder Dogwood; 2.5" Cal., 12'-14' Ht.	9	EA	500.00	4,500.00
A71	8-02	PS Fothergilla gardenii 'Blue Mist'/ Blue Mist Dwarf Fothergilla; 15"-18" Ht.	54	EA	40.00	2,160.00
A72	8-02	PS Rhododendron 'Blue Diamond'/ Blue Diamond Rhododendron; 15"-18" Ht.	112	EA	40.00	4,480.00
A73	8-02	PS Deutzia gracilis 'Nikko'/ Nikko Slender Deutzia; 15"-18" Ht.	137	EA	40.00	5,480.00
A74	8-02	PS Ilex x 'Mondo'/ Little Rascal Holly; 15"-18" Ht.	95	EA	40.00	3,800.00
A75	8-02	PS Sprea japonica 'Walburna'/ Magic Carpet Sprea; 2 Gal. Cont.	236	EA	20.00	4,720.00
A76	8-02	PS Rosa x 'NOA97400A'/ Flower Carpet Amber Groundcover Rose; 2 Gal. Cont.	132	EA	40.00	5,280.00
A77	8-02	PS Berberis thunbergii 'Concorde'/ Concorde Japanese Barberry; 2 Gal. Cont.	54	EA	30.00	1,620.00
A78	8-02	PS Viburnum opulus 'Nanum'/ Dwarf Cranberry Bush; 2 Gal. Cont.	112	EA	30.00	3,360.00
A79	8-02	PS Erica x darleyensis 'Kramers Role'/ Darley Dale Heath; 1 Gal. Cont.	291	EA	15.00	4,365.00
A80	8-02	PS Lavandula angustifolia 'Hidcote Blue'/ Hidcote Blue Lavender; 1 Gal. Cont.	176	EA	15.00	2,640.00
A81	8-02	PS Helictotrichon sempervirens/ Blue Oat Grass; 1 Gal. Cont.	241	EA	15.00	3,615.00
A82	8-02	PS Pennisetum alopecuroides 'Little Bunny'/ Little Bunny Dwarf Fountain Grass; 1 Gal. Cont.	308	EA	15.00	4,620.00
A83	8-02	PS Rubus calycinoides/ Creeping Bramble ; 1 Gal. Cont.	615	EA	15.00	9,225.00
A84	8-02	PS Veronica 'Waterperry Blue'/ Waterperry Blue Speedwell; 1 Gal. Cont.	1,005	EA	15.00	15,075.00
A85	8-02	PS Guem 'Mango Lassi'/ Mango Lassi Avens; 1 Gal. Cont.	180	EA	20.00	3,600.00
A86	8-02	Root Barrier	704	LF	12.00	8,448.00
A87	8-02	Plant Establishment-1 Year (Minimum Bid \$5,000)	1	LS	5,000.00	5,000.00
A88	8-02	Property Restoration	1	FA	\$ 15,000.00	\$ 15,000.00
A89	8-03	Automatic Irrigation System Complete	1	LS	95,000.00	95,000.00

**SCHEDULE A ROADWAY IMPROVEMENTS**  
**CITY OF DES MOINES**  
**SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH**

Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
A90	8-04	Cement Conc. Traffic Curb and Gutter	5,630	LF	30.00	168,900.00
A91	8-04	Cement Conc. Traffic Curb	1,360	LF	30.00	40,800.00
A92	8-04	Cement Conc. Extruded Curb	310	LF	10.00	3,100.00
A93	8-04	Cement Conc. Wheel Stop	4	EA	100.00	400.00
A94	8-05	Resolution of Utility Conflicts	1	FA	\$ 25,000.00	\$ 25,000.00
A95	8-05	Potholing	50	EA	350.00	17,500.00
A96	8-06	Cement Conc. Driveway Entrance	630	SY	70.00	44,100.00
A97	8-09	Raised Pavement Marker Type 1	24	HUND	150.00	3,600.00
A98	8-09	Raised Pavement Marker Type 2	4	HUND	400.00	1,600.00
A99	8-12	Black Vinyl Coated Chain Link Fence, 42-In	500	LF	37.00	18,500.00
A100	8-12	Temporary Security Fencing	1	LS	1,500.00	1,500.00
A101	8-12	Replace Existing Fence, Parcel 11	1	LS	7,000.00	7,000.00
A102	8-13	Monument Case and Cover	1	EA	500.00	500.00
A103	8-14	Cement Conc. Curb Ramp Type ____	12	EA	2,800.00	33,600.00
A104	8-14	Cement Conc. Sidewalk	3,260	SY	40.00	130,400.00
A105	8-14	Thickened Edge Sidewalk	550	LF	24.00	13,200.00
A106	8-14	Bus Shelter Footing Westbound	1	LS	2,700.00	2,700.00
A107	8-14	Bus Shelter Footing Eastbound	1	LS	2,700.00	2,700.00
A108	8-14	Decorative Stamped Cement Concrete Finish	170	SY	240.00	40,800.00
A109	8-18	Mailbox Support	5	EA	200.00	1,000.00
A110	8-19	Wood Fence	440	LF	87.00	38,280.00
A111	8-20	Rectangular Rapid Flashing Beacon System at 14th Avenue S Complete	1	LS	15,000.00	15,000.00
A112	8-20	Rectangular Rapid Flashing Beacon System at 18th Avenue S Complete	1	LS	21,000.00	21,000.00
A113	8-20	Modifications to Existing Fiber Optic ITS System Complete	1	LS	55,000.00	55,000.00
A114	8-20	Illumination System Complete	1	LS	930,000.00	930,000.00
A115	8-21	Permanent Signing	1	LS	20,000.00	20,000.00
A116	8-22	Paint Line, 4-In.	5,585	LF	0.40	2,234.00
A117	8-22	Plastic Stop Line	95	LF	12.00	1,140.00
A118	8-22	Plastic Crosswalk Line	1,085	SF	12.00	13,020.00
A119	8-22	Plastic Traffic Arrow	18	EA	150.00	2,700.00
A120	8-22	Plastic Traffic Letter	4	EA	120.00	480.00

SCHEDULE A ROADWAY IMPROVEMENTS CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
A121	8-22	Plastic Bicycle Symbol	16	EA	400.00	6,400.00
A122	8-22	Plastic Access Parking Symbol Type A	2	EA	80.00	160.00
A123	8-26	Secondary Electrical Service Connections (8 EA)	1	FA	\$ 40,000.00	\$ 40,000.00
A124	8-27	Adjust Gas Valve	18	EA	350.00	6,300.00
A125	8-30	Decorative Metal Banners	13	EA	2,500.00	32,500.00
A126	8-32	Stone Block Seating	9	EA	1,600 <sup>00</sup>	14,400 <sup>00</sup>
<b>TOTAL SCHEDULE A ROADWAY IMPROVEMENTS =</b>						<b>5,534,742<sup>00</sup></b>

SCHEDULE B JOINT UTILITY TRENCH SHARED COSTS CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
B1	1-04	Minor Changes	1	FA	\$ 36,000.00	\$ 36,000.00
B2	1-05	Roadway Surveying	1	LS	500.00	500.00
B3	1-07	Spill Prevention, Control & Countermeasures Plan	1	LS	500.00	500.00
B4	1-07	Potholing	20	EA	300.00	6,000.00
B5	1-08	Type B Progress Schedule (Minimum Bid \$5,000)	1	LS	5,000.00	5,000.00
B6	1-09	Mobilization for Joint Utility Trench	1	LS	100.00	100.00
B7	1-10	Project Temporary Traffic Control for Joint Utility Trench	1	LS	8,000.00	8,000.00
B8	2-09	Shoring or Extra Excavation Class B for Joint Utility Trench	1	LS	500.00	500.00
B9	8-01	Erosion/Water Pollution Control	1	LS	500.00	500.00
B10	8-26	Franchise Utility Coordination	1	LS	500.00	500.00
B11	8-26	HMA Class 1/2" PG 64-22 for Joint Utility Trench	245	TON	115.00	28,175.00
B12	8-26	Franchise Utility Trench Excavation, Incl. Haul	3,500	CY	60.00	210,000.00
B13	8-26	Franchise Utility Trench and Structure Backfill, Crushed Surfacing Top Course	3,225	TON	20.00	64,500.00
B14	8-26	Franchise Utility Trench Bedding, Sand	940	CY	48.00	45,120.00
SUBTOTAL SCHEDULE B JOINT UTILITY TRENCH SHARED COSTS =						405,395.00
WSST (10%) =						40,539.50
TOTAL SCHEDULE B JOINT UTILITY TRENCH SHARED COSTS =						445,934.50

SCHEDULE C COMCAST UNDERGROUNDING CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
C1	8-26	Install Conduit 2 In. Diam.	3,535	LF	2.00	7,070.00
C2	8-26	Install Conduit 4 In. Diam.	6,090	LF	3.00	18,270.00
C3	8-26	Install Vault SGLB 2436	1	EA	300.00	300.00
C4	8-26	Install Vault SGLB 3048	4	EA	500.00	2,000.00
C5	8-26	Install Handhole SGLB 1419	2	EA	300.00	600.00
SUBTOTAL SCHEDULE C COMCAST UNDERGROUNDING =					<del>53,580.00</del>	28,240.00
WSST (10%) =					2,824.00	
TOTAL SCHEDULE C COMCAST UNDERGROUNDING =					31,064.00	

SCHEDULE D CENTURY LINK UNDERGROUNDING CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
D1	8-26	Install Conduit 4 In. Diam.	7,300	LF	3.00	21,900.00
D2	8-26	Install Charles Pedestal	4	EA	300.00	1,200.00
D3	8-26	Install Charles Cuba	3	EA	500.00	1,500.00
D4	8-26	Install Vault 463-TA	3	EA	300.00	900.00
D5	8-26	Install Vault 466-TA	1	EA	300.00	300.00
D6	8-26	Adjust Vault to Grade	6	EA	1,100.00	5,500.00
<b>SUBTOTAL SCHEDULE D CENTURY LINK UNDERGROUNDING =</b>						31,300.00
					<b>WSST (10%) =</b>	3,130.00
<b>TOTAL SCHEDULE D CENTURY LINK UNDERGROUNDING =</b>						34,430.00

SCHEDULE E PSE UNDERGROUNDING CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
E1	8-26	Install Conduit 2 In. Diam.	640	LF	2.00	1,280.00
E2	8-26	Install Conduit 4 In. Diam.	6,605	LF	3.00	19,815.00
E3	8-26	Install Conduit 6 In. Diam.	4,805	LF	4.00	19,220.00
E4	8-26	Install Handhole 2'6"x2'6"x2'	3	EA	400.00	1,200.00
E5	8-26	Install Transformer 42"x48"x38"	3	EA	300.00	900.00
E6	8-26	Install J-Box Vault 7'x4'8"x5'8"	7	EA	300.00	2,100.00
E7	8-26	Install Pull Vault 11'4"x5'10"x5'	3	EA	300.00	900.00
E8	8-26	Install Switch Vault 11'4"x5'10"x8'6"	1	EA	300.00	300.00
SUBTOTAL SCHEDULE E PSE UNDERGROUNDING =					45,715.00	
WSST (10%) =					4,571.50	
TOTAL SCHEDULE E PSE UNDERGROUNDING =					50,286.50	

SCHEDULE F PSE FIBEROPTIC CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
F1	6-26	Install Conduit 3 in. Diam.	2,020	LF	2.00	4,040.00
F2	6-26	Install Transformer 42"x48"x38"	4	EA	300.00	1,200.00
SUBTOTAL SCHEDULE F PSE FIBEROPTIC =					5,240.00	
WSST (10%) =					524.00	
TOTAL SCHEDULE F PSE FIBEROPTIC =					5,764.00	

ADDITIVE BID - TEMPORARY TRAFFIC CONTROL (Additional Restrictions) CITY OF DES MOINES SOUTH 216TH STREET - SEGMENT 3, 11TH AVENUE SOUTH TO 20TH AVENUE SOUTH						
Item	Section	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	1-10	Project Temporary Traffic Control	1	LS	140,000.00	140,000.00
2	1-10	Project Temporary Traffic Control for Joint Utility Trench	1	LS	12,000.00	12,000.00
<b>TOTAL ADDITIVE BID =</b>					152,000.00	
<b>Bid Proposal Summary</b>						
<b>TOTAL BID SCHEDULE A ROADWAY IMPROVEMENTS =</b>					5,534,742. <sup>00</sup>	
<b>TOTAL BID SCHEDULE B JOINT UTILITY TRENCH SHARED COSTS =</b>					445,934.50	
<b>TOTAL BID SCHEDULE C COMCAST UNDERGROUNDING =</b>					31,064.00	
<b>TOTAL BID SCHEDULE D CENTURY LINK UNDERGROUNDING =</b>					34,430.00	
<b>TOTAL BID SCHEDULE E PSE UNDERGROUNDING =</b>					50,286.50	
<b>TOTAL BID SCHEDULE F PSE FIBEROPTIC =</b>					5,764.00	
<b>TOTAL BID ADDITIVE BID - TEMPORARY TRAFFIC CONTROL (Additional Restrictions) =</b>					152,000.00	
<b>BASIS OF AWARD: TOTAL BID ALL SCHEDULES + ADDITIVE BID =</b>					6,254,221. <sup>00</sup>	

Proposal (Continued)

Attached hereto is the required Bid Security in the amount of \$ 15,010  
( ) payable to the City of Des Moines which is equal  
to or more than five percent (5%) of the total bid price.

Signed [Signature]  
**Donna Motland**  
Title Corporate Secretary

Name of Bidder Ceccanti, Inc.

Registration or license, Division of Professional Licensing:

- 1. License Number CECCATI\*227CRB est 02/02/78 exp 04/30/19
- 2. Date 12/11/18
- 3. Contractor's Signature [Signature]  
**Donna Motland**
- 4. Title Corporate Secretary

Address of Bidder: 4111e Brookdale Rd East Tallahassee WA 98446  
Street City Zip

Telephone Number of Bidder (253)537-2990  
Office Mobile

E-mail Contacts jon@ceccantinc.com

Date of Bid 12/11/18

The undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, the Bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Bidder's Signature: [Signature]  
**Donna Motland**  
Date: 12/11/18 **Corporate Secretary**

Receipt is hereby acknowledged for the following Addenda:

<u>Addendum No.</u>	<u>Date Received</u>	<u>Signature</u>
1	11/29/18	
2	12/7/18	
3	12/7/18	

The bidder acknowledges that bids must be submitted for all Bid Schedules. Partial Bids shall not be considered.

Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for South 216<sup>th</sup> Street – Segment 3.

Form of a Bid Bond

BID BOND DEPOSIT

Herewith find deposit in the form of a \_\_\_\_\_ (state whether certified check, cashier's check, bid bond, or postal money order)

for the amount of \_\_\_\_\_, which amount is not less than five percent (5%) of the total bid, including sales tax.

Signature \_\_\_\_\_

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, Ceccanti, Inc., as Principal, and Merchants Bonding Company (Mutual), as Surety, are held and firmly bound unto the City of Des Moines, as Oblige, in the penal sum of Five Percent (5%) of the Total Amount of Bid dollars (\$ 5% ) for the payment of which the Principal and Surety bind themselves, their heirs, exocutors, administrators, successors and assigns, jointly and severally, by these presents.

The Condition of this obligation is such that if the Oblige shall make award to the Principal for the South 216th Street - Segment 3, according to the terms of the proposal or bid made by the Principal therefore and the Principal shall duly make and enter into a contract with the Oblige in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Oblige; or, if the Principal shall in case of failure so to do, pay and forfeit to the Oblige the penal amount of the deposit specified in the call for bids; then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Oblige, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS 11th DAY OF December, 2018 Ceccanti, Inc.

Principal Donna Motland Corporate Secretary Merchants Bonding Company (Mutual) Guida McClain, Attorney-in-Fact Surety



Received return of deposit in the sum of \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

# MERCHANTS BONDING COMPANY, INC. POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Blair Paljens; Curt Dyckman; Darin M Puryear; Debra F Powell; Guida McClain; Jill A Wallace; Julie McCallum; Kristen Look; Martha Reeve; Stuart O'Farrell; Troy Williams

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this Instrument to be signed and sealed this 4th day of October, 2018.

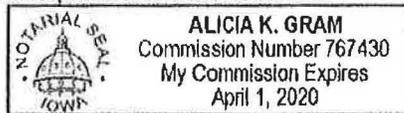


MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.

On this this 4th day of October 2018, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



*Alicia K. Gram*

Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 11th day of December, 2018.



*William Warner Jr.*

Secretary

Non-collusion Affidavit

City of Des Moines

STATE OF WASHINGTON)

) ss.

County of King )

Donna Motland, being first duly sworn on his oath, says she is Corporate Secretary and that the bid above submitted is a genuine and not a sham or collusive bid, or made in the interest or on behalf of any person not therein named; and he further says that the said Bidder has not directly or indirectly induced or solicited any bidder on the above work or supplies to put in a sham bid, or any other person or corporation to refrain from bidding; and that said Bidder has not in any matter sought by collusion to secure to (her)(him)self an advantage over any other bidder or bidders.

Signature [Signature]

Subscribed and sworn to before me this 11 day Donna Motland  
of December, 2018. Corporate Secretary

[Signature]  
Notary Public in and for the State of Washington

Notary Public  
State of Washington  
**KRISTIE ROJAS**  
MY COMMISSION EXPIRES  
January 15, 2019

Residing at Ruyallup

My commission expires 01-15-19

## Statement of Bidder's Qualifications

Each bidder submitting a proposal on work included in these Plans and Specifications shall prepare and submit as part of this bid the following schedule:

1. Name of bidder:

Cecant, Inc.

2. Business address and telephone number:

4111 Broadway Road East

Tacoma WA 98446

(253) 537-2910

3. How many years has said bidder been engaged in the contracting business under present firm name:

41 years

4. Contracts now in hand (gross amount):

\$ 60 million

5. General character of work performed by said company:

Earthwork + Utilities

6. List of more important projects constructed by said company, including approximate costs and dates:

See attached

7. List of company's major equipment:

See attached

<u>Start/Complete</u>	<u>Project</u>	<u>Owner/General Contractor</u>	<u>Contract Amount</u>	<u>Contact Person</u>	<u>Phone #</u>
2008- 2009	SR 16 Burley Olalla Interchange	WSDOT	\$ 15,864,309.00	Brenden Clarke	360-874-3020
2008- 2010	94th Avenue East / 116th Street	Pierce County	\$ 7,375,214.00	Jerry Bryant	253-798-7172
2009- 2011	244th Avenue Bridge	City of Sammamish	\$ 9,986,246.00	Jed Ireland	425-295-0563
2009- 2012	Belfair WWC	Mason County	\$ 11,920,549.53	Brian Matthews	360-427-9670
2011- 2013	South Central Forcemain	Kitsap County	\$ 4,992,368.00	Barbara Zaroff	360-337-5777
2012-2014	Stadium Way	City of Tacoma	\$ 13,664,775.44	Lynn DeLorenzo	253-594-7919
2014-2015	Calistoga Setback Levee	City of Orting	\$ 14,045,012.00	Matt Kastberg	253-604-6735
2014-2016	Delridge CSO Retrofit	City of Seattle	\$ 5,605,863.00	Tara Wong Esteban	206-684-5903
2015-2016	North Base Viking Park & Ride	Kitsap Transit	\$ 13,303,909.00	Stephanie Edwards	206-436-0515
2016-2018	SeaTac - Connecting 28/24th	City of SeaTac	\$ 12,610,395.00	Hein Nguyen	206-973-4720

Equipment	Status: Own/Lease/Rent	Year	Make	Model	Condition
John Deere 700H Crawler Dozer	Own	2004	John Deere	700H	Good
Deere Backhoe/Loader	Own	2004	Deere	310SG	Good
Caterpillar 950G Loader	Own	2002	Caterpillar	950G	Good
Kenworth Dumptruck	Own	2015	Kenworth	T-880	Good
Hitachi Hydraulic Excavator	Own	2007	Hitachi	Z-350-3	Good
90 Ton Rough Terrain Crane	Own	2008	Grove	RT890E	Gpod
47 Ton Excavator	Own	2015	Deere	470G	Good
49 Ton Excavator	Own	2015	Komatsu	490	Good
Wire Saws	Own	2014	Pentruder	Various	Good

8. Bank references:

Columbia Bank Attn: Chris Gruenfeld  
~~501 West Market~~ 719 2nd Avenue Suite 500  
(206) 223-4542 Seattle WA 98104

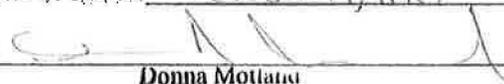
9. Dept. of Labor and Industries' firm number:

367 252 00

10. Dept. of Revenue registration number:

600 219 994

Name of Bidder Cowart, Inc.

By   
Donna Mottland

Title **Corporate Secretary**

Date 12/11/18

Statement of Proposed Subcontractors and Material Suppliers

Subcontractors Name, Address,  
and Telephone Number

Description of Work

West coast Signal Inc. Electrical  
20111 208<sup>th</sup> Ave. S.E.  
Renton Wa. 98058  
(206) 595-6656

Material Suppliers

Material (major items only)

Exhibit B: Contract Documents

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**South 216<sup>th</sup> Street – Segment 3**

Contract Checklist ..... 1

Agreement..... 2

Separate Performance and Payment Bonds ..... 17

Landscaping and Irrigation Warranty and Defect Bond ..... 19

### Formal Task Assignment Document

Task Number

Task Order # KPG 2018-06

The general provisions and clauses of Agreement 2018-2019 On-Call General Civil Engineering Services shall be in full force and effect for this Task Assignment

Location of Project: 216<sup>th</sup> St. Between 11<sup>th</sup> Ave S and 20<sup>th</sup> Ave S

Project Title: South 216<sup>th</sup> Street – Segment 3

Maximum Amount Payable Per Task Assignment: \$636,775.53

Completion Date: December 31, 2019

Description of Work:

Please see attached scope of work – Exhibit A

Work shall be completed on a time and materials basis at contract rates for a not to exceed budget of \$636,775.53

Agency Project Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Oral Authorization Date: \_\_\_\_\_ Date: \_\_\_\_\_

Consultant Signature: *[Handwritten Signature]* Date: 1-3-19

Agency Approving Authority: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT A****City of Des Moines****South 216<sup>th</sup> Street – Segment 3****Project Scope of Work****December 13, 2018****Construction Services**


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This work will provide construction management services for the construction contract to complete the **South 216<sup>th</sup> Street – Segment 3** (hereinafter called “Project”). These services will include project management, inspection, materials testing, public involvement, and contract administration during the construction of the project, as detailed below. KPG (“Consultant”) will provide to the City of Des Moines, Washington (“City”) construction management and engineering services for the project. A detailed scope for the Contract follows:

**I. INTRODUCTION**

The following scope of services and associated costs are based upon the assumptions outlined below.

**Assumptions:**

- The **proposed project team** will include a part-time project manager, a full-time project engineer, a part-time documentation specialist, one full-time inspector during construction activities, necessary sub-consultants to provide services for materials testing, and other supporting tasks as deemed necessary. The level of services is based on a project duration of approximately 11 months, or **200 working days**. It is anticipated that full time site observation will be required for the entire duration of construction and that supplemental observation will be necessary for specialized work elements such as urban design, landscaping, signals, and illumination.
- Services will be performed in accordance with the Local Agency Guidelines (LAG), the City of Des Moines, and the WSDOT Construction Manual.
- For work on Utility Schedules, the Consultant will coordinate with the Utilities as lead in directing the work of the Contractor as per the terms of the Interlocal Agreement between the Utilities and the City. The Utilities will provide field inspection for all work surrounding the construction of the utility systems, as outlined in the bid documents. The Consultant will provide only administrative support for inspection and field duties relating to the

Utilities work. Simultaneous work may be ongoing with roadway improvements, requiring separate observation and management by the Consultant.

- Services considered incidental to this work include management of temporary construction licenses secured by the City of Des Moines. The consultant will also direct the work of the Contractor consistent with said licenses as well as the terms of any easements secured for project improvements.
- **Hours of work.** Work is anticipated to take place during daylight hours on a single shift of 8 hours per day, 5 days per week. No night or weekend work is anticipated as part of this scope of services.
- **Field office:** It is recognized that the Contractor will provide a field office and other items for use by field staff. Other items and supplies may be needed for the field office, including marking paint, and other items, which will be invoiced as part of the direct expenses shown in the Budget..

## II. SCOPE OF WORK

### TASK 1 – MANAGEMENT/COORDINATION/ADMINISTRATION

Provide overall project management, coordination with the City of Des Moines, monthly progress reports, and invoicing. This effort will include the following elements.

- Organize and layout work for project staff. Prepare project instructions on contract administration procedures to be used during construction.
- Review monthly expenditures, prepare invoice and submit project progress letter to the City of Des Moines.

### TASK 2 – PRECONSTRUCTION SERVICES

**Preconstruction Conference:** The Consultant will prepare an agenda for, distribute notices of, and conduct a preconstruction conference in the City of Des Moines offices. The Consultant’s project manager, project engineer, document specialist, and inspector will attend the preconstruction conference. The Consultant will prepare a written record of the meeting and distribute copies of the notes to all attendees and affected agencies, staff, etc.

**Preconstruction Photos:** Preconstruction photographs will include existing condition of the project right-of-way, and all relevant buildings adjoining the site. Photos will be cataloged as to their location, date, and other relevant information. Consultant will provide one set of preconstruction photographs or video to the City of Des Moines in digital format.

### TASK 3 – CONSTRUCTION SERVICES

#### Field Services:

The Consultant shall provide the services of one full-time project engineer, full-time inspector, part-time documentation specialist, and other tasks necessary to monitor the progress of the work. Construction staff shall oversee the following items of work, on the project site, and will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City of Des Moines.

The Utilities will provide inspection for work associated with the Utility Schedules; however, the Consultant shall direct the work of the Contractor as provided under the agreements between the City of Des Moines and the Utilities. By providing inspection oversight, the Consultant shall assume no responsibility for proper construction techniques or job site safety.

The presence of the Consultant's personnel at the construction site is for the purpose of providing to the City of Des Moines a greater degree of confidence that the completed work will generally conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction Contractor(s). The Consultant's personnel shall act in accordance with Section 1-05.1 and 1-05.2 of the current WSDOT Standard Specifications. The Consultant will endeavor to protect all parties against defects and deficiencies in the work of the Contractor(s), but cannot guarantee the Contractors' performance and shall not be responsible for construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the work performed by the construction contractor(s) and any subcontractors.

Field inspection staff will perform the following duties as a matter of their daily activities:

- i. Prepare **daily construction reports** detailing the contractor's operations performed for each day the Contractor is on site; measure the quantities of materials installed, log equipment and staff used, and other associated information. The Utilities will provide measurement and payment information to the Consultant for development of monthly progress payments.
- ii. Respond to questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the Contractor, including response to related questions from adjacent property owners and the general public.
- iii. Prepare **field records and documents** to help assure the project is administered in accordance with funding requirements.
- iv. Provide periodic **photographs** during the course of construction. Photographs will be in digital format and cataloged by date. A series of post construction photographs will also be provided to the City in digital format.
- v. Coordinate with the contractor-provided surveyor and verify general adequacy of surveying provided.
- vi. Coordinate with the City of Des Moines and/or WSDOT's utility and traffic signal operations and maintenance personnel.

**Materials Testing:** Coordinate and manage materials testing sub-consultants for construction services, who will provide materials testing services as required, up to \$30,000. Coordinate the work of the materials testing technicians and testing laboratories in the observation and testing of materials used in the construction; document and evaluate results of testing; and address deficiencies. Frequency of testing shall be as prescribed in the WSDOT Construction Manual.

**Substantial Completion:** Upon substantial completion of work, coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punchlist' of items to be completed. A punchlist and Certificate of Substantial Completion will be prepared by the Consultant and issued by the City of Des Moines.

**Verification Survey:** The Contractor shall provide construction staking for the project with the exception of those items listed below. Control has been provided in the bid documents. No construction staking has been provided as part of this scope. A total of 40 hours of crew time are included in the estimated costs for spot check verification survey if required.

#### **Office Support Services:**

**Document Control.** Original documentation will be housed at the Consultant's office, and filed in accordance with standard filing protocol. A copy of working files will be maintained in the field office.

**Project Coordination:** Liaison with City of Des Moines on a regular basis to discuss project issues and status. Coordinate with utilities, and community outreach issues.

**Plan Interpretations:** Provide technical interpretations of the drawings, specifications, and contract documents, and evaluate requested deviations from the approved design or specifications. Coordinate with City of Des Moines for resolution of issues involving scope, schedule, and/or budget changes.

**Weekly Meetings:** Lead weekly meetings, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on a weekly basis.

**Initial Schedule Review:** Perform detailed schedule review of contractor provided CPM for conformance with the contract documents.

**Monthly Pay Requests:** Prepare monthly requests for payment, review with the City of Des Moines and contractor and approve, as permitted. Utilize City provided format for pay estimates, or Consultant format. If applicable, the Utilities will provide quantities for payment for work associated with Utility Schedules.

**Monthly Schedule Review:** At the monthly cutoff, review contractor's updated schedule and compare with field-observed progress, as described in Section 1-08 of the Special Provisions. In addition, perform schedule analysis on contractor provided CPM updates and review schedule for delays and impacts. Coordinate with Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within the Contractor's control or other events or issues beyond the Contractor's control.

**Submittals:** Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the contract documents. Key submittals to be transmitted to the City of Des Moines for their review and approval. Submittals shall be logged and tracked.

**Request for Information (RFI):** Review and respond to RFI's. RFI's shall be logged and tracked.

**Record of Materials (ROM):** Develop ROM for use on the project, based on the contract specifications and WSDOT/LAG requirements.

**Change Orders:** Develop change orders, provide technical assistance to negotiate change orders, and assist in resolution of disputes which may occur during the course of the project..

**(If applicable) Community Communication:** The Consultant shall serve as the primary contact for public inquiries about the project including introduction and providing contact information to the principals of abutting properties. The Consultant will develop responses to inquiries within 24 hours. The Consultant will produce and distribute monthly e-mails with updated project information. The consultant will develop and regularly maintain a communications log that documents all inquiries and their resolution. This will include utilizing the answering machine (inspector cell phone) to collect phone calls from the public, and responding to inquiries. All calls will be recorded in a phone memorandum. Three project flyers will be prepared as part of the community communication. The flyers will be mailed by the City of Des Moines and prepared by the Consultant.

**Cost Projections:** Prepare up to two cost projections for the project. Projections to be based on the current amount paid to date, pending change orders, quantity projections, and other information.

#### **TASK 4 – PROJECT CLOSEOUT / RECORD DRAWINGS**

**Record Drawings:** Review record drawings prepared by the Contractor and Utilities, and prepare a conformed set of project record drawings based on Contractor provided information and from inspection notes. Record drawings to be verified on a monthly basis, as part of the progress payment to the Contractor. Upon project completion, contractor provided markups will be verified for completeness and supplemented with inspection information. The Consultant will prepare record drawings in AutoCAD format based on construction records provided by the Contractor. Electronic drawings will be provided to the City upon request.

**Physical Completion Letter:** Following completion of all punchlist work, prepare physical completion letter to the contractor, and recommend that the City of Des Moines and/or Utilities accept the project.

**Project Closeout:** Transfer all project documents to the City for permanent storage. Assist with backup data for City closeout of grant and utility agreements.

#### **Management Reserve:**

The services described under this task, and any other additional services requested by the City of Des Moines, will be performed only when authorized by the City. Authorization to perform additional services will be in the form of a supplement to this agreement, specifying the work to be performed, and basis of payment. A total of \$5,000 has been included in the cost for services as a placeholder.

- Produce traffic advisories and other news releases at project milestones.
- Provide any additional services resulting from changes in scope or design of the project. Changes include, but are not limited to, changes in size, complexity, the schedule, character of construction, or method of financing.
- Preparation of award submittal for APWA, ASCE, and other agencies.
- Provide claims analysis and assistance in resolving claims that are protracted in nature and beyond the scope of the change order process described herein.
- Ribbon Cutting Ceremony: Conduct a ribbon cutting ceremony that provides information about

the project elements and schedule, and that provides information about how to stay informed through the project. Handouts to be prepared for this task. Refreshments, tables, and other necessary items to be provided by the Consultant.

- Other activities deemed necessary by the City of Des Moines.

### **III. DELIVERABLES**

- i. Preconstruction Conference minutes
- ii. Preconstruction meeting agenda and minutes (Draft and Final)
- iii. Daily Reports
- iv. Test Reports
- v. Construction Photographs –
- vi. Weekly meeting minutes
- vii. Certificate of Substantial Completion with punchlist
- viii. Monthly contractor pay requests
- ix. Cost projections
- x. Physical completion letter and recommendation of final acceptance letter
- xi. Public involvement literature and record of public comments
- xii. All project records at the completion of the contract, including submittals, RFI's, change orders, correspondence, and other information.
- xiii. Construction flyers
- xiv. Project website initial language and monthly updates
- xv. Record Drawings

**HOUR AND FEE ESTIMATE**

Project: City of Des Moines  
 S 216th Street Segment 3  
 Construction Services



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Task	Description	Labor Hour Estimate									Total Budget Budget
		Project Manager (Principal) KPG	Resident Engineer KPG	Design Engineer KPG	CAD Technician KPG	Const Technician KPG	Const Inspector (night) KPG	Survey Crew KPG	Document Specialist KPG	Office Admin KPG	
		\$ 207.53	\$ 118.98	\$ 118.98	\$ 107.91	\$ 83.01	\$ 101.00	\$ 148.64	\$ 83.01	\$ 83.01	
<b>1 - Management, Coordination, Administration (Estimated duration 40 wee</b>											
	Weekly level of effort by Classification	2	0	0	0	0	0	0	0	1	
	<b>Preconstruction Budget Estimate</b>	<b>80</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>\$ 19,922.40</b>
<b>2 - Preconstruction Services (Estimated duration 2 weeks)</b>											
	Weekly level of effort by Classification	10	30	30	0	20	16	0	30	4	
	<b>Preconstruction Budget Estimate</b>	<b>20</b>	<b>60</b>	<b>60</b>	<b>0</b>	<b>40</b>	<b>32</b>	<b>0</b>	<b>60</b>	<b>8</b>	<b>\$ 30,625.16</b>
<b>3 - Construction Services (Estimated duration 40 weeks)</b>											
	Weekly level of effort by Classification	6	40	8	0	45	0	1	24	1	
	<b>Construction Period Budget Estimate</b>	<b>240</b>	<b>1600</b>	<b>320</b>	<b>0</b>	<b>1800</b>	<b>0</b>	<b>40</b>	<b>960</b>	<b>40</b>	<b>\$ 516,631.00</b>
<b>4 - Closeout/Record Dwg Services (Estimated duration 2 weeks)</b>											
	Weekly level of effort by Classification	12	20	8	20	24	0	0	30	2	
	<b>Closeout / Record Dwg Budget Estimate</b>	<b>16</b>	<b>40</b>	<b>16</b>	<b>40</b>	<b>48</b>	<b>0</b>	<b>0</b>	<b>60</b>	<b>4</b>	<b>\$ 23,596.98</b>
	<b>Subtotal - Labor</b>	<b>356</b>	<b>1700</b>	<b>396</b>	<b>40</b>	<b>1888</b>	<b>32</b>	<b>40</b>	<b>1080</b>	<b>92</b>	<b>\$ 590,775.53</b>
<b>Reimbursables &amp; Subconsultants</b>											
									Structural Review	\$	5,000.00
									Material Testing Allowance	\$	30,000.00
									Construction Vehicles (10 months @ \$750)		
									Misc. - (Mileage, Field Supplies, & Independent Roadway Exc Calcs)	\$	6,000.00
									CM Reserve	\$	5,000.00
	<b>Subtotal - Reimbursables</b>									<b>\$</b>	<b>46,000.00</b>
	<b>Total Project Budget</b>								<b>Total Not To Exceed Contract Amount =</b>	<b>\$</b>	<b>636,775.53</b>

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**SOUTH 216TH STREET - SEGMENT 3**  
(11TH AVENUE S TO 20TH AVENUE S)

Bid Tabulation  
Tuesday, December 11, 2018



Bid Item No.	Section No.	Item	Total Quantity	Unit	Engineer's Estimate		Ceccanti		Scarsella		Pacific Civil & Infra.		NW Cascade		Active Construction		Johansen Const.		Marshbank Const.		Tucci & Sons			
					Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
<b>SCHEDULE A - ROADWAY IMPROVEMENTS</b>																								
A1	1-04	Minor Change	1	FA	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00		
A2	1-05	Roadway Surveying	1	LS	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00		
A3	1-05	Record Drawings (Minimum Bid \$5,000)	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00		
A4	1-07	Site Preparation, Control & Countermeasures Plan	1	LS	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00		
A5	1-08	Type B Progress Schedule (Minimum Bid \$5,000)	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00		
A6	1-09	Mobilization	1	LS	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00	
A7	1-10	Project Temporary Traffic Control	1	LS	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	\$ 425,000.00	
A8	2-01	Cleaning and Grubbing	1	LS	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	
A9	2-02	Removal of Structures and Obstructions	1	LS	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	
A10	2-02	Asphalt Pavement Removal	13,860	SY	\$ 12.00	\$ 166,320.00	\$ 10.00	\$ 138,600.00	\$ 8.50	\$ 117,810.00	\$ 7.50	\$ 103,950.00	\$ 6.25	\$ 86,250.00	\$ 5.00	\$ 69,300.00	\$ 4.00	\$ 55,440.00	\$ 3.00	\$ 41,580.00	\$ 2.00	\$ 27,720.00	\$ 1.50	\$ 20,790.00
A11	2-02	Cement Conc. Sidewalk Removal	540	SY	\$ 12.00	\$ 6,480.00	\$ 10.00	\$ 5,400.00	\$ 8.50	\$ 4,590.00	\$ 7.50	\$ 4,050.00	\$ 6.25	\$ 3,375.00	\$ 5.00	\$ 2,700.00	\$ 4.00	\$ 2,160.00	\$ 3.00	\$ 1,620.00	\$ 2.00	\$ 1,080.00	\$ 1.50	\$ 810.00
A12	2-02	Cement Conc. Curb Removal	1,545	LF	\$ 5.00	\$ 7,725.00	\$ 4.00	\$ 6,180.00	\$ 3.50	\$ 5,400.00	\$ 3.00	\$ 4,635.00	\$ 2.50	\$ 3,862.50	\$ 2.00	\$ 3,090.00	\$ 1.50	\$ 2,317.50	\$ 1.00	\$ 1,545.00	\$ 0.75	\$ 1,158.75	\$ 0.50	\$ 772.50
A13	2-03	Roadway Excavation Incl. Haul	1	LS	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	
A14	2-03	Unstable Foundation Excavation Including Haul	100	CY	\$ 40.00	\$ 4,000.00	\$ 37.00	\$ 3,700.00	\$ 34.00	\$ 3,400.00	\$ 31.00	\$ 3,100.00	\$ 28.00	\$ 2,800.00	\$ 25.00	\$ 2,500.00	\$ 22.00	\$ 2,200.00	\$ 19.00	\$ 1,900.00	\$ 16.00	\$ 1,600.00	\$ 13.00	\$ 1,300.00
A15	2-03	Gravel Borrow Including Haul	900	TON	\$ 35.00	\$ 31,500.00	\$ 34.00	\$ 30,600.00	\$ 33.00	\$ 30,000.00	\$ 32.00	\$ 28,800.00	\$ 31.00	\$ 27,900.00	\$ 30.00	\$ 27,000.00	\$ 29.00	\$ 26,100.00	\$ 28.00	\$ 25,200.00	\$ 27.00	\$ 24,300.00	\$ 26.00	\$ 23,400.00
A16	2-09	Shoring or Extra Excavation Class B	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	
A17	4-04	Crushed Surfacing Top Course	2,555	TON	\$ 30.00	\$ 76,650.00	\$ 24.00	\$ 61,320.00	\$ 20.00	\$ 51,100.00	\$ 17.00	\$ 43,435.00	\$ 14.00	\$ 35,770.00	\$ 11.00	\$ 28,105.00	\$ 8.00	\$ 20,440.00	\$ 6.00	\$ 15,330.00	\$ 4.00	\$ 10,220.00	\$ 3.00	\$ 7,665.00
A18	4-04	Crushed Surfacing Base Course	4,193	TON	\$ 30.00	\$ 125,790.00	\$ 24.00	\$ 100,632.00	\$ 20.00	\$ 83,800.00	\$ 17.00	\$ 71,260.00	\$ 14.00	\$ 58,720.00	\$ 11.00	\$ 46,180.00	\$ 8.00	\$ 33,640.00	\$ 6.00	\$ 25,095.00	\$ 4.00	\$ 16,550.00	\$ 3.00	\$ 12,410.00
A19	5-04	HMA Class 12" P11.54 22"	5,440	TON	\$ 35.00	\$ 190,400.00	\$ 34.00	\$ 184,960.00	\$ 33.00	\$ 179,520.00	\$ 32.00	\$ 174,080.00	\$ 31.00	\$ 168,640.00	\$ 30.00	\$ 163,200.00	\$ 29.00	\$ 157,760.00	\$ 28.00	\$ 152,320.00	\$ 27.00	\$ 146,880.00	\$ 26.00	\$ 141,440.00
A20	5-04	Commercial HMA	200	TON	\$ 70.00	\$ 14,000.00	\$ 68.00	\$ 13,600.00	\$ 66.00	\$ 13,200.00	\$ 64.00	\$ 12,800.00	\$ 62.00	\$ 12,400.00	\$ 60.00	\$ 12,000.00	\$ 58.00	\$ 11,600.00	\$ 56.00	\$ 11,200.00	\$ 54.00	\$ 10,800.00	\$ 52.00	\$ 10,400.00
A21	5-04	Placing Bituminous Pavement	1,770	SY	\$ 8.00	\$ 14,160.00	\$ 7.50	\$ 13,275.00	\$ 7.00	\$ 12,390.00	\$ 6.50	\$ 11,505.00	\$ 6.00	\$ 10,620.00	\$ 5.50	\$ 9,735.00	\$ 5.00	\$ 8,850.00	\$ 4.50	\$ 7,965.00	\$ 4.00	\$ 7,080.00	\$ 3.50	\$ 6,195.00
A22	5-05	Stamped Concrete Concrete Pavement	20	SY	\$ 300.00	\$ 6,000.00	\$ 280.00	\$ 5,600.00	\$ 260.00	\$ 5,200.00	\$ 240.00	\$ 4,800.00	\$ 220.00	\$ 4,400.00	\$ 200.00	\$ 4,000.00	\$ 180.00	\$ 3,600.00	\$ 160.00	\$ 3,200.00	\$ 140.00	\$ 2,800.00	\$ 120.00	\$ 2,400.00
A23	6-13	Modular Block Wall	636	SF	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00	\$ 40.00	\$ 25,440.00
A24	6-13	Structural Earth Wall	810	SF	\$ 35.00	\$ 28,350.00	\$ 34.00	\$ 27,540.00	\$ 33.00	\$ 26,730.00	\$ 32.00	\$ 25,920.00	\$ 31.00	\$ 25,110.00	\$ 30.00	\$ 24,300.00	\$ 29.00	\$ 23,490.00	\$ 28.00	\$ 22,680.00	\$ 27.00	\$ 21,870.00	\$ 26.00	\$ 21,060.00
A25	6-13	Gravel Backfill for Structural Earth Wall Incl. Haul	140	CY	\$ 150.00	\$ 21,000.00	\$ 144.00	\$ 20,160.00	\$ 138.00	\$ 19,320.00	\$ 132.00	\$ 18,480.00	\$ 126.00	\$ 17,640.00	\$ 120.00	\$ 16,800.00	\$ 114.00	\$ 15,960.00	\$ 108.00	\$ 15,120.00	\$ 102.00	\$ 14,280.00	\$ 96.00	\$ 13,440.00
A26	6-16	Shell - 30 Inch Diameter	1,038	LF	\$ 15.00	\$ 15,570.00	\$ 14.40	\$ 14,947.20	\$ 13.80	\$ 14,424.60	\$ 13.20	\$ 13,902.00	\$ 12.60	\$ 13,379.40	\$ 12.00	\$ 12,856.80	\$ 11.40	\$ 12,334.20	\$ 10.80	\$ 11,811.60	\$ 10.20	\$ 11,289.00	\$ 9.60	\$ 10,766.40
A27	6-16	Furnishing Solder Pipe - W14x20	495	LF	\$ 80.00	\$ 39,600.00	\$ 77.00	\$ 38,115.00	\$ 74.00	\$ 36,630.00	\$ 71.00	\$ 35,145.00	\$ 68.00	\$ 33,660.00	\$ 65.00	\$ 32,175.00	\$ 62.00	\$ 30,690.00	\$ 59.00	\$ 29,205.00	\$ 56.00	\$ 27,720.00	\$ 53.00	\$ 26,235.00
A28	6-16	Furnishing Solder Pipe - W14x13	290	LF	\$ 85.00	\$ 24,650.00	\$ 81.00	\$ 23,490.00	\$ 77.00	\$ 22,330.00	\$ 73.00	\$ 21,170.00	\$ 69.00	\$ 20,010.00	\$ 65.00	\$ 18,850.00	\$ 61.00	\$ 17,690.00	\$ 57.00	\$ 16,530.00	\$ 53.00	\$ 15,370.00	\$ 49.00	\$ 14,210.00
A29	6-16	Furnishing Solder Pipe - W14x8	354	LF	\$ 210.00	\$ 74,340.00	\$ 203.00	\$ 71,802.00	\$ 196.00	\$ 69,264.00	\$ 189.00	\$ 66,726.00	\$ 182.00	\$ 64,188.00	\$ 175.00	\$ 61,650.00	\$ 168.00	\$ 59,112.00	\$ 161.00	\$ 56,574.00	\$ 154.00	\$ 54,036.00	\$ 147.00	\$ 51,498.00
A30	6-16	Timber Lagging	2,380	SF	\$ 25.00	\$ 59,500.00	\$ 24.00	\$ 57,120.00	\$ 23.00	\$ 54,740.00	\$ 22.00	\$ 52,360.00	\$ 21.00	\$ 49,980.00	\$ 20.00	\$ 47,620.00	\$ 19.00	\$ 45,260.00	\$ 18.00	\$ 42,900.00	\$ 17.00	\$ 40,540.00	\$ 16.00	\$ 38,180.00
A31	6-16	Modular Block Paving	2,700	SF	\$ 36.00	\$ 97,200.00	\$ 34.00	\$ 91,800.00	\$ 32.00	\$ 86,400.00	\$ 30.00	\$ 81,000.00	\$ 28.00	\$ 75,600.00	\$ 26.00	\$ 70,200.00	\$ 24.00	\$ 64,800.00	\$ 22.00	\$ 59,400.00	\$ 20.00	\$ 54,000.00	\$ 18.00	\$ 48,600.00
A32	6-16	Cement Conc. Wall Drip	175	LF	\$ 60.00	\$ 10,500.00	\$ 57.00	\$ 9,975.00	\$ 54.00	\$ 9,450.00	\$ 51.00	\$ 8,925.00	\$ 48.00	\$ 8,400.00	\$ 45.00	\$ 7,875.00	\$ 42.00	\$ 7,350.00	\$ 39.00	\$ 6,825.00	\$ 36.00	\$ 6,300.00	\$ 33.00	\$ 5,775.00
A33	6-16	Cement Conc. Gutter	450	LF	\$ 40.00	\$ 18,000.00	\$ 39.00	\$ 17,550.00	\$ 38.00	\$ 17,100.00	\$ 37.00	\$ 16,650.00	\$ 36.00	\$ 16,200.00	\$ 35.00	\$ 15,750.00	\$ 34.00	\$ 15,300.00	\$ 33.00	\$ 14,850.00	\$ 32.00	\$ 14,400.00	\$ 31.00	\$ 13,950.00
A34	7-04	Storm Sewer Pipe, 6-in. Diam.	75	LF	\$ 45.00	\$ 3,375.00	\$ 43.00	\$ 3,225.00	\$ 41.00	\$ 3,075.00	\$ 39.00	\$ 2,925.00	\$ 37.00	\$ 2,775.00	\$ 35.00	\$ 2,625.00	\$ 33.00	\$ 2,475.00	\$ 31.00	\$ 2,325.00	\$ 29.00	\$ 2,175.00	\$ 27.00	\$ 2,025.00
A35	7-04	Storm Sewer Pipe, 8-in. Diam.	115	LF	\$ 60.00	\$ 6,900.00	\$ 58.00	\$ 6,660.00	\$ 56.00	\$ 6,420.00	\$ 54.00	\$ 6,180.00	\$ 52.00	\$ 5,940.00	\$ 50.00	\$ 5,700.00	\$ 48.00	\$ 5,460.00	\$ 46.00	\$ 5,220.00	\$ 44.00	\$ 4,980.00	\$ 42.00	



**SOUTH 216TH STREET - SEGMENT 3**  
(11TH AVENUE S TO 20TH AVENUE S)

Bid Tabulation  
Tuesday, December 11, 2018



Bid Item No.	Section No.	Item	Total Quantity	Unit	Engineer's Estimate		Ceccanti		Scarsella		Pacific Civil & Infra.		NW Cascade		Active Construction		Johansen Const.		Marshbank Const.		Tucci & Sons			
					Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
A91	8-04	Cement Conc. Traffic Curb	1,360	LF	\$ 24.00	\$ 32,640.00	\$ 30.00	\$ 40,800.00	\$ 33.50	\$ 45,560.00	\$ 24.00	\$ 32,640.00	\$ 24.00	\$ 32,640.00	\$ 35.00	\$ 47,600.00	\$ 28.50	\$ 38,850.00	\$ 20.00	\$ 27,200.00	\$ 35.00	\$ 47,600.00	\$ 35.00	\$ 47,600.00
A92	8-04	Cement Conc. Extruded Curb	310	LF	\$ 15.00	\$ 4,650.00	\$ 10.00	\$ 3,100.00	\$ 8.00	\$ 2,480.00	\$ 8.00	\$ 2,480.00	\$ 8.00	\$ 2,480.00	\$ 6.50	\$ 2,015.00	\$ 7.00	\$ 2,170.00	\$ 6.50	\$ 2,015.00	\$ 6.50	\$ 2,015.00	\$ 10.00	\$ 3,100.00
A93	8-04	Cement Conc. Wheel Stop	4	EA	\$ 400.00	\$ 1,600.00	\$ 100.00	\$ 400.00	\$ 100.00	\$ 400.00	\$ 100.00	\$ 400.00	\$ 100.00	\$ 400.00	\$ 102.00	\$ 408.00	\$ 115.00	\$ 460.00	\$ 107.00	\$ 428.00	\$ 110.00	\$ 440.00	\$ 115.00	\$ 460.00
A94	8-05	Resolution of Utility Conflicts	1	FA	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	
A95	8-05	Potholing	50	EA	\$ 400.00	\$ 20,000.00	\$ 350.00	\$ 17,500.00	\$ 500.00	\$ 25,000.00	\$ 595.00	\$ 29,750.00	\$ 475.00	\$ 23,750.00	\$ 275.00	\$ 13,750.00	\$ 470.00	\$ 23,500.00	\$ 600.00	\$ 30,000.00	\$ 350.00	\$ 17,500.00	\$ 350.00	\$ 17,500.00
A96	8-06	Cement Conc. Driveway Entrance	630	SY	\$ 80.00	\$ 50,400.00	\$ 70.00	\$ 44,100.00	\$ 120.00	\$ 75,600.00	\$ 92.00	\$ 57,960.00	\$ 107.00	\$ 67,410.00	\$ 160.00	\$ 100,800.00	\$ 160.00	\$ 100,800.00	\$ 150.00	\$ 94,500.00	\$ 110.00	\$ 69,300.00	\$ 100.00	\$ 63,000.00
A97	8-09	Raised Pavement Markers Type 1	24	HUND	\$ 325.00	\$ 7,800.00	\$ 150.00	\$ 3,600.00	\$ 144.00	\$ 3,456.00	\$ 144.00	\$ 3,456.00	\$ 155.00	\$ 3,720.00	\$ 165.00	\$ 3,960.00	\$ 165.00	\$ 3,960.00	\$ 155.00	\$ 3,720.00	\$ 155.00	\$ 3,720.00	\$ 165.00	\$ 3,960.00
A98	8-09	Raised Pavement Markers Type 2	4	HUND	\$ 350.00	\$ 1,400.00	\$ 400.00	\$ 1,600.00	\$ 400.00	\$ 1,600.00	\$ 400.00	\$ 1,600.00	\$ 435.00	\$ 1,740.00	\$ 450.00	\$ 1,800.00	\$ 430.00	\$ 1,720.00	\$ 450.00	\$ 1,800.00	\$ 450.00	\$ 1,800.00	\$ 400.00	\$ 1,600.00
A99	8-12	Black Vinyl Coated Chain Link Fence, 42 in	500	LF	\$ 30.00	\$ 15,000.00	\$ 37.00	\$ 18,500.00	\$ 39.50	\$ 19,750.00	\$ 39.50	\$ 19,750.00	\$ 42.00	\$ 21,000.00	\$ 43.00	\$ 21,500.00	\$ 41.00	\$ 20,500.00	\$ 41.00	\$ 20,500.00	\$ 41.00	\$ 20,500.00	\$ 36.00	\$ 18,000.00
A100	8-12	Temporary Safety Fencing	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 1,500.00	\$ 1,500.00	\$ 2,500.00	\$ 2,500.00	\$ 4,000.00	\$ 4,000.00	\$ 5,500.00	\$ 5,500.00	\$ 5,500.00	\$ 5,500.00	\$ 1,750.00	\$ 1,750.00	\$ 5,500.00	\$ 5,500.00	\$ 4,500.00	\$ 4,500.00	\$ 5,500.00	\$ 5,500.00
A101	8-12	Replace Existing Fence, Parcel 11	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 7,000.00	\$ 7,000.00	\$ 5,500.00	\$ 5,500.00	\$ 5,900.00	\$ 5,900.00	\$ 5,900.00	\$ 5,900.00	\$ 6,750.00	\$ 6,750.00	\$ 6,300.00	\$ 6,300.00	\$ 6,300.00	\$ 6,300.00	\$ 6,300.00	\$ 6,300.00	\$ 5,750.00	\$ 5,750.00
A102	8-13	Monument Case and Cover	1	EA	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00	\$ 750.00	\$ 750.00	\$ 670.00	\$ 670.00	\$ 2,000.00	\$ 2,000.00	\$ 800.00	\$ 800.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 695.00	\$ 3,000.00	\$ 3,000.00	\$ 2,000.00	\$ 2,000.00
A103	8-14	Cement Conc. Curb Ramp Type ____	12	EA	\$ 2,800.00	\$ 33,600.00	\$ 2,800.00	\$ 33,600.00	\$ 3,450.00	\$ 41,400.00	\$ 2,300.00	\$ 27,600.00	\$ 2,700.00	\$ 32,400.00	\$ 3,000.00	\$ 36,000.00	\$ 2,650.00	\$ 31,800.00	\$ 2,650.00	\$ 31,800.00	\$ 2,650.00	\$ 31,800.00	\$ 3,500.00	\$ 42,000.00
A104	8-14	Cement Conc. Sidewalk	3,260	SY	\$ 45.00	\$ 147,300.00	\$ 40.00	\$ 130,400.00	\$ 40.00	\$ 130,400.00	\$ 45.00	\$ 147,300.00	\$ 45.00	\$ 147,300.00	\$ 50.00	\$ 163,000.00	\$ 50.00	\$ 163,000.00	\$ 45.00	\$ 147,300.00	\$ 45.00	\$ 147,300.00	\$ 50.00	\$ 163,000.00
A105	8-14	Thickened Edge Sidewalk	550	LF	\$ 40.00	\$ 22,000.00	\$ 24.00	\$ 13,200.00	\$ 15.00	\$ 8,250.00	\$ 15.00	\$ 8,250.00	\$ 45.00	\$ 24,750.00	\$ 37.00	\$ 20,350.00	\$ 80.00	\$ 44,000.00	\$ 35.45	\$ 19,497.50	\$ 30.00	\$ 16,500.00	\$ 40.00	\$ 22,000.00
A106	8-14	Bus Shelter Footing Westbound	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 2,700.00	\$ 2,700.00	\$ 5,000.00	\$ 5,000.00	\$ 4,100.00	\$ 4,100.00	\$ 6,500.00	\$ 6,500.00	\$ 13,000.00	\$ 13,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 5,000.00	\$ 5,000.00	\$ 4,500.00	\$ 4,500.00
A107	8-14	Bus Shelter Footing Eastbound	1	LS	\$ 1,500.00	\$ 1,500.00	\$ 2,700.00	\$ 2,700.00	\$ 5,000.00	\$ 5,000.00	\$ 4,100.00	\$ 4,100.00	\$ 6,500.00	\$ 6,500.00	\$ 13,000.00	\$ 13,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 5,000.00	\$ 5,000.00	\$ 4,500.00	\$ 4,500.00
A108	8-14	Decorative Stamped Cement Concrete Finish	130	SY	\$ 500.00	\$ 65,000.00	\$ 240.00	\$ 31,200.00	\$ 100.00	\$ 13,000.00	\$ 235.00	\$ 30,550.00	\$ 247.00	\$ 32,110.00	\$ 115.00	\$ 14,950.00	\$ 247.00	\$ 32,110.00	\$ 115.00	\$ 14,950.00	\$ 270.00	\$ 35,100.00	\$ 250.00	\$ 32,500.00
A109	8-18	Rebar Support	5	EA	\$ 500.00	\$ 2,500.00	\$ 200.00	\$ 1,000.00	\$ 400.00	\$ 2,000.00	\$ 400.00	\$ 2,000.00	\$ 420.00	\$ 2,100.00	\$ 900.00	\$ 4,500.00	\$ 530.00	\$ 2,650.00	\$ 530.00	\$ 2,650.00	\$ 530.00	\$ 2,650.00	\$ 200.00	\$ 1,000.00
A110	8-19	Wood Fence	440	LF	\$ 38.00	\$ 16,720.00	\$ 87.00	\$ 38,280.00	\$ 98.00	\$ 43,120.00	\$ 98.00	\$ 43,120.00	\$ 107.00	\$ 47,080.00	\$ 50.00	\$ 22,000.00	\$ 105.00	\$ 46,200.00	\$ 110.00	\$ 48,400.00	\$ 105.00	\$ 46,200.00	\$ 40.00	\$ 17,600.00
A111	8-20	Rectangular Rapid Flashing Beacon System at 14th Avenue S Complete	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 18,000.00	\$ 18,000.00	\$ 13,165.00	\$ 13,165.00	\$ 13,165.00	\$ 13,165.00	\$ 14,500.00	\$ 14,500.00	\$ 15,000.00	\$ 15,000.00	\$ 16,000.00	\$ 16,000.00	\$ 14,000.00	\$ 14,000.00	\$ 14,000.00	\$ 15,700.00	\$ 15,700.00	
A112	8-20	Rectangular Rapid Flashing Beacon System at 18th Avenue S Complete	1	LS	\$ 22,000.00	\$ 22,000.00	\$ 21,000.00	\$ 21,000.00	\$ 20,856.00	\$ 20,856.00	\$ 20,856.00	\$ 20,856.00	\$ 23,000.00	\$ 23,000.00	\$ 23,000.00	\$ 23,000.00	\$ 24,000.00	\$ 24,000.00	\$ 16,300.00	\$ 16,300.00	\$ 17,000.00	\$ 17,000.00	\$ 18,600.00	\$ 18,600.00
A113	8-20	Modifications to Existing Fiber Optic ITS System Complete	1	LS	\$ 54,000.00	\$ 54,000.00	\$ 55,000.00	\$ 55,000.00	\$ 52,716.00	\$ 52,716.00	\$ 52,716.00	\$ 52,716.00	\$ 55,000.00	\$ 55,000.00	\$ 57,000.00	\$ 57,000.00	\$ 62,400.00	\$ 62,400.00	\$ 70,000.00	\$ 70,000.00	\$ 70,000.00	\$ 78,000.00	\$ 78,000.00	
A114	8-20	Integration System Complete	1	LS	\$ 693,000.00	\$ 693,000.00	\$ 930,000.00	\$ 930,000.00	\$ 905,163.00	\$ 905,163.00	\$ 905,163.00	\$ 905,163.00	\$ 992,000.00	\$ 992,000.00	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,106,000.00	\$ 1,106,000.00	\$ 950,000.00	\$ 950,000.00	\$ 950,000.00	\$ 1,120,000.00	\$ 1,120,000.00	
A115	8-21	Permanent Signage	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 20,000.00	\$ 20,000.00	\$ 5,277.00	\$ 5,277.00	\$ 21,000.00	\$ 21,000.00	\$ 15,000.00	\$ 15,000.00	\$ 8,500.00	\$ 8,500.00	\$ 25,000.00	\$ 25,000.00	\$ 24,000.00	\$ 24,000.00	\$ 24,000.00	\$ 6,000.00	\$ 6,000.00	
A116	8-22	Paint Lane, 4in	6,585	LF	\$ 1.00	\$ 6,585.00	\$ 0.40	\$ 2,634.00	\$ 0.33	\$ 1,843.05	\$ 0.33	\$ 1,843.05	\$ 0.35	\$ 2,304.75	\$ 0.39	\$ 2,568.15	\$ 0.35	\$ 2,304.75	\$ 0.35	\$ 2,304.75	\$ 0.35	\$ 2,304.75	\$ 0.40	\$ 2,634.00
A117	8-22	Plastic Strip Lane	85	LF	\$ 8.00	\$ 680.00	\$ 12.00	\$ 1,020.00	\$ 12.00	\$ 1,020.00	\$ 12.00	\$ 1,020.00	\$ 13.00	\$ 1,105.00	\$ 13.00	\$ 1,105.00	\$ 13.00	\$ 1,105.00	\$ 13.00	\$ 1,105.00	\$ 13.00	\$ 1,105.00	\$ 14.00	\$ 1,190.00
A118	8-22	Plastic Crosswalk Lane	1,085	SF	\$ 10.00	\$ 10,850.00	\$ 12.00	\$ 13,020.00	\$ 10.75	\$ 11,683.75	\$ 10.75	\$ 11,683.75	\$ 12.00	\$ 13,020.00	\$ 12.00	\$ 13,020.00	\$ 11.55	\$ 12,531.75	\$ 12.00	\$ 13,020.00	\$ 12.00	\$ 13,020.00	\$ 12.50	\$ 13,562.50
A119	8-22	Plastic Traffic Arrow	18	EA	\$ 200.00	\$ 3,600.00	\$ 150.00	\$ 2,700.00	\$ 177.00	\$ 3,186.00	\$ 177.00	\$ 3,186.00	\$ 195.00	\$ 3,510.00	\$ 200.00	\$ 3,600.00	\$ 190.00	\$ 3,420.00	\$ 190.00	\$ 3,420.00	\$ 200.00	\$ 3,600.00	\$ 200.00	\$ 3,600.00
A120	8-22	Plastic Traffic Letter	4	EA	\$ 100.00	\$ 400.00	\$ 120.00	\$ 480.00	\$ 114.00	\$ 456.00	\$ 114.00	\$ 456.00	\$ 125.00	\$ 500.00	\$ 130.00	\$ 520.00	\$ 125.00	\$ 500.00	\$ 122.00	\$ 488.00	\$ 122.00	\$ 488.00	\$ 132.00	\$ 528.00
A121	8-22	Plastic Bicycle Symbol	16	EA	\$ 125.00	\$ 2,000.00	\$ 400.00	\$ 6,400.00	\$ 400.00	\$ 6,400.00	\$ 400.00	\$ 6,400.00	\$ 435.00	\$ 6,960.00	\$ 450.00	\$ 7,200.00	\$ 430.00	\$ 6,880.00	\$ 430.00	\$ 6,880.00	\$ 430.00	\$ 6,880.00	\$ 400.00	\$ 6,400.00
A122	8-22	Plastic Access Parking Symbol Type A	2	EA	\$ 150.00	\$ 300.00	\$ 80.00	\$ 160.00	\$ 77.00	\$ 154.00	\$ 77.00	\$ 154.00	\$ 85.00	\$ 170.00	\$ 100.00	\$ 200.00	\$ 85.00	\$ 170.00	\$ 82.00	\$ 164.00	\$ 82.00	\$ 164.00	\$ 90.00	\$ 180.00
A123	8-26	Secondary Electrical Service Connections (0 EA)	1	FA	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	
A124	8-27	Asphalt Gas Valve	19	EA	\$ 250.00	\$ 4,750.00	\$ 350.00	\$ 6,650.00	\$ 350.00	\$ 6,650.00	\$ 350.00	\$ 6,650.00	\$ 700.00	\$ 13,300.00	\$ 600.00	\$ 11,400.00	\$ 400.00	\$ 7,600.00	\$ 550.00	\$ 10,450.00	\$ 400.00	\$ 7,600.00	\$ 600.00	\$ 11,400.00
A125	8-30	Decorative Metal Banners	13	EA	\$ 2,000.00	\$ 26,000.00	\$ 2,500.00	\$ 32,500.00	\$ 2,750.00	\$ 35,750.00	\$ 2,513.00	\$ 32,669.00	\$ 3,000.00	\$ 39,000.00	\$ 3,000.00	\$ 39,000.00	\$							



**SOUTH 216TH STREET - SEGMENT 3**  
(11TH AVENUE S TO 20TH AVENUE S)

Bid Tabulation  
Tuesday, December 11, 2018



**KPG**  
Interdisciplinary Design

		Engineer's Estimate		Ceccanti		Scarsella		Pacific Civil & Infra.		NW Cascade		Active Construction		Johansen Const.		Marshbank Const.		Tucci & Sons				
Bid Item No.	Section No.	Item	Total Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost		
D5	8-26	Install Vault 48"-TA	1	EA	2,000.00	2,000.00	300.00	300.00	2,850.00	2,850.00	890.00	890.00	785.00	785.00	1,200.00	1,200.00	1,975.00	1,975.00	1,500.00	1,500.00		
D6	8-26	Adjust Vault to Grade	3	EA	600.00	1,800.00	1,100.00	3,300.00	1,050.00	3,150.00	570.00	1,710.00	1,100.00	3,300.00	1,200.00	3,600.00	2,075.00	6,225.00	2,700.00	8,100.00		
Subtotal						43,900.00		31,900.00		33,830.00		18,873.00		34,495.00		38,500.00		58,950.00		58,350.00		49,800.00
Sales Tax (10%)						4,390.00		3,190.00		3,383.00		1,887.30		3,449.50		3,850.00		5,895.00		5,835.00		4,980.00
<b>Total Construction Cost Schedule D</b>					<b>\$ 40,290.00</b>		<b>\$ 34,430.00</b>		<b>\$ 37,213.00</b>		<b>\$ 20,670.30</b>		<b>\$ 37,944.50</b>		<b>\$ 42,350.00</b>		<b>\$ 64,845.00</b>		<b>\$ 64,185.00</b>		<b>\$ 54,560.00</b>	

		Quantity		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost	
SCHEDULE E - PSE UNDERGROUNDING																							
E1	8-26	Install Conduit 2 In. Diam	640	LF	4.00	2,560.00	2.00	1,280.00	1.75	1,120.00	1.00	640.00	2.00	1,280.00	2.00	1,280.00	3.25	2,080.00	3.10	1,984.00	3.50	2,240.00	
E2	8-26	Install Conduit 4 In. Diam	6605	LF	4.00	26,420.00	3.00	19,815.00	2.75	18,163.75	1.00	6,605.00	3.00	19,815.00	4.45	29,392.25	5.00	33,025.00	5.50	36,327.50			
E3	8-26	Install Conduit 6 In. Diam	4805	LF	4.00	19,220.00	4.00	19,220.00	3.50	16,817.50	1.00	4,805.00	4.00	19,220.00	7.00	33,535.00	5.00	24,025.00	7.00	33,635.00			
E4	8-26	Install Handhole 2'0"x2'6"x2	3	EA	1,000.00	3,000.00	400.00	1,200.00	515.00	1,545.00	1,112.00	3,336.00	415.00	1,245.00	350.00	1,050.00	1,245.00	3,735.00	400.00	1,600.00	450.00	1,350.00	
E5	8-26	Install Transformer 42"x48"x38"	3	EA	1,200.00	3,600.00	300.00	900.00	1,050.00	3,150.00	1,450.00	4,350.00	625.00	1,875.00	600.00	1,800.00	1,795.00	5,385.00	1,500.00	4,500.00	280.00	840.00	
E6	8-26	Install J-Box Vault 7'x4'8"x5'8"	7	EA	1,500.00	10,500.00	300.00	2,100.00	2,050.00	14,350.00	2,920.00	20,440.00	1,200.00	8,400.00	2,000.00	14,000.00	2,575.00	18,025.00	1,500.00	10,500.00	280.00	1,960.00	
E7	8-26	Install Plat Vault 11'4"x5'10"x5	3	EA	2,000.00	6,000.00	300.00	900.00	4,115.00	12,345.00	8,460.00	25,380.00	1,500.00	4,500.00	2,500.00	7,500.00	3,495.00	10,485.00	2,800.00	8,400.00	280.00	840.00	
E8	8-26	Install Switch Vault 11'4"x5'10"x6"	1	EA	2,000.00	2,000.00	300.00	300.00	4,115.00	4,115.00	9,260.00	9,260.00	2,700.00	2,700.00	2,500.00	2,500.00	4,100.00	4,100.00	2,800.00	2,800.00	280.00	280.00	
Subtotal						73,300.00		45,715.00		71,806.25		74,816.00		59,335.00		67,165.00		106,897.25		91,239.00		77,472.50	
Sales Tax (10%)						7,330.00		4,571.50		7,180.63		7,481.60		5,933.50		6,716.50		10,689.73		9,123.90		7,747.25	
<b>Total Construction Cost Schedule E</b>					<b>\$ 80,630.00</b>		<b>\$ 50,286.50</b>		<b>\$ 78,766.88</b>		<b>\$ 82,297.60</b>		<b>\$ 65,268.50</b>		<b>\$ 73,881.50</b>		<b>\$ 117,520.98</b>		<b>\$ 100,362.90</b>		<b>\$ 85,219.75</b>		

		Quantity		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost	
SCHEDULE F - PSE FIBER OPTIC																							
F1	8-26	Install Conduit 3 In. Diam	2020	LF	4.00	8,080.00	2.00	4,040.00	2.00	4,040.00	1.00	2,020.00	2.25	4,545.00	2.50	5,050.00	3.80	7,676.00	4.00	8,080.00	4.50	9,090.00	
F2	8-26	Install Transformer 42"x48"x38"	4	EA	1,200.00	4,800.00	300.00	1,200.00	1,050.00	4,200.00	1,618.00	6,472.00	825.00	3,300.00	600.00	2,400.00	2,000.00	8,000.00	1,500.00	6,000.00	280.00	1,120.00	
Subtotal						12,880.00		5,240.00		8,240.00		8,492.00		7,845.00		7,450.00		15,676.00		14,080.00		10,210.00	
Sales Tax (10%)						1,288.00		524.00		824.00		849.20		784.50		745.00		1,567.60		1,408.00		1,021.00	
<b>Total Construction Cost Schedule F</b>					<b>\$ 14,168.00</b>		<b>\$ 5,764.00</b>		<b>\$ 9,064.00</b>		<b>\$ 9,341.20</b>		<b>\$ 8,629.50</b>		<b>\$ 8,195.00</b>		<b>\$ 17,243.60</b>		<b>\$ 15,488.00</b>		<b>\$ 11,231.00</b>		

		Quantity		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost		Unit Cost		Total Cost	
Additive - Project Temporary Traffic Control																							
1	1-10	Project Temporary Traffic Control	1	LS	50,000.00	50,000.00	140,000.00	140,000.00	150,000.00	150,000.00	22,000.00	22,000.00	75,000.00	75,000.00	75,000.00	75,000.00	47,000.00	47,000.00	23,000.00	23,000.00	85,350.00	85,350.00	
2	1-10	Project Temporary Traffic Control for Joint Utility Trench	1	LS	5,000.00	5,000.00	12,000.00	12,000.00	2,500.00	2,500.00	22,000.00	22,000.00	148,000.00	148,000.00	25,000.00	25,000.00	23,500.00	23,500.00	13,000.00	13,000.00	41,000.00	41,000.00	
<b>Total Construction Cost Additive Traffic Control</b>					<b>\$ 55,000.00</b>		<b>\$ 152,000.00</b>		<b>\$ 152,500.00</b>		<b>\$ 44,000.00</b>		<b>\$ 223,000.00</b>		<b>\$ 100,000.00</b>		<b>\$ 70,500.00</b>		<b>\$ 36,000.00</b>		<b>\$ 127,350.00</b>		

<b>TOTAL CONSTRUCTION COST (SCHEDULES A - F)</b>					<b>\$ 5,861,849.50</b>		<b>\$ 6,102,221.00</b>		<b>\$ 6,301,821.57</b>		<b>\$ 6,996,011.85</b>		<b>\$ 6,857,363.00</b>		<b>\$ 7,350,450.00</b>		<b>\$ 7,447,221.13</b>		<b>\$ 7,550,733.40</b>		<b>\$ 7,547,416.55</b>
<b>TOTAL CONSTRUCTION COST WITH ADDITIVE TRAFFIC CONTROL</b>					<b>\$ 5,916,849.50</b>		<b>\$ 6,254,221.00</b>		<b>\$ 6,454,121.57</b>		<b>\$ 7,040,011.85</b>		<b>\$ 7,080,363.00</b>		<b>\$ 7,450,450.00</b>		<b>\$ 7,517,721.13</b>		<b>\$ 7,586,733.40</b>		<b>\$ 7,674,766.55</b>

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December 28, 2018

City of Des Moines  
21650 11<sup>th</sup> Avenue South  
Des Moines, WA 98198-6317

Attn: Scott Romano

Re: South 216<sup>th</sup> Street Segment 3 project – Recommendation of Award

Dear Scott,

As requested, KPG has completed the verification for Ceccanti, INC for the South 216<sup>th</sup> Street - Segment 3 project.

As part of our review, we contacted all of their listed references. Three of the ten provided references were able to be contacted. All of the feedback we received was positive and included comments such as: “No issues”, “Project completed on time and under budget”, “trustworthy, knowledgeable, and easy to work with” and I am happy to say that all of the references mentioned that they would be happy to work with them again on future projects.

We have checked the status of Ceccanti on the Washington State Labor and Industries web page to confirm they are currently licensed, bonded, and insured, no strikes or debarment records arose federally or statewide.

KPG acknowledges that Ceccanti, INC is a qualified bidder and this is a responsive bid for the South 216<sup>th</sup> Street Segment 3 project. We recommend the City of Des Moines award the project to Ceccanti, INC.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mike Mayfarth'.

Mike Mayfarth  
Resident Engineer  
KPG, Inc.

Cc: Project files

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# Washington State Transportation Improvement Board

November 18, 2016

### TIB Members

Commissioner Richard Stevens, Chair  
Grant County

Mayor Patty Lent, Vice Chair  
City of Bremerton

Jim Albert  
Office of Financial Management

Jeff Carpenter, P.E.  
WSDOT

Elizabeth Chamberlain  
City of Walla Walla

Wendy Clark-Getzin, P.E.  
Clallam Transit

Gary Ekstedt, P.E.  
Yakima County

Commissioner Terri Jeffreys  
Mason County

Mayor Glenn Johnson  
City of Pullman

John Klekotka, P.E.  
Port of Everett

Commissioner Robert Koch  
Franklin County

Colleen Kuhn  
Human Services Council

Mayor Ron Lucas  
Town of Steilacoom

Mick Matheson, P.E.  
City of Sultan

E. Susan Meyer  
Spokane Transit Authority

Laura Philpot, P.E.  
City of Maple Valley

David Ramsay  
Feet First

Amy Scarton  
WSDOT

Martin Snell  
Clark County

Jay Weber  
County Road Administration Board

Stevan E. Gorcester  
Executive Director

P.O. Box 40901  
Olympia, WA 98504-0901  
Phone: 360-586-1140  
Fax: 360-586-1165  
www.tib.wa.gov

Mr. Dan Brewer  
Planning, Building and Public Works Director  
City of Des Moines  
21650 11th Avenue South  
Des Moines, WA 98198-6317

Dear Mr. Brewer:

Congratulations! We are pleased to announce the selection of your project, S 216th Street, 11th Ave S to 20th Ave S, TIB project number 8-1-110(008)-1.

Total TIB funds for this project are \$3,157,245.

**Before any work is allowed on this project, you must:**

- Verify the information on the Project Funding Status Form, revise if necessary, and sign;
- Submit the section of your adopted Six Year Transportation Plan listing this project;
- Sign both copies of the Fuel Tax Grant Distribution Agreement; and
- Return the above items to TIB;

You may only incur reimbursable expenses after you receive approval from TIB.

In accordance with RCW 47.26.084, you must certify full funding by November 18, 2017 or the grant may be terminated. Grants may also be rescinded due to unreasonable project delay as described in WAC 479-05-211.

If you have questions, please contact Greg Armstrong, TIB Project Engineer, at (360) 586-1142 or e-mail [GregA@TIB.wa.gov](mailto:GregA@TIB.wa.gov).

Sincerely,

Stevan Gorcester  
Executive Director

Enclosures

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**EXECUTION COPY****INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF DES MOINES AND THE PORT OF SEATTLE****For****SOUTH 216<sup>TH</sup> STREET IMPROVEMENTS FRONTING PORT OF SEATTLE AND  
WSDOT PROPERTY REFERRED TO AS DES MOINES CREEK - -WEST**

This Interlocal Agreement (“Agreement”) is entered, by and between the CITY OF DES MOINES (“City”) and the PORT OF SEATTLE (“Port”), both Washington municipal corporations, collectively referred to in this Agreement at the “Parties”.

**RECITALS**

**WHEREAS**, the City is a non-charter optional municipal code city organized under the laws of the State of Washington, with authority to enact laws and enter into interlocal and right-of-way agreements to promote the health, safety, and welfare of its citizens, and

**WHEREAS**, the Port is a municipal corporation, with authority under the Revised Airports Act, Chapter 14.08 RCW; the Airport Zoning Act, Chapter 14.12 RCW, the State Environmental Policy Act (SEPA), Chapter 43.21C RCW; certain port district enabling statutes; and other state and local laws, to exercise discretionary land use jurisdiction over real property located within its boundaries, and

**WHEREAS**, Chapter 39.34 RCW (“The Interlocal Cooperation Act”) permits municipal corporations to contract with one another to perform any act that each is independently authorized to perform, and

**WHEREAS**, the City and Port recognize the public benefits that will accrue to the City, the Port, and the community from construction of the Project, which are the improvements on South 216<sup>th</sup> Street fronting the Des Moines Creek West (“DMC-W”) property described in this Agreement, including accelerating the potential development of the DMC-W, and

**WHEREAS**, the Port and City share the goals of leasing the DMC-W on a long-term ground lease to allow for creation of a modern, quality commercial development that provides family wage jobs, a new source of direct and indirect long-term revenue for both the Port and the City and increasing trade opportunities for the region, and

**WHEREAS**, pursuant to RCW 36.70B.200, the City Council has authorized the City Manager to enter into this Agreement, and

**WHEREAS**, the Parties are entering into this Agreement for the purpose of memorializing their agreement concerning the payment of \$1.5 million by the Port to the City for improvements on the frontage of South 216<sup>th</sup> Street and the receipt of credit by the Port of \$1.5 million toward

any future transportation impact fees that the City might impose with respect to the development of the DMC-W, and

**WHEREAS**, the Port Commission voted on July 24, 2018 to authorize the Port Executive Director to enter into an agreement substantially in the form of this Agreement, and

**NOW THEREFORE**, in consideration of mutual promises and covenants and promises set forth in this Agreement, and in the exercise of authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW, the Parties hereto agree to the terms and conditions as follows:

## AGREEMENT

### 1.0 DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations are defined below as follows:

- 1.1 Agreement. "Agreement" means this Interlocal Agreement approved by appropriate action of the City and Port of Seattle.
- 1.2 DMC-W. Des Moines Creek - West, an approximately [20+-acre] property owned by the Port that includes a parcel under purchase option with the Washington State Department of Transportation ("WSDOT") within the City, which can be generally described as the area bounded by South 216<sup>th</sup> Street to the south, the City-owned Des Moines Creek Trail property to the north, the Des Moines Creek Business Park to the east and the Des Moines Terrace Addition residential subdivision to the west.
- 1.3 DMMC. The City of Des Moines Municipal Code, Des Moines, Washington.
- 1.4 Transportation Gateway Project. The City's project to construct transportation improvements to South 216<sup>th</sup> Street right-of-way to accommodate multiple modes of travel (pedestrians, bicycles, transit, automobiles, & freight) in support of the DMC-W as well as accommodating future growth as reflected in the City's Comprehensive Transportation Plan. The project limits for that segment fronting DMC-W is Segment 3 or South 216<sup>th</sup> Street between 11<sup>th</sup> Avenue South and 20<sup>th</sup> Avenue South as shown in Exhibit A.
- 1.5 Permitted Uses. The uses allowed on properties zoned Business Park (B-P) as established by DMMC 18.52.010B.
- 1.6 Project. South 216<sup>th</sup> Street physical improvements, also known as South 216<sup>th</sup> Street – Segment 3, fronting Port and WSDOT property referred to as DMC-W". Work to also include project administration, design, ROW, and construction and construction management.

## 2.0 DES MOINES CREEK -- WEST

- 2.1** General. The DMC-W is envisioned as a thriving center for diverse light industrial and commercial activities developed in phases in accordance with a Des Moines City Council-approved Master Plan developed consistent with DMMC 18.105.050.
- 2.2** Project Phases. The DMC-W will be developed in the following three phases:
- 2.2.1 Execution of this Agreement with acknowledgement that this Agreement may need to be amended as subsequent phase details for the Project are developed.
- 2.2.2 Completion of frontage Project on South 216<sup>th</sup> Street connecting corridor improvement between 11<sup>th</sup> Avenue South and 20<sup>th</sup> Avenue South by the City and financed by the City, State Transportation Improvement Board, and this early In-Lieu \$1.5 million payment by the Port.
- 2.2.3 Solicitation of a developer and development of a DMC-W Master Plan consistent with DMMC 18.105.050.
- 2.3** Future Agreements: The Parties acknowledge that this Agreement may contemplate the execution and delivery of future agreements, documents, instruments, and permits, the final form and contents of which are not presently determined. The Parties agree to provide the necessary resources and to work in good faith to develop the final form and contents of such documents, agreements, instruments, and permits, and to execute and deliver the same promptly.

## 3.0 BACKGROUND DOCUMENTATION AND PREVIOUS AGREEMENTS

- 3.1** General. The terms of this Agreement and the development envisioned for the DMC-W are influenced by a number of previous documents relied on to complete DMCBP phases 1-3 including but not limited to the DMCBP Conceptual Master Plan, DMCBP Draft and Final EIS, Traffic Trip Thresholds Technical Memoranda, and Wetlands Delineation reports.
- 3.2** Development Requirements. The Port shall comply with all applicable Development Regulations, except as modified by this Agreement or previous agreements between the Parties.
- 3.3** Recreation Requirements. The Port, or an entity assigned this work by the Port under a separate agreement, shall complete a Des Moines Creek Trail connection starting from the north side of S 216<sup>th</sup> Street and going north through the DMC-W property (Exhibit A). Specifications for construction of the new trail shall be to

City Standards, consistent with those of the existing trails within Des Moines adjacent to this property. The location of this trail within the property shall be determined by the Port, and included as part of the DMC-W Master Plan. The Parties anticipate that the Port will dedicate an easement for the area of the trail to the City by the Port after the construction of the trail has been completed.

#### 4.0 TRANSPORTATION INFRASTRUCTURE IMPROVEMENTS

**4.1** Access and Internal Roadways. Roadways on the Property accessing South 216<sup>th</sup> Street and 20<sup>th</sup> Avenue South shall be built to City of Des Moines Street Development Standards (Street Design and Construction Standards) as described in this Section. An access tract approximately 50 feet wide has been preserved for a connection from the DMC-W to 20<sup>th</sup> Ave South to the east and shown in Exhibit A. This connection would provide the DMC-W access to the recently constructed traffic signal at South 216<sup>th</sup> Street and 20<sup>th</sup> Avenue South. The final roadway location will be determined after the planning for the DMC-W development has been agreed with the Port and the City. [The Port intends to include this road construction as a requirement of the future developer under the terms of the ground lease.]

**4.2** Frontage Improvements for the Project.

**4.2.1** Consistent with DMMC 12.20.050(2) and in advance of the future development of the DMC-W property, the Port will agree to make a one-time advance payment totaling \$1,500,000 (One Million, five hundred thousand Dollars) to the City to fulfill the Port's obligations regarding the frontage improvements on South 216<sup>th</sup> Street for the Project.

**4.2.2** The Parties acknowledge that due to the magnitude and complexity of the Project, completing its construction in incremental stages would be significantly more costly than constructing it as one integrated project, given its alignment, comprehensive storm drainage systems, and other utility improvements. Therefore, the Parties agree that in order to minimize the overall roadway improvement costs, the improvements are best completed at one time as part of an integrated project with advance payment by the Port. In accepting the advance cash payment from the Port, the City will take the lead and assume full financial responsibility for the construction of the frontage improvements adjacent to South 216<sup>th</sup> Street. As a result, payment of \$1.5 million as provided for in this Agreement shall fulfill the Port's total obligations in reference to the Project being constructed by the City.

**4.2.3** The City will notify the Port once the City's Construction Contract for the Project has been executed, and the Port will then make the \$1.5million payment to the City for the Project.

**4.3** Credit Towards Transportation Impact Fees. In consideration for the Port contributing \$1.5 Million to the City for the Project, the City shall credit the Port with \$1.5 million towards future Transportation Impact Fees (TIF) pursuant to RCW 82.02.060 related to any improvements along DMC-W Street frontage that the City may impose for the development of the DMC-W by the Port.

**4.4** Project and System Improvements. The Port shall require the future ground lease tenant to be fully responsible for the construction of other project related improvements (the east-west roadway access to 20<sup>th</sup> Avenue South for example), and any other physical and system improvements that may be identified in the traffic impact analysis to be submitted as part of the Master Plan for the buildout of the DMC-W.

## **5.0 VESTED RIGHTS AND TERM**

**5.1** Duration and Termination. This Agreement shall remain in effect for a period of ten (10) years unless either (a) the Parties both agree to extend the Agreement for an additional time period to be defined, or (b) the Project is fully developed consistent with Master Plans approved by the City, or (c) the Agreement is sooner terminated by the Parties.

## **6.0 CERTAINTY OF AGREEMENT**

**6.1** Agreement Deemed Controlling. This Agreement and any terms, conditions, maps, notes, references, or regulations which are a part of the Agreement shall be considered enforceable. In the event of a specific conflict with any provisions of the DMMC, this Agreement shall take precedence. Unless otherwise provided by this Agreement, the City's ordinances, resolutions, rules and regulations, and official policies governing permitted land uses, density, design, improvement, and construction standards shall be those City ordinances, resolutions, rules and regulations, and official policies in force at the time of the execution of this Agreement.

**6.2** Subsequent Actions. This Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the Property nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies.

**6.3** Changes in the Law. In the event that City, state or federal laws or regulations, enacted after this Agreement has been entered into, prevent or preclude compliance with one or more of the provisions of the Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply

with such state or federal laws or regulations following modification procedures in Section 10 for an amendment or cancellation.

**7.0 GENERAL PROVISIONS**

7.1 This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of six (6) pages and one (1) attached Exhibit and constitutes the entire understanding and agreement of the Parties.

**CITY OF DES MOINES**



Michael Matthias  
City Manager

By direction of the Des Moines City Council  
in Open Public Meeting  
on 7-19-2018  
Dated: 8-21-18

**Approved as to Form:**



City of Des Moines Attorney

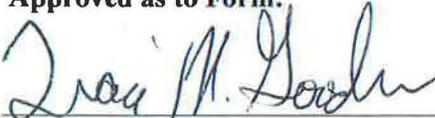
**PORT OF SEATTLE**



Stephen Metruck  
Executive Director

By direction of the Port Commission  
in Open Public Meeting  
on July 24, 2018  
Dated: 8/30/2018

**Approved as to Form:**

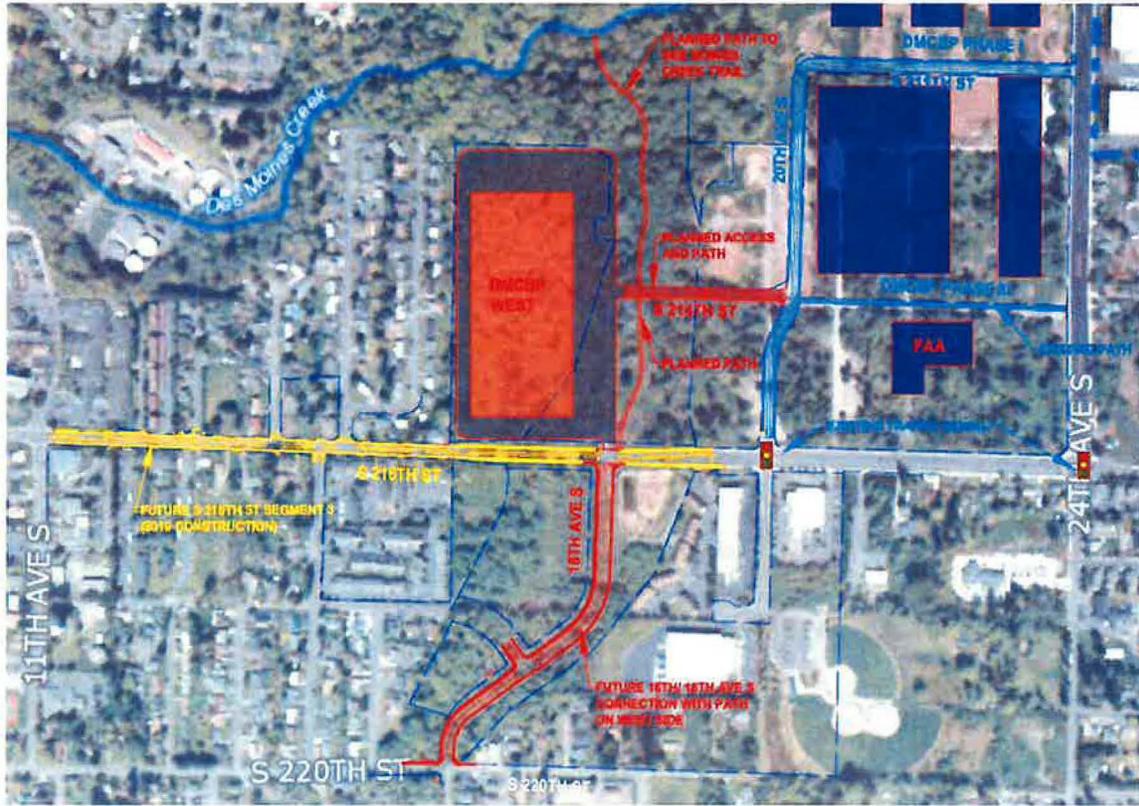


Port of Seattle Legal Department

**EXHIBIT LIST**

Exhibit A: Planned Path to Des Moines Creek Trail and Access via S. 214<sup>th</sup> Street to 20<sup>th</sup> Ave S.

**EXHIBIT A**



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**CITY OF DES MOINES  
Voucher Certification Approval**

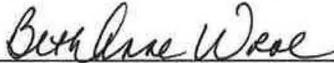
24-Jan-19

**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 Jan 24, 2019 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through January 14, 2019 and payroll transfers through January 18, 2019 included in the attached list and further described as follows:

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



Beth Anne Wroe, Finance Director

	# From	# To	Amounts
<b>Claims Vouchers:</b>			
Total A/P Checks/Vouchers	156376	- 156492	403,018.40
Electronic Wire Transfers	1170	- 1175	515,755.35
<b>Total claims paid</b>			<b>918,773.75</b>
<b>Payroll Vouchers</b>			
Payroll Checks	19116	- 19124	7,353.51
Direct Deposit	30001	- 30173	348,148.38
			0.00
			0.00
<b>Total Paychecks/Direct Deposits paid</b>			<b>355,501.89</b>
<b>Total checks and wires for A/P &amp; Payroll</b>			<b>1,274,275.64</b>

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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 17-070 Small Cell Facilities Franchise Agreement with Seattle SMSA Limited Partnership d/b/a Verizon Wireless, First Reading

**ATTACHMENTS:**

1. Draft Ordinance No. 17-070
2. Map of proposed small cell network
3. Illustration of proposed facilities

FOR AGENDA OF: January 24, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: January 16, 2019

**CLEARANCES:**

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

CHIEF OPERATIONS OFFICER: DSB

- Legal JS  
 Finance \_\_\_\_\_  
 Courts \_\_\_\_\_  
 Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: DSB For M.M.

### **Purpose and Recommendation**

The purpose of this agenda item is for the City Council to consider approval of a small cell telecommunications Franchise Agreement with Seattle SMSA Limited Partnership d/b/a Verizon Wireless for the installation of seven small cell facilities in City right-of-way. This proposed Franchise Agreement requires two readings by the City Council.

### **Suggested Motion**

**Motion 1: "I move to pass Draft Ordinance No. 17-070 to a second reading on the next available City Council agenda."**

### **Background**

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

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

The City has been working with Seattle SMSA Limited Partnership d/b/a Verizon Wireless since 2017 to prepare this draft franchise agreement to allow for the installation of small cell facilities in City right-of-way. If approved, this agreement would be the City's first for the installation of small-cell antennas. In 2018 the City Council updated Title 20 (Telecommunications Code) and included provisions for small cell facilities. These codes provide the framework for this agreement.

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

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

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

The City's consultant provided a model draft franchise that was used as the template for this agreement. This draft franchise has been introduced to the Ad Hoc Franchise Committee on two occasions in 2018 and it was the Committee's recommendation to bring this draft to the entire Council.

### **Discussion**

The key terms of the franchise agreements are detailed below. This franchise was developed using a model franchise agreement created by a telecommunications consultant hired by the City. Mr. Scott Snyder and his team of attorneys at Ogden Murphy Wallace represent a number of jurisdictions across the state and have created a model franchise using their vast expertise and experience in the telecommunications field.

1. **Franchise Term:** The term of the Franchise is for 10 years.
2. **Small Cell Facilities:** The proposal in this application is to install 7 small cell facilities on existing utility poles in the City. These sites are clustered in the Pacific Ridge/Business Park area. Additional future sites would need to be applied for by Verizon and approved by City staff in accordance with Title 20 of the Municipal Code (Telecommunications).
3. **Safety Issues:** Citizen Concerns: Radio Frequency (RF) preemption. A citizen recently raised concerns at public comment regarding the potential future impacts of Radio Frequency (RF)

radiation on the public. Congress has preempted state and local regulation of radio frequency emissions and interference. The City's telecommunications code contains the maximum level of regulation available to the City in the form of a requirement that an applicant certify compliance of small cells and other transmitting equipment with federal regulation. In the view of the FCC, the emissions from small cell facilities are well below acceptable limits for Maximum Permissible Exposure (MPE). Small cell facilities operate at a small fraction of regulated power. The FCC accordingly granted a categorical exclusion from environmental review for facilities meeting certain height and frequency requirements. *See A Local Government Official's Guide to Transmitting Antennae RF Emission Safety: Rules, Procedures and Practical Guidance*. FCC, June 2, 2000. Section 15(10) requires Verizon to provide the City with emissions reports on a regular basis and to certify compliance with all applicable regulations.

4. **Relocation Costs:** Verizon is solely responsible for relocation costs unless state law requires otherwise. RCW 35.99.060 applies specifically to telecommunications franchises and requires cities to share in some relocation costs for specific instances where a city requires relocation for a private party's benefit or if a city requires relocation twice within a 5 year period.
5. **Right of Way Management, Planning, and Operations:** The Franchise reflects current City practice. Verizon is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way.
6. **Indemnification and Insurance:** The Agreement provides that Verizon will indemnify the City for actions of the company or their agents. Verizon is required to maintain \$5,000,000 in automobile and general liability insurance coverage. This coverage is sufficient and likely exceeds any reasonably expected liability that could occur from this Agreement.
7. **Franchise Application Fee:** Verizon has paid the City a one-time franchise application fee of \$20,000. This flat fee is consistent with RCW 35.21.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations as well as consultant costs that have been incurred since the application was received.
8. **Taxes:** Under DMMC 3.68.060(3) the City imposes a 6% tax on telephone businesses. To the extent that increased revenue is received from Verizon's telephone business, the City will receive 6%. Internet service revenues are not taxed pursuant to federal law.
9. **Abandonment:** The Franchise requires that Verizon remove any facilities that have been discontinued or are no longer functioning within 60 days. Additionally, the City can order removal of a facility with 120 days' notice.
10. **Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City's interests are protected throughout these Agreements.

### Alternatives

1. Pass the Draft Ordinance to a second reading as written.
2. Pass the Draft Ordinance to a second reading with proposed amendments to be negotiated with Verizon.
3. Do not pass the Draft Ordinance to a second reading and direct staff to continue negotiations.

**Financial Impact**

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

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

**Recommendation**

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

**CITY ATTORNEY'S FIRST DRAFT 01/09/2019****DRAFT ORDINANCE NO. 17-070**

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

**WHEREAS**, Seattle SMSA Limited Partnership d/b/a Verizon Wireless (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise"), and

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

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

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

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

**WHEREAS**, the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to

Ordinance No. \_\_\_\_\_  
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require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis, and

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

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

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

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

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

**Sec. 1. Franchise granted.**

(1) Pursuant to RCW 35A.47.040, the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years, beginning on the Effective Date of this Ordinance, set forth in section 41 herein.

(2) This Franchise Ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, upgrade, remove, excavate, acquire, repair, restore, and use the Small Cell Facilities, as defined in section 2(2), for its telecommunications network, in, under, on, across, over, through along or below the public rights-of-ways located in the City of Des Moines, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public "rights-of-way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces,

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utility easements (unless there are relevant use, structure or other restrictions) or other public right of way which, under City ordinances or applicable laws, the City has authority to grant franchises, licenses, or leases for use thereof, or has regulatory authority there over and only to the extent such rights-of-way are opened. Rights-of-way for the purpose of this Franchise do not include: (i) buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the rights-of-way such as utility poles and light poles.

**Sec. 2. Authority limited to occupation of Public rights-of-way for services.**

(1) The authority granted herein is a limited authorization to occupy and use the rights-of-way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the rights-of-way only consistent with this Franchise, the Des Moines Zoning Code, the Comprehensive Plan, the current Road Design and Construction Standards and the Des Moines Municipal Code as currently written or hereafter modified (collectively the "Codes"). All rights granted hereunder are subject to the terms, conditions and requirements of the Codes unless this Franchise specifically provides to the contrary. In the event that a conflict exists between the terms of this Franchise and the Codes, the terms of this Franchise shall control. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the rights-of-way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services (the "Services").

(2) As used herein, "Small Cell Facilities" or "Facilities" means a personal wireless services facility that meets both of the following qualifications: (i) each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit

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within an imaginary enclosure of no more than three cubic feet; and (ii) primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume (but remain included in the definition of Small Cell Facilities): Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch. Small Cell Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceed the noise limits allowed in the Codes or associated permit are excluded from "Small Cell Facilities." Services do not include personal wireless services and associated facilities that fall outside of the definition of Small Cell Facilities (i.e. macro facilities).

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

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

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structures in the rights-of-way, it shall enter into a separate lease, site specific agreement or license agreement with the City.

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

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

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

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

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

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

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**Sec. 4. Location of Telecommunications network facilities.**

(1) Franchisee may locate its approved Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable Code requirements as currently written or as subsequently amended.

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

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

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

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

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

(1) Relocation requirement. Franchisee agrees and covenants to protect, secure, support, temporarily disconnect, relocate, or remove from any rights-of-way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way, and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway

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construction, change or establishment of street grade, or the construction of any Public Improvement Project, provided that Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same rights-of-way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. Except as otherwise provided by law or as otherwise agreed to in this Franchise, the costs and expenses associated with relocations ordered pursuant to this section shall be borne by Franchisee. "Public Improvement Project" means any construction, installation, relocation, undergrounding, expansion, maintenance, repair or removal of roads, streets, sidewalks, parks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines, poles, structures or other capital improvement project within the Franchise Area that is undertaken by or on behalf of the City or another public entity (i.e. PSERN) and is funded by the City or another public entity (either directly with its own funds or with other public monies obtained by the City). For the avoidance of doubt, the term "Public Improvement Project" shall include any such capital improvement project undertaken by the City which requires the relocation of Franchisee's Facilities within the Franchise Area, even if the capital improvement project entails, in part, related work funded and/or performed by or for a third party governmental entity under a valid interlocal agreement between the City and such entity, but shall not include, without limitation, any other improvements or repairs undertaken by or for the benefit of third party private entities.

(2) Relocation - Third party structures. If the request for relocation from the City originates due to a Public Improvement Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City, and at no cost to the City, subject to the procedure in section 5(5). Franchisee acknowledges and agrees, that to the extent Franchisee's Small Cell Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Improvement Project.

(3) Relocation - Franchisee owned structures. The cost of relocation of any Franchisee owned poles or structures shall be determined in accordance with the requirements of

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RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Cell Facilities in order to provide consideration for the City's approval to site a Small Cell Facility on Franchisee owned structures or poles in a portion of the right-of-way designated or proposed for a Public Improvement Project. For this section 5(3), designation of the right-of-way for a Public Improvement Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of chapter 36.70A RCW. The Comprehensive Plan includes, but is not limited to the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Cell Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

(4) Locate. Upon request of the City, or a third party performing work in the right-of-way, and in order to facilitate the design of City street and right-of-way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's Public Improvement Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

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

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

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

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

(d) The City shall provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, but in no event less than one hundred twenty (120) days prior to the commencement of the construction of such Public Improvement Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in section 5(5), the City shall notify the Franchisee during the predesign meetings and the process mandated by the grant funding shall control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City. Such timeline may be extended by a mutual agreement if necessitated by occurrence of an "act of God" or a delay by the City in approval of permits required to relocate Franchisee's Facilities (provided that such permit applications are submitted in a timely manner and are complete).

(f) Franchisee shall complete relocation of its Facilities at no charge or expense to the City pursuant to the timeline provided by the City, or as otherwise modified by the City.

(g) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, which necessitates the relocation of

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Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.

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

(7) Contractor delay claims. Franchisee agrees to work cooperatively with the City, other franchisees and utilities, and the City's third party contractor with respect to the Public Improvement Project. If Franchisee breaches its obligations under this section with respect to relocating its Facilities, and to the extent such breach causes a delay in the work being undertaken by the City's third-party contractor(s) that results in a claim by the third-party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

(a) Tender the Contractor Delay Claim to Franchisee for defense and indemnification in accordance with section 5(8) and section 16; or

(b) Require that Franchisee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Franchisee under this section 5(7)(b), the City shall first give Franchisee written notice of the Contractor Delay Claim and give Franchisee the opportunity to work with the third party contractor(s) to resolve the Contractor Delay Claim for a period of not less than sixty (60) days prior to the City's payment of the Contractor Delay Claim.

(8) Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of section 16, against any and all claims,

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suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided herein; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

(9) City's costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in section 5(1) through section 5(5), then upon at least ten (10) days written notice to Franchisee, the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to section 14(3) and section 14(4).

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

#### **Sec. 6. Undergrounding.**

(1) Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to section 15(3) and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of Small Cell Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Improvement Project as described in section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the rights-of-way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities. Franchisee shall not be required to underground any portion of the Facility that must technically remain above-ground to operate.

(2) If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate

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the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City.

(3) Franchisee shall not remove any underground Facilities that require trenching or other opening of the rights-of-way, except as provided in this section 6(3). Franchisee may remove any underground Facilities from the right-of-way that have been installed in such a manner that it can be removed without trenching or other opening of the right-of-way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to section 8(2), prior to any such removal of underground Facilities from the right-of-way and must provide as-built plans and maps pursuant to section 7(1).

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

#### **Sec. 7. Maps and records.**

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

(2) Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with

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information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

(3) All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the rights-of-way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section 7(3) shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this section 7(3) be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this section 7(3) shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

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

(5) Nothing in section 7(3) or section 7(4) prohibits the City from complying with chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such

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injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records, due to Franchisee's judicial intervention, as required hereunder within sixty (60) days of a request from the City.

**Sec. 8. Work in the rights-of-way.**

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

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

(3) The City reserves the right to limit or exclude Franchisee's access to a specific route, public right-of-way or other location when, in the reasonable judgment of the Public Works

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Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the rights-of-way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.

(4) If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

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

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

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

(5) At the discretion of the City Engineer and depending on the impact to the usage of the rights-of-way, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the right-of-way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the

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above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

(6) Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after obtaining the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public rights-of-way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth to the extent caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature only to the extent arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for the costs of any repairs to damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming of limbs greater than 4-inches in diameter must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the City Engineer or his/her designee.

(7) Franchisee shall meet with the City and other franchise holders and users of the rights-of-way upon written notice to schedule and coordinate construction in the rights-of-way. All construction locations, activities, and schedules shall

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be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

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

(9) Franchisee shall maintain all above ground improvements that it places on City rights-of-way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the right-of-way, Franchisee shall provide a clear zone to meet the Public Works Engineering and Construction Standards. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

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

**Sec. 10. Safety requirements.**

(1) Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the rights-of-ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements,

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rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

(2) If an unsafe condition or a violation of section 10.1 caused by Franchisee is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same, but no less than thirty (30) days. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All actual costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to 0 and 0.

(3) Additional safety standards include:

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

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

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of

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which, during periods of dusk and darkness, shall be clearly marked and visible.

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

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

**Sec. 11. Work of contractors and subcontractors.** Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

**Sec. 12. Restoration after construction.**

(1) Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or within sixty (60) days after abandonment approved pursuant to section 18, remove any obstructions from the rights-of-way and restore the surface of the rights-of-way to at least

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the same condition the rights-of-way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the rights-of-way not caused by Franchisee or anyone doing work for Franchisee nor for reasonable wear and tear. The Public Works Director or the Public Works Director's designee shall have final approval of the condition of such rights-of-way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as chapter 332-120 WAC), and local standards and specifications.

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

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

(4) In the event Franchisee does not repair a right-of-way or an improvement in or to a right-of-way within the reasonable time agreed to by the Public Works Director, or his/her designee, upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of section 14(3) and section 14(4). In addition, and pursuant to section 14(3) and section 14(4), the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with section 21(3).

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

**Sec. 13. Emergency work--Dangerous conditions.**

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

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

(3) Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or

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

**Sec. 14. Recovery of costs, taxes and fees.**

(1) Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. No permits shall be issued for the installation of authorized Facilities until such time as the City has received payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of section 14(3).

(2) Franchisee shall promptly reimburse the City in accordance with the provisions of section 14(3) and section 14(4) for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City

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agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

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

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

(5) Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a

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separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

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

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

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

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

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

(3) Preference for existing infrastructure; Site specific agreements.

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

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new or replacement structures in the rights-of-way then Franchisee may be required to enter into a site specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the right-of-way. Such agreements may require a site specific charge paid to the City. The approval

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of a site specific agreement is at the discretion of each of the parties thereto.

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

(d) This section 15(3) does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the rights-of-way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

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

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

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

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Facilities that are considered Deactivated Facilities, as described in section 18(1), shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the right-of-way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities which were removed from the right-of-way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

(8) Unauthorized Facilities. Any Small Cell Facilities installations in the City right-of-way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall have sixty (60) days thereafter in which to either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Failure to do either of the foregoing within such 60-day period (or longer than 60 days if necessary upon the City's consent so long as Franchisee can demonstrate that it submitted a complete permit application to the City) will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand and 00/100 Dollars (\$1,000.00) per Unauthorized Facility, per day starting on the sixty-first (61st) day, or the first day after the expiration of any extended period granted by the City, until such time as Franchisee has obtained approval for the Unauthorized Facilities or has otherwise removed such Facilities. If the City does not approve the application for such Unauthorized Facilities and Franchisee is unsuccessful in an appeal (if an appeal is requested), then Franchisee shall remove the Unauthorized Facilities from the City's right-of-way within thirty (30) days after the expiration of all appeal periods for such denial. This Franchise remedy is in addition to any other remedy available to the City at law or equity.

(9) Graffiti abatement. As soon as practical, but not later than fourteen (14) days from the date Franchisee receives

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notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Cell Facilities of which it is the owner of the pole or structure or on the Small Cells Facilities themselves attached to a third-party pole (i.e. graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

(10) Emissions reports.

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

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

(c) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities. The City may inspect any of Franchisee's Facilities and equipment located in the rights-of-way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility, or portion thereof committing the violation, until the emissions exposure is remedied. Such notification shall be made orally by calling 1-800-264-6620 and by written notice pursuant to section 31. Franchisee is required to promptly turn off the Facility (or portion thereof) but no later than forty-eight (48) hours after receipt of notice pursuant to section 31. If Franchisee's Facilities are found to exceed FCC standards, then Franchisee shall

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reimburse the City for any costs incurred by the City for testing the Facility and providing notice as described in section 14(3) and section 14(4).

(11) Interference with Public Facilities. Franchisee's Small Cell Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or the PSERN (or its successor entity) communications operation or equipment. If the Small Cell Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Cell Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference, such Small Cell Facility may be deemed an Unauthorized Facility and subject to the provisions of section 15(7) or removal by the City consistent with section 13.

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

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**Sec. 16. Indemnification.**

(1) Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees and agents from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property to the extent caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligation shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

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

(3) The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this section 16(3). City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation

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

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

(5) Notwithstanding any other provisions of this section 16, Franchisee assumes the risk of damage to its Facilities located in the rights-of-way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors,

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

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

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

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

(a) Automobile Liability insurance with limits of \$5,000,000 combined single limit each accident for bodily injury and property damage;

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(b) Commercial General Liability insurance, written on an occurrence basis with limits of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises;-operations; independent contractors; products and completed operations; explosion, collapse and underground (XCU);

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

(d) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate; and

(e) Excess Umbrella liability policy with limits of \$5,000,000 per occurrence and in the aggregate.

(2) Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee.

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

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(4) Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this section 17. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this section 17. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in section 21 below. Notwithstanding the cure period described in section 21(3), the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

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

(6) The City may review all insurance limits once every calendar year during the Term, and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall then issue a certificate of insurance to the City showing compliance with these adjustments.

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

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

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(1) Where any Facilities or portions of Facilities are no longer needed and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in section 15(6). Deactivated Facilities, or portions thereof, shall be completely removed within sixty (60) days and the site, pole or infrastructure restored to its pre-existing condition, reasonable wear and tear excepted.

(2) If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within ninety (90) days of such notification from the landlord at no cost to the City.

(3) Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the rights-of-way within one hundred twenty (120) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the rights-of-way to at least the same condition the rights-of-way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the rights-of-way not caused by Franchisee or any person doing work for Franchisee, or reasonable wear and tear. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

(4) Notwithstanding section 18(1) above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

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

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

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

(1) At the City's request, Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 150% of the estimated cost of constructing Franchisee's Facilities, excluding materials, within the rights-of-way of the City prior to commencement of any such work or such lesser amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the rights-of-way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this section 19(1). In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.

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

**Sec. 20. Revocation.** If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods as set forth in section 21(2), then at the election of the Des Moines City Council after, at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure, this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Des Moines City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Des Moines City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Des Moines City Council does not grant any additional period, the Des Moines City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a

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court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

**Sec. 21. Remedies to enforce compliance.**

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

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

(3) If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written

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notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) revoke this Franchise with in accordance with section 20, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchisee or the Franchise Bond set forth in section 19(2) until the violation is cured, or (3) pursue other remedies as described in section 21(1) above. Liquidated damages described in this section 21(3) shall not be offset against any sums due to the City as a tax or reimbursement pursuant to section 14.

(4) If the City shall violate, or fail to comply with any of the provisions of this Franchise, the Franchisee shall provide the City with written notice specifying with reasonable particularity the nature of any such breach and the City shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the parties may agree to a longer cure period. If the breach is not cured within the specified time, or the City does not comply with the specified conditions, the Franchisee may, at its discretion, (1) terminate this Franchise, or (2) pursue other remedies as described in section 21(2) above.

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

**Sec. 23. Cost of Publication.** The cost of publication of this Franchise shall be borne by Franchisee.

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**Sec. 24. Acceptance.** Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to section 17, any Performance Bond, if applicable, pursuant to section 19(1) and the Franchise Bond required pursuant to section 19(2). The administrative fee pursuant to section 14(1) is due within sixty (60) days of receipt of the invoice from the City.

**Sec. 25. Survival.** All of the provisions, conditions, and requirements of section 5, section 6, section 8, section 12, section 16, section 17, section 18, section 25, section 27, and section 39(2) of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

**Sec. 26. Assignment.**

(1) This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in section 26(2) below, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this section 26, no assignment or transfer of this

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Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

(2) Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Franchise, following the revocation procedure described in section 20 above, or prior to any such revocation by the City, Franchisee may revoke its request for consent to any such assignment, in which case, this Franchise shall continue in full force. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of section 14(3) and section 14(4), and shall pay the applicable application fee.

(3) Franchisee may, without prior consent from the City:  
(i) lease the Facilities, or any portion, to another person; (ii)

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grant an infeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this section 26(3) shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

**Sec. 27. Extension.** If this Franchise expires without renewal, the City may, subject to applicable law:

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

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

**Sec. 28. 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 of this Franchise.

**Sec. 29. Eminent Domain.** The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be

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attributed to the right to occupy the area conferred by this Franchise.

**Sec. 30. Vacation.** If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area, in which Franchisee is located. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

**Sec. 31. Notice.** Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

<p>CITY OF DES MOINES:</p> <p>Attn: City Manager 21630 11th Ave S, Suite A Des Moines, WA 98198</p> <p>With a copy to:</p> <p>CITY OF DES MOINES Attn: City Clerk 21630 11th Ave S, Suite A Des Moines, WA 98198</p>	<p>SEATTLE SMSA LIMITED PARTNERSHIP D.B.A. VERIZON WIRELESS:</p> <p>Attn: Network Real Estate 180 Washington Valley Road Bedminster, New Jersey 07921</p> <p>With a copy to:</p> <p>SEATTLE SMSA LIMITED PARTNERSHIP D.B.A. VERIZON WIRELESS Attn: Pacific Market General Counsel 15505 Sand Canyon Avenue Irvine, CA 92618</p>
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**Sec. 32. Severability.** If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

**Sec. 33. Compliance with applicable laws.** Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes to address small cell deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

**Sec. 32. Amendment.** The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway

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

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

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

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

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approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

**Sec. 39. Miscellaneous.**

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

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

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

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

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

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

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

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cure the conditions of noncompliance at the Franchisee's expense.

(8) Any reference to the City's costs that must be paid by Franchisee pursuant to the terms of this Franchise shall mean all actual, reasonable, and documented costs of the City.

**Sec. 40.** Change of Law. If any federal or state laws or regulations or any binding judicial interpretations thereof that govern any aspect of the rights or obligations of one or more parties under this Agreement shall change and such change makes any aspect of such rights or obligations inconsistent with the then-effective federal or state laws, regulations or binding judicial interpretations, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

**Sec. 41.** Ordinance Effective Date. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title ("Effective Date").

**Sec. 42.** **Effective date.** This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title ("Effective Date").

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

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

APPROVED AS TO FORM:

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

ATTEST:

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

Published: \_\_\_\_\_

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

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

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

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

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

**Bonnie Wilkins, CMC**  
City Clerk

Published: \_\_\_\_\_



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mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print)

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

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

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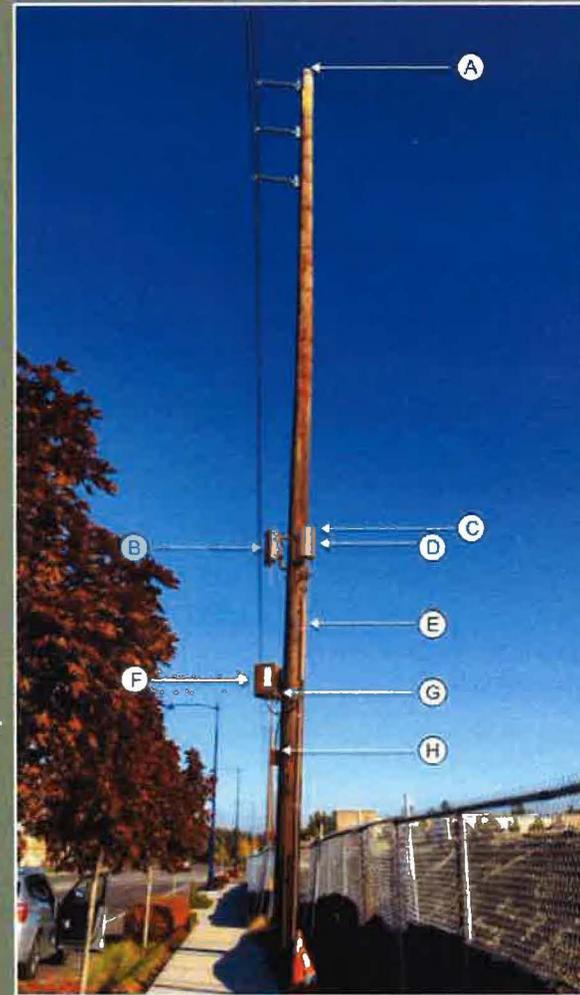
# VERIZON WIRELESS - PAC RIDGE SMALL CELL NETWORK DES MOINES



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CURRENT



PROPOSED

- A TOP OF EXISTING POLE 68.7'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED CONDUITS ON STANDOFF BRACKET
- F PROPOSED SCREENED EQUIPMENT ON STANDOFF MOUNT
- G BOTTOM OF EQUIPMENT 15.5'
- H TOP OF PROPOSED DISCONNECT 12.0'

PACIFIC RIDGE NODE 54



**PROJECT INFORMATION:**  
**PACIFIC RIDGE SC**  
 GROUP #1  
 NODE 54  
 21326 24TH AVE S  
 DES MOINES, WA 98198

**CURRENT ISSUE DATE:**  
 01/31/18

**ISSUE FOR:**  
 REVIEW

**ISSUE HISTORY:**

No.	Date	Revision	INT.
B	01/31/18	REVIEW	LW
A	01/16/18	REVIEW	LW

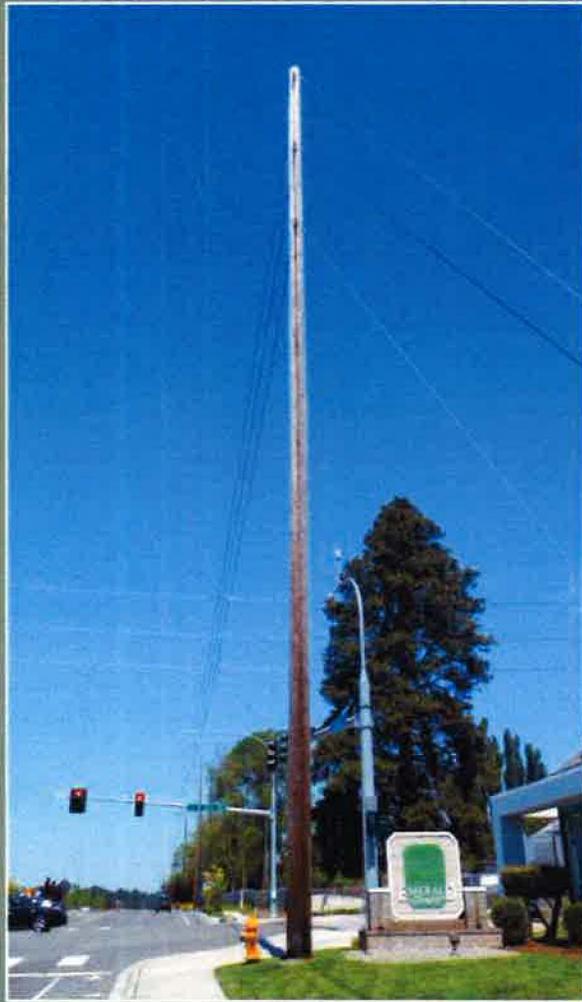
**PLANS PREPARED BY:**  
  
**MORRISON HERSHFELD**  
 600 STEWART ST., SUITE 200  
 SEATTLE, WA 98101  
 Tel: 206 268 7370  
 www.morrisonhershfield.com  
 MH PROJECT #: 7170238

**CLIENT:**  
  
 Actualize  
 WE MAKE IT HAPPEN

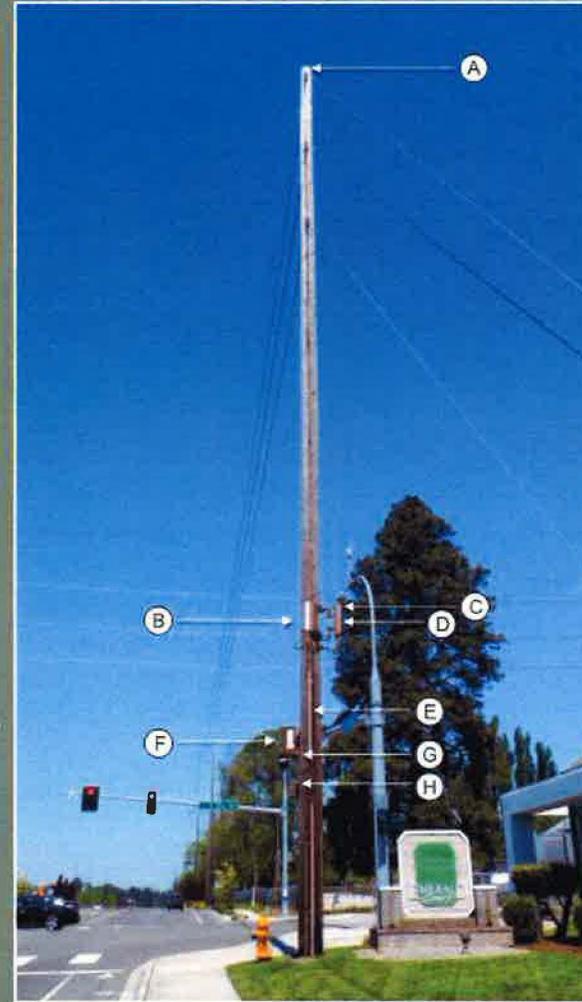
**SEAL OF APPROVAL:**

**SHEET TITLE:**  
 NODE 54  
 PHOTOSIM 1

**SHEET:**  
**A1.2**



CURRENT



PROPOSED

- A TOP OF EXISTING POLE 74.0'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED CONDUITS ON STANDOFF BRACKET
- F PROPOSED SCREENED EQUIPMENT ON STANDOFF MOUNT
- G BOTTOM OF EQUIPMENT 15.5'
- H TOP OF PROPOSED DISCONNECT 12.0'

## PACIFIC RIDGE NODE 55



**PROJECT INFORMATION:**  
**PACIFIC RIDGE SC**  
 GROUP #1  
 NODE 55  
 21600 24TH AVE S  
 DES MOINES, WA 98198

**CURRENT ISSUE DATE:**  
 01/31/18

**ISSUE FOR:**  
 REVIEW

**ISSUE HISTORY:**

No.	Date	Revision	By
B	01/31/18	REVIEW	LW
A	01/16/18	REVIEW	LW

**PLANS PREPARED BY:**

**MORRISON HERSHFIELD**  
 600 STEWART ST., SUITE 200  
 SEATTLE, WA 98101  
 TEL: 206-468-5370  
 www.morrisonhershfield.com  
 MH PROJECT #: 7170238

**CLIENT:**

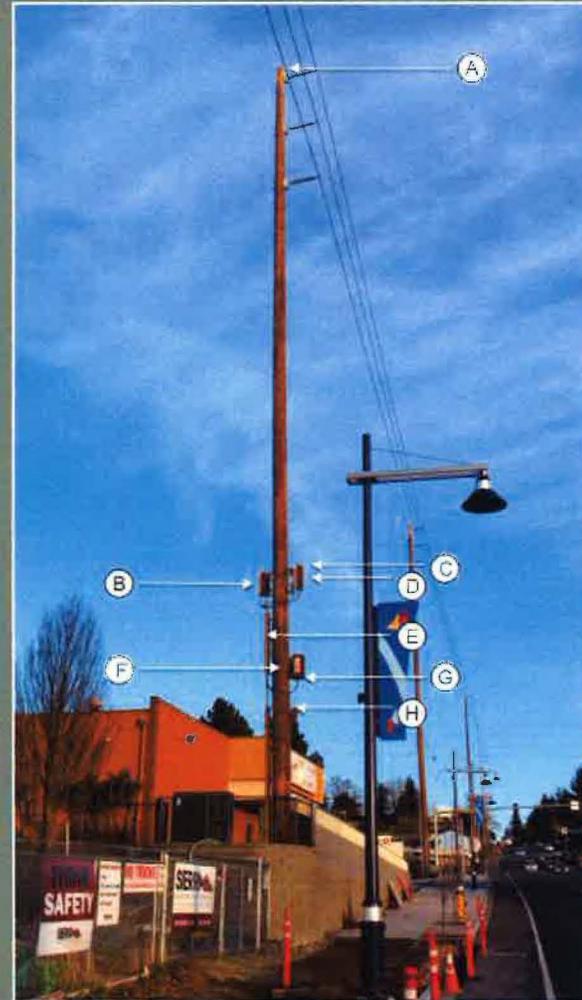
**SEAL OF APPROVAL:**

**SHEET TITLE:**  
 NODE 55  
 PHOTOSIM 1

**SHEET:**  
**A1.2**



CURRENT



PROPOSED

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- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED CONDUITS ON STANDOFF BRACKET
- F PROPOSED SCREENED EQUIPMENT ON STANDOFF MOUNT
- G BOTTOM OF EQUIPMENT 15.5'
- H TOP OF PROPOSED DISCONNECT 12.0'

PACIFIC RIDGE NODE 56



PROJECT INFORMATION:

PACIFIC RIDGE SC

GROUP #1  
NODE 56

21425 PACIFIC HWY S  
DES MOINES, WA 98196

CURRENT ISSUE DATE:

01/31/18

ISSUE FOR:

REVIEW

ISSUE HISTORY:

No.	Date	Revision	INT.
B	01/31/18	REVIEW	LW
A	01/16/18	REVIEW	CW

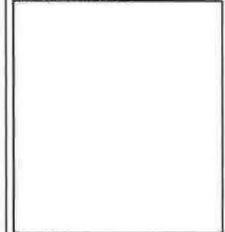
PLANS PREPARED BY:

**MH**  
MORRISON HERSHFIELD  
600 STEWART ST, SUITE 200  
SEATTLE, WA 98101  
TEL: 206.266.7379  
www.morrisonhershfield.com  
MH PROJECT #: 7170238

CLIENT:



SEAL OF APPROVAL:



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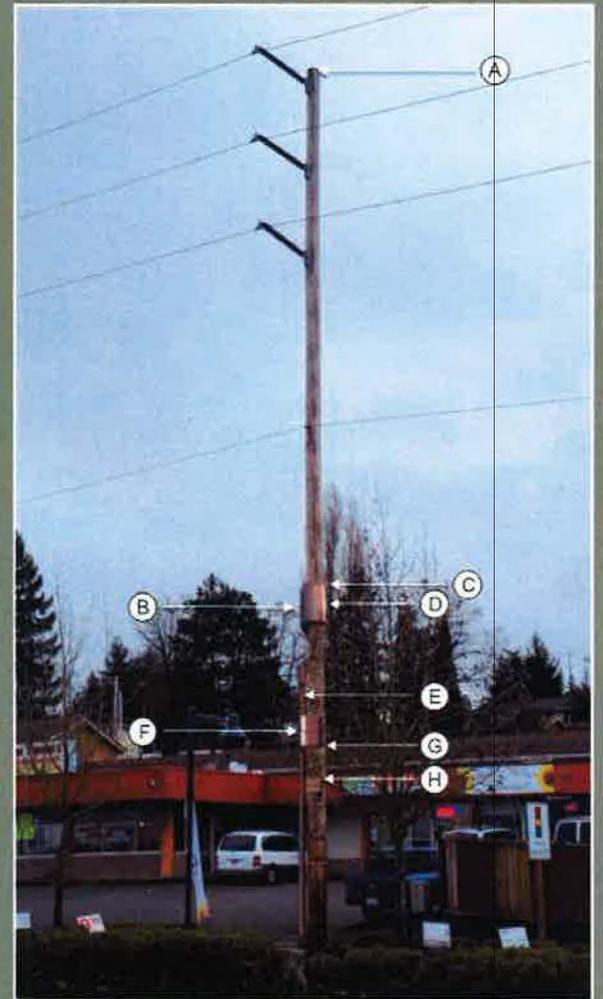
NODE 56  
PHOTOSIM 1

SHEET:

A1.2



CURRENT



PROPOSED

- A TOP OF EXISTING POLE 69.5'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED CONDUITS ON STANDOFF BRACKET
- F PROPOSED SCREENED EQUIPMENT ON STANDOFF MOUNT
- G BOTTOM OF EQUIPMENT 15.5'
- H TOP OF PROPOSED DISCONNECT 12.0'

PACIFIC RIDGE NODE 57



**PROJECT INFORMATION:**  
**PACIFIC RIDGE SC**  
 GROUP #1  
 NODE 57  
 21624 PACIFIC HWY S  
 DES MOINES, WA 98198

**CURRENT ISSUE DATE:**  
 01/31/18

**ISSUE FOR:**  
 REVIEW

**ISSUE HISTORY:**

No.	Date	Revision	INT.
B	01/31/18	REVIEW	LW
A	01/15/18	REVIEW	CW

**PLANS PREPARED BY:**  
  
**MORRISON HERSHFIELD**  
 600 STEWART ST, SUITE 200  
 SEATTLE, WA 98101  
 Tel: 206 296 7370  
 www.morrisonhershfield.com  
 MH PROJECT #: 7170236

**CLIENT:**  
  
 Actualize  
 AS APPEAR

**SEAL OF APPROVAL:**  
 [Empty box for seal]

**SHEET TITLE:**  
 NODE 57  
 PHOTOSIM 1

**SHEET:**  
**A1.2**



**PROJECT INFORMATION:**  
**PACIFIC RIDGE SC**  
 GROUP #1  
 NODE 58  
 21644 29TH AVE S  
 DES MOINES, WA 98198

**CURRENT ISSUE DATE:**  
 01/31/18

**ISSUE FOR:**  
 REVIEW

**ISSUE HISTORY:**

No.	Date	Revision	INT.
B	01/31/18	REVIEW	LW
A	01/16/18	REVIEW	LW

**PLANS PREPARED BY:**

**MORRISON HERSHFIELD**  
 600 STEWART ST. SUITE 200  
 SEATTLE, WA 98101  
 Tel: 206.286.7370  
 www.morrisonhershfield.com  
 MH PROJECT #: 7170238

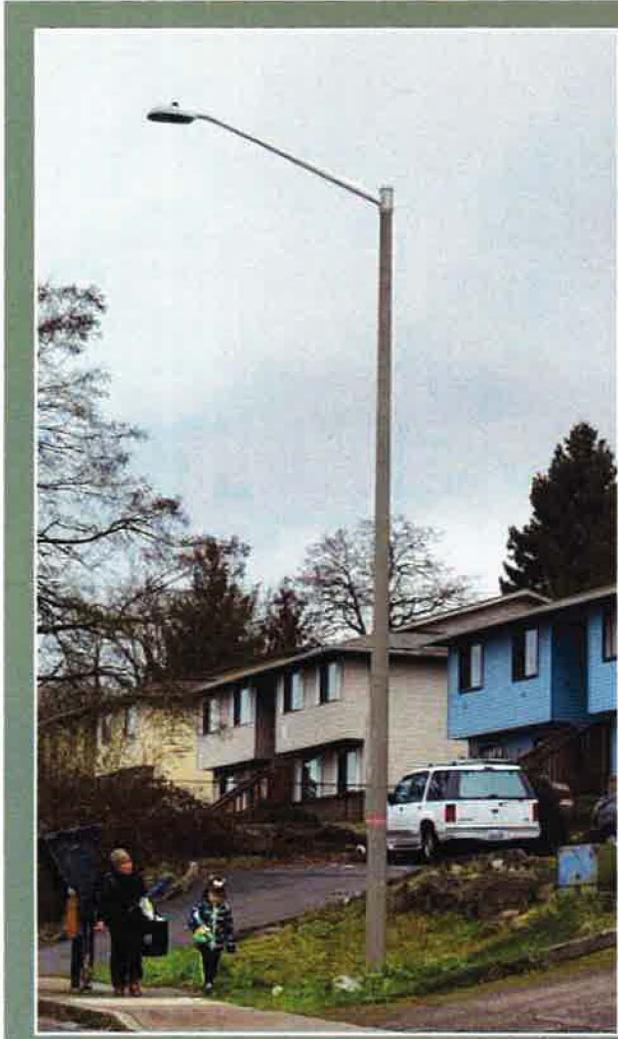
**CLIENT:**

**Actualize**  
 WE MAKE IT HAPPEN

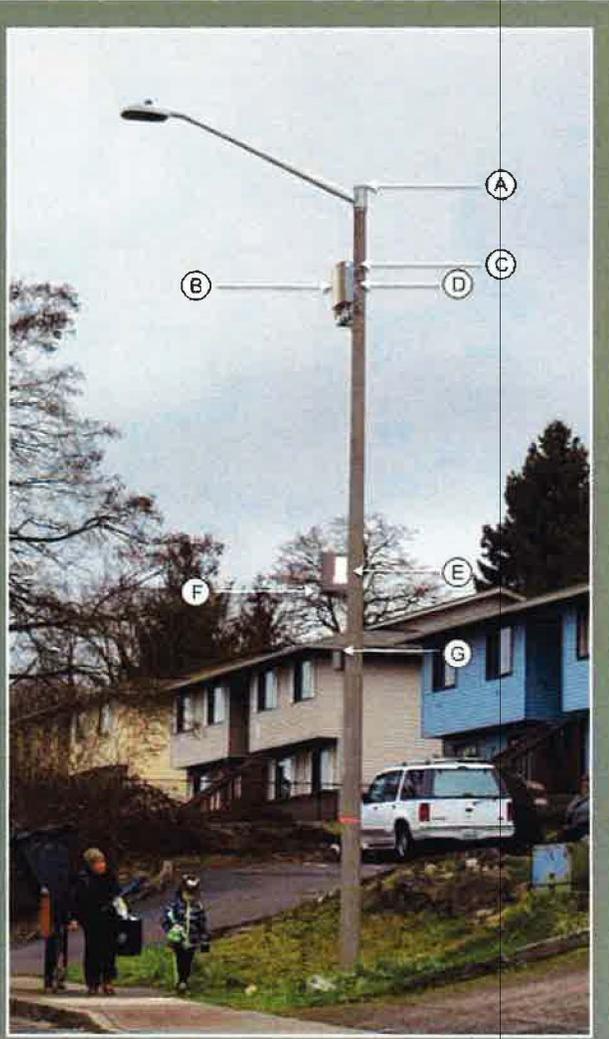
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**SHEET TITLE:**  
 NODE 58  
 PHOTOSIM 1

**SHEET:**  
**A1.2**



CURRENT



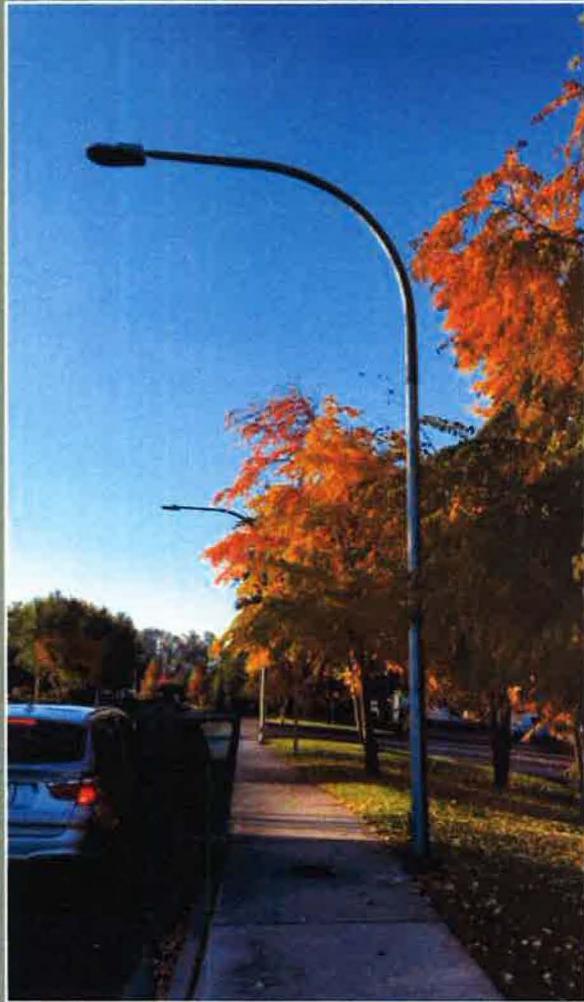
PROPOSED

- A TOP OF PROPOSED REPLACEMENT POLE 30.0'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED SCREENED RADIO EQUIPMENT STRAPMOUNTED TO POLE
- F BOTTOM OF EQUIPMENT 15.5'
- G TOP OF PROPOSED DISCONNECT 12.0'

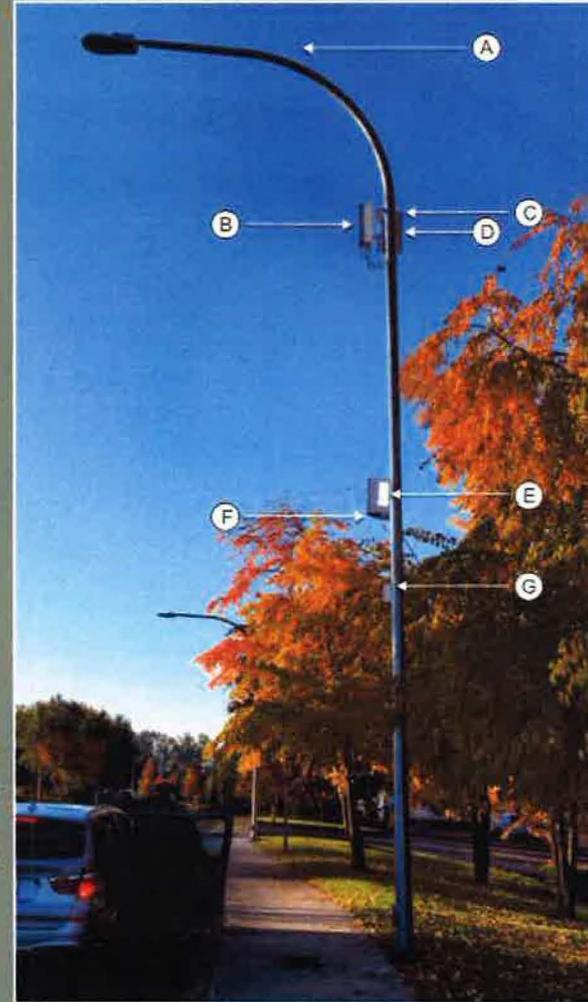
PACIFIC RIDGE NODE 58



24"x36" SCALE: NOT TO SCALE  
 11"x17" SCALE: NOT TO SCALE



CURRENT



PROPOSED

- A TOP OF PROPOSED REPLACEMENT POLE 30.0'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED SCREENED RADIO EQUIPMENT STRAPMOUNTED TO POLE
- F BOTTOM OF EQUIPMENT 15.5'
- G TOP OF PROPOSED DISCONNECT 12.0'



PACIFIC RIDGE NODE 63



**PROJECT INFORMATION:**  
**PACIFIC RIDGE SC**  
 GROUP #1  
 NODE 63  
 21644 29TH AVE S  
 DES MOINES, WA 98198

**CURRENT ISSUE DATE:**  
 01/31/18

**ISSUE FOR:**  
 REVIEW

**ISSUE HISTORY:**

No.	Date	Revision	INT.
B	01/31/18	REVIEW	LW
A	01/16/18	REVIEW	LW

**PLANS PREPARED BY:**  
**MORRISON HERSHFIELD**  
 800 STEWART ST, SUITE 220  
 SEATTLE, WA 98101  
 TEL 206 268 7370  
 www.morrisonhershfield.com  
 MH PROJECT #: 7170238

**CLIENT:**  

 Actualize  
 we make things happen

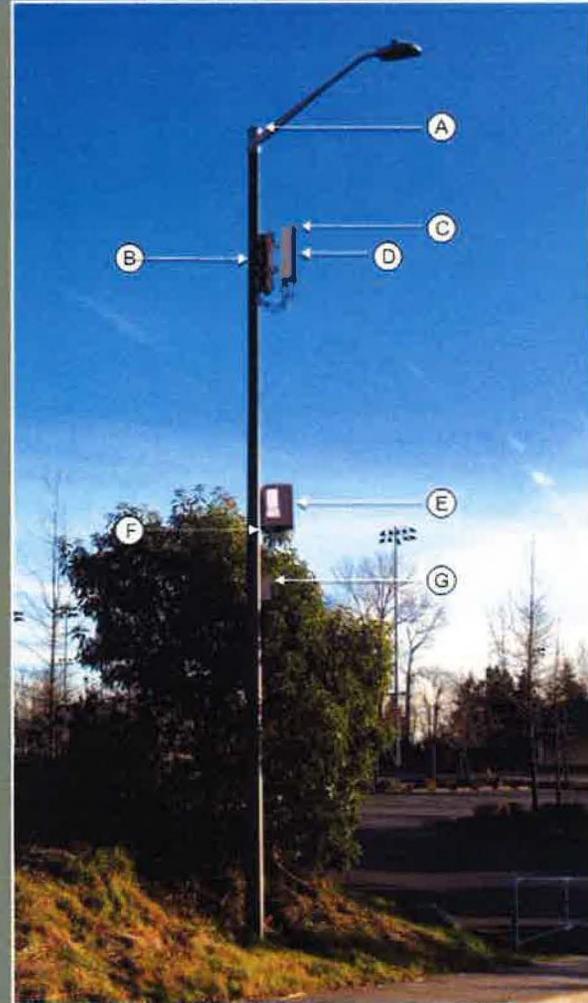
**SEAL OF APPROVAL:**

**SHEET TITLE:**  
 NODE 63  
 PHOTOSIM 1

**SHEET:**  
**A1.2**



CURRENT



PROPOSED

- A TOP OF PROPOSED REPLACEMENT POLE 30.0'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED SCREENED RADIO EQUIPMENT STRAPMOUNTED TO POLE
- F BOTTOM OF EQUIPMENT 15.5'
- G TOP OF PROPOSED DISCONNECT 12.0'



## PACIFIC RIDGE NODE 64



**PROJECT INFORMATION:**

PACIFIC RIDGE SC

GROUP #1  
NODE 64

21800 20TH AVE S  
DES MOINES, WA 98196

**CURRENT ISSUE DATE:**

01/31/18

**ISSUE FOR:**

REVIEW

**ISSUE HISTORY:**

No.	Date	Revision	INT.
B	01/31/18	REVIEW	LW
A	01/16/18	REVIEW	CW

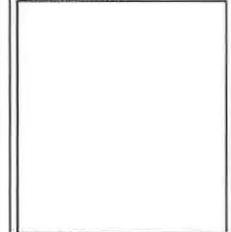
**PLANS PREPARED BY:**

**MORRISON HERSHFIELD**  
600 STEWART ST, SUITE 200  
SEATTLE, WA 98101  
Tel: 206.268.7370  
www.morrisonhershfield.com  
MH PROJECT #: 7170238

**CLIENT:**



**SEAL OF APPROVAL:**



**SHEET TITLE:**

NODE 64  
PHOTOSIM 1

**SHEET:**

A1.2

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Dear Port of Seattle Commission,

The following is recommended by our city Aviation Advisory Committee and by approved motion of the Des Moines City Council. The City of Des Moines, perhaps more than any other local jurisdiction, experiences disproportionate impacts from Sea-Tac International Airport operations as a function of our proximity to the Airport. We have long been a staunch advocate for mitigation and have availed ourselves of any opportunity to advocate for a lessening of this disproportionate relationship that negatively impacts our residents and businesses.

In May of 2017, Mayor Pina made public comments to the POS Commission during a joint meeting with Federal Aviation Administration senior officials. The tenor of those comments are more critical as each day passes and operations at Sea-Tac continue to increase. Mayor Pina expressed concern with the implementation of NextGen by the FAA and Airport and the impact of operational changes that exacerbate impacts from overflights. He addressed concerns regarding the Sustainable Airport Master Plan (SAMP) and airport reconfiguration to continue to accommodate significant growth at the Airport.

The City submitted comments on the scoping process of the SAMP in a letter to Mr. Steve Rybolt, dated September 27, 2018. The letter emphasizes our concerns that "environmental review of projected growth does not consider impacts of growth to date," based on the significant increase in growth of operations, cargo and passenger traffic since 2012. We have also joined with the cities of Burien, SeaTac, and Normandy Park to engage national consultants with our SEPA officials to review the environmental process of the SAMP.

Des Moines is participating in the Ultra Fine Particle study being conducted by the University of Washington funded by the Washington State Legislature. The City is providing funding and direct participation with the State Budget Proviso in conjunction with our partner cities of Burien, SeaTac, Normandy Park, Tukwila and Federal Way that is administered by the Washington State Department of Commerce to establish a baseline impact analysis of Sea-Tac Airport operations. The City participates on the Airport StART Committee. All of these efforts are undertaken to provide relief for our residents and businesses.

Today, we want to reaffirm our commitment to leave no stone unturned to secure relief for our City from noise and health impacts associated with Airport operations. The City of Burien is approving a set of resolutions that address Airport growth and that states,

In the interest of human health and safety and wise expenditure of public resources, that the Port of Seattle delay any build-out or launch of additional infrastructure at Sea-Tac, specifically as identified in the SAMP until such time as the PSRC and Department of Commerce studies are completed. [Section 1]

Additionally, the Burien Resolution recognizes the critical nature and value of efforts to site a second regional airport. The City of Des Moines advocated for this to be included in the study undertaken by PSRC for the FAA. We have repeatedly emphasized the importance of appropriate review of siting a second major Airport.

## Bonnie Wilkins

---

**From:** Anthony Hemstad <anthony@hemstad.us>  
**Sent:** Wednesday, January 23, 2019 9:37 AM  
**To:** Michael Matthias  
**Cc:** Bonnie Wilkins  
**Subject:** Airport siting update

Good Morning Michael –

It was good speaking with you last night.

As requested, here is a short update on the bills regarding finding an alternative site for a new primary airport in Washington.

Senator Keiser and Representative Orwall have been great leaders on this issue. On Friday SB-5370 was introduced by Senator Keiser. This bill would create a state commercial aviation coordinating commission. Its main purpose would be to make a location recommendation for a future commercial airport by January 1, 2021. It would also create a timeline for the opening of this additional commercial aviation facility that should be completed and functional by 2040.

Representative Orwall will introduce the House version of this bill later this week. I'm currently working to get some co-sponsors for the bill.

I'll keep you up to date on these bills moving forward.

Best regards,

Anthony

Legislative advocate for City of Des Moines  
*Anthony Hemstad*  
*Principal, Hemstad Consulting*  
*Mobile: 253.335.9163*  
*Email: [anthony@hemstad.us](mailto:anthony@hemstad.us)*

Sent from Mail for Windows 10

**CITY MANAGER'S EXECUTIVE ORDER NO. 19-001  
CITY OF DES MOINES MARINA PAY PARKING**

**AN EXECUTIVE ORDER OF THE CITY MANAGER OF THE CITY OF DES MOINES** relating to Marina Pay Parking and establishing policies for the Pay Parking Passes and setting parking fees.

**RECITALS**

**WHEREAS**, the infrastructure of the Marina has deteriorated from constant use and exposure to Puget Sound and the elements, and

**WHEREAS**, maintenance, repairs and infrastructure replacements are pertinent to the Marina and require sustainable revenue sources, and

**WHEREAS**, the City pays the state Department of Natural Resources over \$120,000 annually to lease the tidelands breakwater area, which equals 20% of the current Marina net operating revenues that are not available for reinvestment in the Marina, and

**WHEREAS**, the City Council has concluded that a pay parking system would be the most equitable for both residents and regional visitors to the Marina and the surrounding beach and park areas, and would provide necessary resources critical for the improvement and maintenance of the Marina infrastructure, and

**WHEREAS**, the City has monitored the pay parking program in order to attempt to determine policies and a fee structure that would best further the goals of investing in Marina infrastructure and providing recreational access to the Marina and Beach Park and

**WHEREAS**, the City Manager has determined that an adjustment to the fee structure is warranted to better meet the City's goals; now therefore,

**IT IS HEREBY ORDERED** as follows:

Effective February 1, 2019, the Des Moines Marina Pay Parking policies established by Executive Order 17-002, as amended by Executive Order 17-003 are rescinded and the following Des Moines Pay Parking Policies and fees as outlined below are hereby established:

**I. Des Moines Resident Pay Parking Pass**

1. Des Moines residents may purchase an annual \$30 Resident Pay Parking Pass at the Marina Office. Residents have access to the North, South, and Beach Park lots between 5:00 am and 10:00 pm (access cards will not work after 10:00 p.m.) The Resident Pay Parking Pass is similar to an access card or Orca Card and has a built-in computer chip. The cost for the annual renewal of an existing access card issued to a resident is \$28.

2. Vehicle registration and driver's license with matching Des Moines' addresses are required for purchase of a Pass. Only one Pass will be issued per registered vehicle.

**II. Non-Resident Pay Parking Pass**

Non-residents may purchase an annual Parking Pass at the Marina Office for \$60. Non-residents have access to the North, South, and Beach Park lots between 5:00 am and 10:00 pm (access cards will not work after 10:00 pm). The frequent user Pass is similar to an access card or Orca Card and has a built-in computer chip.

**III. Hourly Parking Fees (Without Pass)**

Regular pay parking fees for those without a Pay Parking Pass are established as follows:

0-2 hours	\$2.00
2-4 hours	\$4.00
4+ hours	\$6.00
Lost Ticket	\$6.00

**IV. Saturday Des Moines Waterfront Farmers Market**

The Saturday Des Moines Waterfront Farmers Market will validate parking for 2 hours, with proof of a purchase. Parking is validated at the Farmers Market booth before exiting.

**V. Anthony's Homeport**

Anthony's Homeport will validate its customer parking. Customers must provide the parking ticket to Anthony's staff for validation.

**VI. Ratification, Confirmation and Approval.** All acts undertaken prior to the effective date of this Executive Order that are consistent with the intent and purpose of same are hereby ratified, confirmed, and approved.

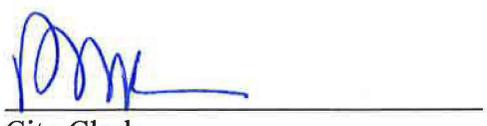
DATED this 24 day of January, 2019.

  
\_\_\_\_\_  
Michael Matthias  
City Manager  
City of Des Moines

APPROVED AS TO FORM:

ATTEST:

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

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









DRAFT ORDINANCE NO. 17-  
070 SMALL CELL  
FRANCHISE AGREEMENT:  
SEATTLE SMSA LP D/B/A  
VERIZON WIRELESS

*January 24, 2019*

*Staff Presentation: Tim George, City Attorney*

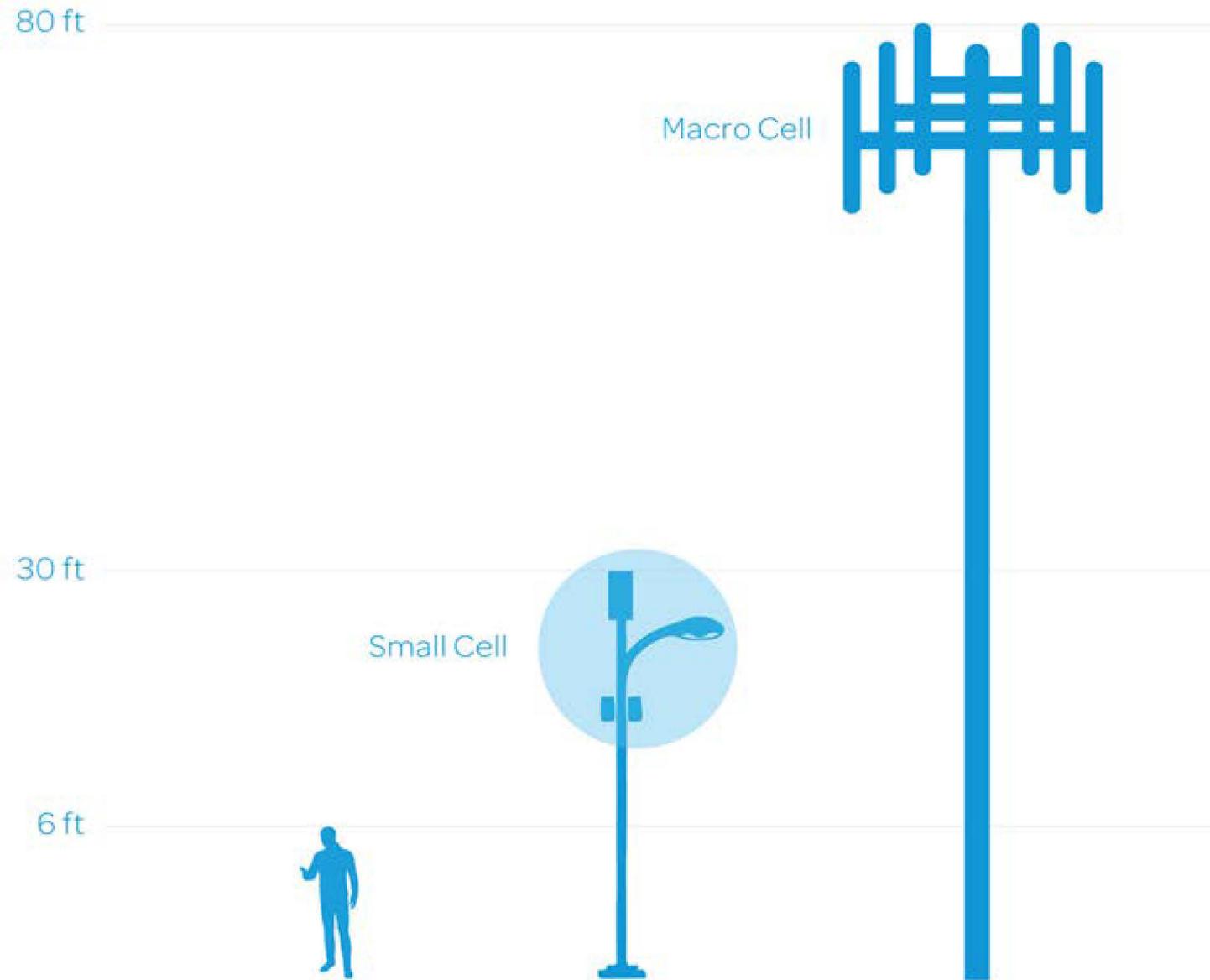
# Process and requirements

- Two readings - pursuant to state law.
- City Council recently updated Title 20 DMMC to create regulations specific to Small Cell Facilities. Creates framework for this Franchise.
- City is limited by Federal Law as to what areas are subject to regulation.
- City cannot prevent provider from closing significant gaps in coverage but can address aesthetics by requiring the “least intrusive means.”
- Competitive Equity/Neutrality – Federal Law requires that cities treat service providers equally. Template for franchise created by City’s Telecommunications Consultant.

# Telecommunications Franchise

- What this does do:
  - *Allows Verizon to locate facilities in City right of way subject to City approval.*
  - *Defines obligations and responsibilities for both Verizon and the City.*
  - *Relies on Title 20 DMMC for specifics (Design Review, Application Process and Approvals, etc.)*

## Different technology, different process



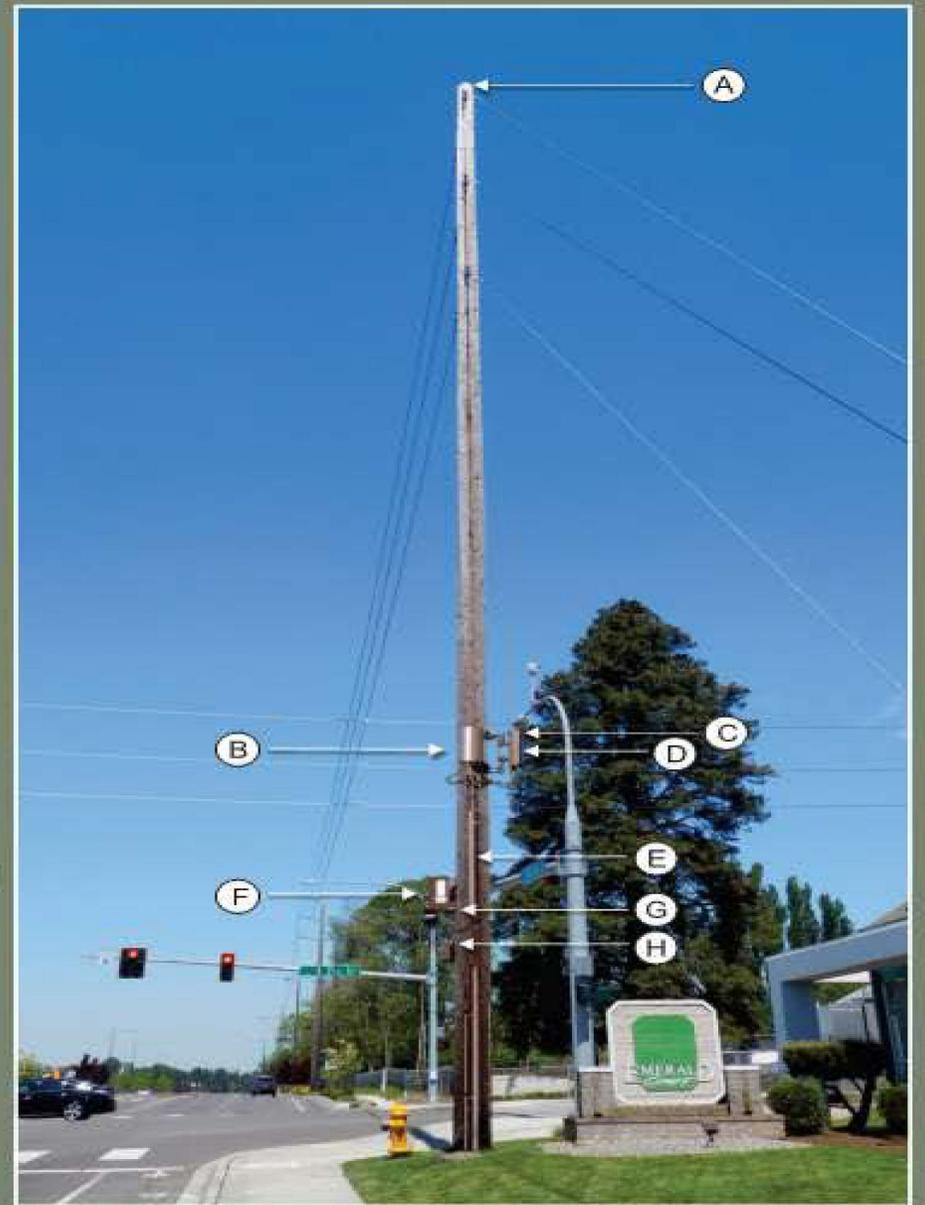
# Identified Small Cell Facilities





CURRENT

- A TOP OF EXISTING POLE 74.0'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED CONDUITS ON STANDOFF BRACKET
- F PROPOSED SCREENED EQUIPMENT ON STANDOFF MOUNT
- G BOTTOM OF EQUIPMENT 15.5'
- H TOP OF PROPOSED DISCONNECT 12.0'



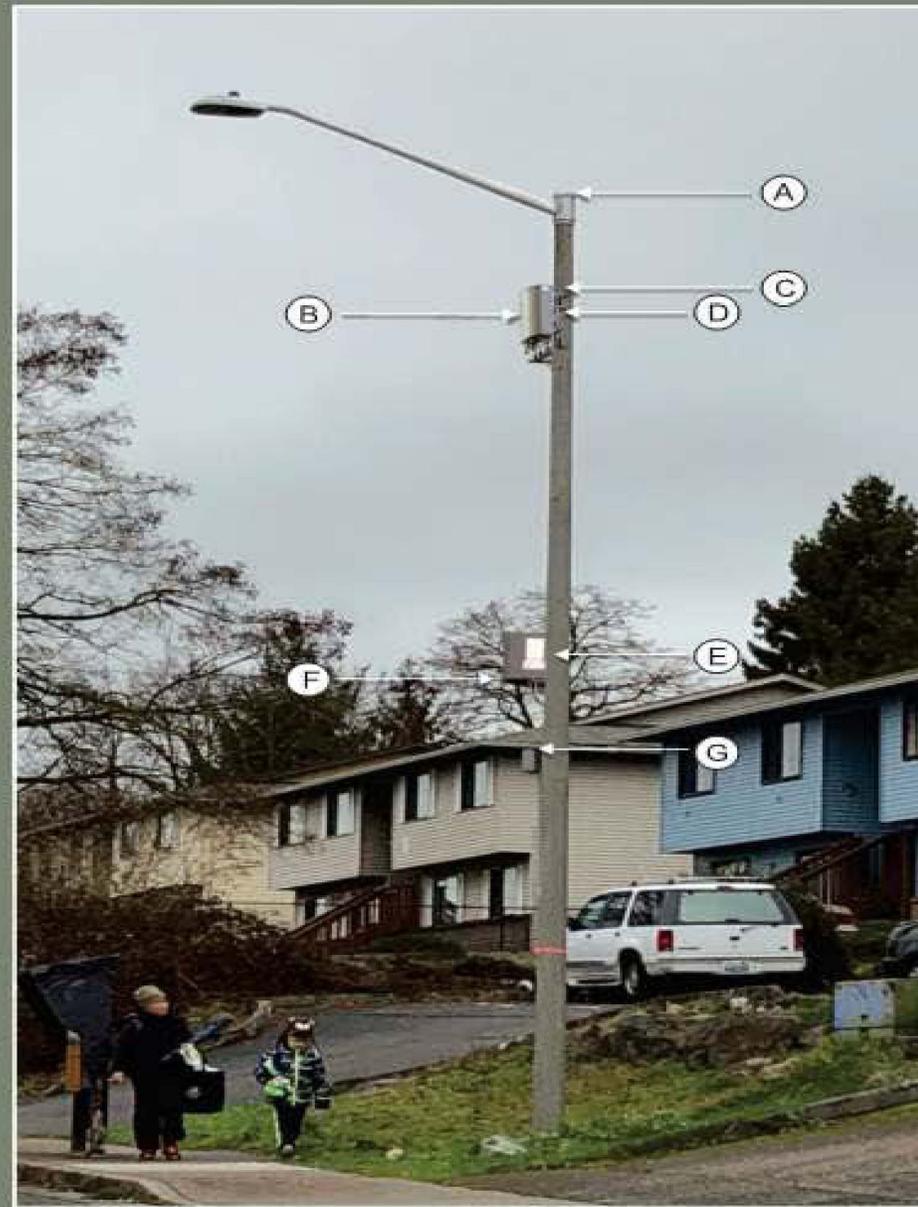
PROPOSED

## PACIFIC RIDGE NODE 55



CURRENT

- A TOP OF PROPOSED REPLACEMENT POLE 30.0'
- B PROPOSED POLE-MOUNTED ANTENNAS - x 2
- C TOP OF PROPOSED ANTENNAS 26.0'
- D RAD CENTER OF ANTENNAS 25.0'
- E PROPOSED SCREENED RADIO EQUIPMENT STRAPMOUNTED TO POLE
- F BOTTOM OF EQUIPMENT 15.5'
- G TOP OF PROPOSED DISCONNECT 12.0'

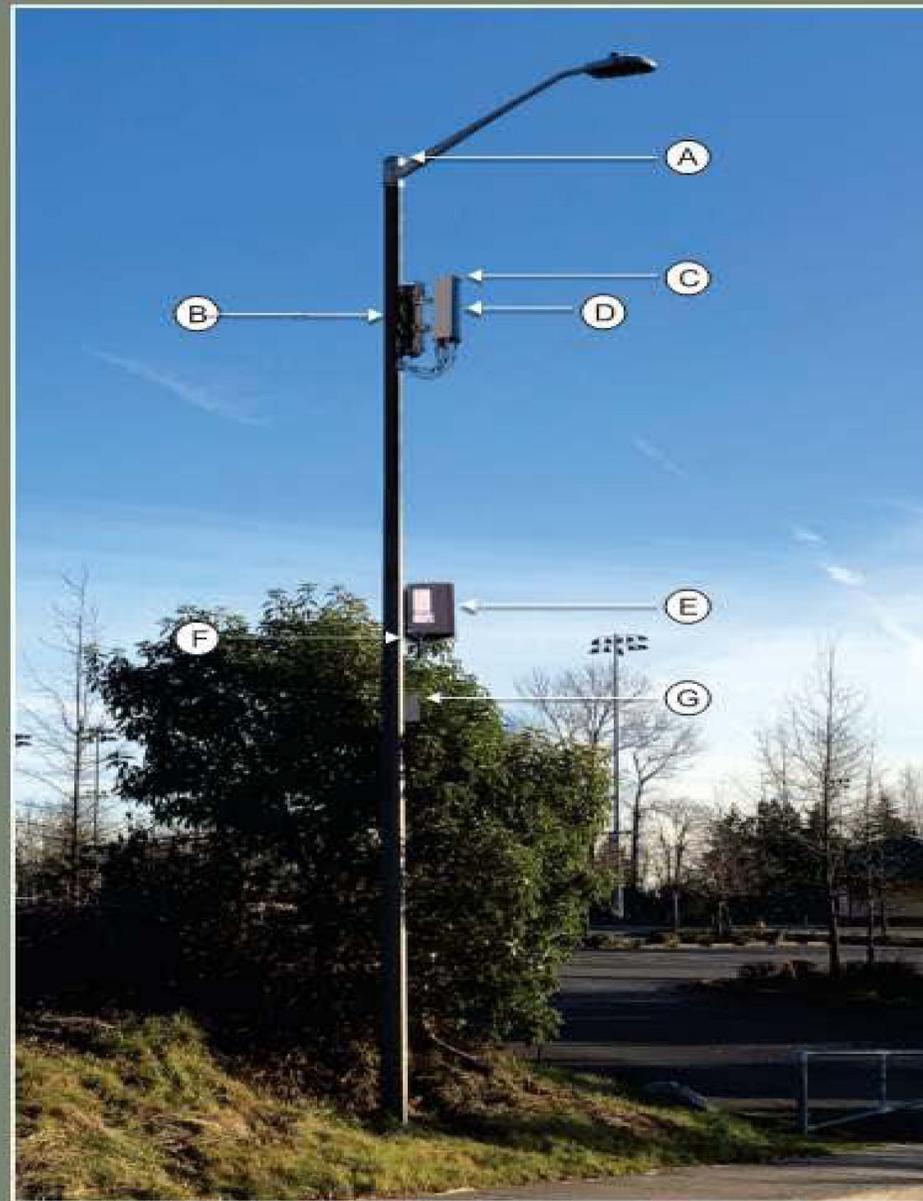


PROPOSED



CURRENT

- A TOP OF PROPOSED REPLACEMENT POLE 30.0'
- B PROPOSED POLE-MOUNTED ANTENNAS x 2
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- E PROPOSED SCREENED RADIO EQUIPMENT STRAPMOUNTED TO POLE
- F BOTTOM OF EQUIPMENT 15.5'
- G TOP OF PROPOSED DISCONNECT 12.0'



PROPOSED

# Key Terms

- Franchise terms meet all requirements of Title 20 DMMC.
- 10 year franchise agreement.
- Relocation costs: Verizon responsible for relocation costs unless state law says otherwise.
- Right of way management: Verizon subject to all City permitting requirements and fees.
- Insurance: \$5 million plus. Exceeds any anticipated potential claim.
- Vacation and abandonment: Follows City's preferred procedure. Discontinued facilities must be removed within 60 days.

# Costs, Fees, and Taxes

- Application Fee: limited by state law to actual administrative expenses incurred during preparation of franchise agreement. One time \$20,000 fee. Covered consultant cost of preparing template and staff cost of negotiating franchise.
- Additional Costs: Verizon will pay actual City costs for future staff time spent administering this agreement.
- Permitting Costs: Verizon will pay all permitting costs associated with work performed under the franchise.
- Utility Tax: Verizon subject to utility tax of 6% on telephone business.
  - *Verizon is existing utility and currently pays 6%.*
  - *To the extent this improves service, may see additional customers.*

# Ad Hoc Franchise Committee Area of Concern

## ■ Safety :

- *Congress has preempted state and local regulation of radio frequency emissions and interference.*
- *The City's telecommunications code contains the maximum level of regulation available to the City.*
- *Franchise Agreement mirrors our code and requires that Verizon certify compliance with federal regulation.*
- *Section 15(10) requires Verizon to provide the City with emissions reports on a regular basis and to certify compliance with all applicable regulations.*
- *In the view of the FCC, the emissions from small cell facilities are well below acceptable limits for Maximum Permissible Exposure (MPE).*

■ Motion:

*“I move to pass Draft Ordinance No 17-070 to a second reading on the next available City Council agenda.”*