

AMENDED AGENDA

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

May 9, 2019 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

EXECUTIVE SESSION

Potential Litigation Under RCW 42.30.110(1)(i) – 15 minutes

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

ADMINISTRATION REPORT

Item 1: POLICE CHIEF – LIFE SAVING AWARD

Item 2: LEGISLATIVE UPDATE

CONSENT CALENDAR

Page 5

Item 1: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers through May 9, 2019 included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#157233-157514	\$1,138,840.50
Total Void checks from Previous Check Runs		\$(11,554.99)
Electronic Wire Transfers	# 1211-1213	\$ 55,914.51
Electronic Wire Transfers	# 1216-1234	\$ 799,941.92
Payroll Checks	# 19154-19159	\$ 6,662.06
Payroll Direct Deposit	#160001-160164	\$ 373,630.00
Payroll Checks	# 19160-19176	\$ 12,805.17
Payroll Direct Deposit	#180001-180173	\$ 353,743.01

Total Checks and Wires for A/P and Payroll: \$2,349,690.12

- Page 7 Item 2: APPROVAL OF MINUTES
Motion is to approve the April 4 and April 17, 2019 City Council Study Session Minutes, and the April 11, 2019 City Council Regular Meeting Minutes.
- Page 15 Item 3: APPOINTMENT OF CLAIMS FOR DAMAGES ACCEPTANCE AGENTS
Motion is to adopt Draft Resolution No. 19-050 updating the Acceptance Agents for Claims for Damages filed against the City pursuant to chapter 4.96 RCW and superseding Resolution No. 1382.
- Page 21 Item 4: 2019 DES MOINES FARMERS MARKET AGREEMENT
Motion is to approve the Agreement with the Des Moines Farmers Market for the 2019 Des Moines Waterfront Farmers Market to be held at the Des Moines Marina on Saturdays from June through September, and Wednesday evenings from July 10 – August 21, and to authorize the City Manager to execute the Agreement substantially in the form as attached.
- Page 29 Item 5: LEASE WITH FLUID MOTION, LLC (DBA RANGER TUGS) FOR THE USE OF DOCK SPACE IN THE GUEST MOORAGE AREA OF THE MARINA
Motion is that the Council ratify and confirm the lease agreement between the City and Fluid Motion, LLC for the use of 250 feet of the North Float in the Guest Moorage area for the rate of \$2,180.00 dollars per month plus leasehold tax and authorize the City Manager to sign the agreement substantially in the form as attached.
- Page 41 Item 6: SOUTH SOUND BOATING SEASON OPENING DAY PROCLAMATION
Motion is to approve the proclamation recognizing the official opening of the South Sound Boating season on May 11, 2019.
- Page 45 Item 7: PROPERTY ACQUISITION: 402 S. 222ND ST.
Motion 1 is to approve the second amendment to the Memorandum of Understanding between the City and Forterra, and the first amendment to the Lease Agreement, and authorize the City Manager to sign the amendments substantially in the form as attached.

Motion 2 is to approve the Purchase and Sales Agreement for the purchase of the property at 402 S. 222nd St. in Des Moines, for the purchase price of \$1,190,000.00, and authorize the City Manager to sign the Agreement substantially in the form as attached.

Page 83 Item 8: 2019 4CULTURE ARTS SUSTAINED SUPPORT GRANT ACCEPTANCE
Motion is to accept the grant from 4Culture for 2019 Arts Sustained Support in the amount of \$7,500 for the City of Des Moines Arts Commission programs, and authorize the City Manager to sign the grant documents substantially in the form as attached.

Page 93 Item 9: GRANT ACCEPTANCE AND ECONOMIC DEVELOPMENT PARTNERSHIP AGREEMENT WITH PORT OF SEATTLE
Motion is to accept the Phase 3 grant funding from the Port of Seattle in the amount of \$31,140 and authorize the City Manager to sign the Economic Development Partnership Agreement substantially in the form as attached.

PUBLIC HEARING

Page 103 Item 1: PUBLIC HEARING TO CONSIDER DRAFT ORDINANCE NO. 19-048 RELATING TO ZONING, AMENDING THE USE TABLE IN DMMC 18.52.010B, ADDING AND REVISING DEFINITIONS IN DMMC 18.01.050
Option 1 – Department of Commerce review complete
Motion 1 is to suspend Rule 26(a) in order to enact Draft Ordinance No 19-048 on first reading.

Motion 2 is to enact Draft Ordinance No. 19-048 amending the use table in DMMC 18.52.010B and adding and revising definitions in DMMC 18.01.050 to make the interim zoning controls enacted by Ordinance 1714 permanent.

Option 2 – Department of Commerce review not complete
Motion is to pass Draft Ordinance No. 19-048 to a second reading on June 27, 2019 or as soon thereafter as the matter may be heard.

NEW BUSINESS

Page 123 Item 1: PROPERTY ACQUISITION: 22106 28TH AVE S
Motion is to ratify and approve the executed agreement for the purchase of the property at 22106 28th Ave S in Des Moines, for the purchase price of \$65,000.00 plus closing costs, and direct Administration to bring forward a budget amendment reflecting the cost for the purchase.

EXECUTIVE SESSION

Labor Negotiations under RCW 42.30.140(4)(a) and Potential Litigation under RCW 42.30.110(1)(i)– ~~30~~45 minutes

NEXT MEETING DATE

May 23, 2019 City Council Regular Meeting

ADJOURNMENT

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**CITY OF DES MOINES
Voucher Certification Approval**

May 9, 2019

Auditing Officer Certification

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

As of **May 9, 2019** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through May 9, 2019 and payroll transfers through May 5, 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
Claims Vouchers:			
Total A/P Checks/Vouchers	157233	- 157514	1,138,840.50
Total Void Checks from Previous Check Runs			(11,554.99)
Electronic Wire Transfers (Wired 3/25/19)	1211	1213	55,914.51
Electronic Wire Transfers	1216	1234	799,941.92
Total claims paid			1,983,141.94
Payroll Vouchers			
Payroll Checks	19154	19159	6,662.06
Direct Deposit	160001	160164	373,630.00
Payroll Checks	19160	19176	12,805.17
Direct Deposit	180001	180173	353,743.01
Total Paychecks/Direct Deposits paid			366,548.18
Total checks and wires for A/P & Payroll			2,349,690.12

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MINUTES

**DES MOINES CITY COUNCIL
STUDY SESSION
Beach Park Dining Hall
22030 Cliff Ave S., Des Moines, Washington**

April 4, 2019 – 7:00 p.m.

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was led by Deputy Mayor Pennington.

ROLL CALL

Council present: Mayor Matt Pina; Deputy Mayor Vic Pennington; Councilmembers Traci Buxton, Luisa Bangs, Jeremy Nutting, Robert Back and Matt Mahoney

Staff present: City Manager Michael Matthias; Chief Operations Officer Dan Brewer; Chief Strategic Officer Susan Cezar; City Attorney Tim George; Harbormaster Scott Wilkins; Finance Director Beth Anne Wroe; Police Chief Ken Thomas; Assistant City Attorney Matt Hutchins; Public Works Director Brandon Carver; City Clerk/Communications Director Bonnie Wilkins and Deputy City Clerk Taria Keane.

COMMENTS FROM THE PUBLIC

- Richard Kennedy, Normandy Park, Highline College National Geographic Geography Bee Presentation

DISCUSSION ITEMS

- Item 1 ~~EMERGING ISSUES~~
- ~~• Redondo Substation~~
 - ~~• Street Crimes~~

Item 2: ARTS COMMISSION APPOINTMENT
Direction/Action
Motion made by Councilmember Back to confirm the Mayoral appointment of Kindle Shaw to a term on the City of Des Moines Arts Commission effective immediately and expiring on December 31, 2020; seconded by Councilmember Bangs.
 Motion passes 7-0

Item 3: CITY MANAGER CONTRACT AMENDMENT #3 AND PAY RANGE INCREASE
Direction/Action
Motion made by Councilmember Back to approve a pay range increase for the City Manager from M-44 E to M-49 C, effective April 1, 2019 and to authorize the Mayor to sign contract amendment #3 substantially in the form as attached; seconded by Councilmember Nutting.

Mayor Pina offered a friendly amendment to approve the pay range increase for the City Manager from M-44 E to M-49 C, effective March 1, 2019 and to authorize the Mayor to sign contract amendment #3 substantially in the form as attached; accepted by Councilmember Back and seconded by Councilmember Nutting.

Motion passes 7-0

Item 4:

COUNCIL RETREAT

City Manager presented a PowerPoint presentation to Council on City Council Retreat Parking Lot notes from the December 13, 2018 City Council Leadership Retreat.

NEXT MEETING DATE

April 11, 2019 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Nutting to adjourn; seconded by Councilmember Bangs.
The motion passed 7-0.

The meeting was adjourned at 9:18 p.m.

Respectfully Submitted,
Taria Keane
Deputy City Clerk

MINUTES

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

April 11, 2019 – 7:00 p.m.

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Mahoney.

ROLL CALL

Council present: Mayor Matt Pina; Deputy Mayor Vic Pennington; Councilmembers Traci Buxton, Luisa Bangs, Robert Back and Matt Mahoney.

Direction/Action

Motion made by Deputy Mayor Pennington to excuse Councilmember Nutting; seconded by Councilmember Back.

Motion passes 6-0.

Staff present:

City Manager Michael Matthias; Chief Operations Officer Dan Brewer; Chief Strategic Officer Susan Cezar; City Attorney Tim George; Harbormaster Scott Wilkins; Finance Director Beth Anne Wroe; Police Chief Ken Thomas; Public Works Director Brandon Carver; Planning & Development Services Manager Denise Lathrop; Land Use Planner II Jason Woycke; City Clerk/Communications Director Bonnie Wilkins.

PRESIDING OFFICER'S REPORT

- Mayor Pina read a statement relative to the recent passage of the City Manager's Contract Amendment.

ADMINISTRATION REPORT

- Chief Thomas gave Council a PowerPoint Presentation on the Redondo Substation, the Street Crimes Unit, and First Quarter Crime Stats.
- Chief Strategic Office Cezar updated the Council on Vision 2050.
- Steve Edmiston gave a PowerPoint Presentation to Council on League of Quiet Skies Voters.

COMMENTS FROM THE PUBLIC

- Pat Nardo, Des Moines, Thank You
- JC Harris, Des Moines, Salary Increase Response
- Sheila Brush, Des Moines, Airport Issue
- Nadya Curtis, Des Moines, Thank You

PUBLIC HEARING

Item 1:

SHORELINE MASTER PROGRAM PERIODIC REVIEW AND AMENDMENT

Mayor Pina Opened the Public Hearing at 8:06 p.m.

Land Use Planner II Woycke gave a PowerPoint Presentation to Council.

Mayor Pina called for those that wished to speak:

JC Harris, Des Moines, Concerned about weakened sea life around Des Moines.

Mayor Pina asked 3 times if anyone else wished to speak.

Seeing none, Mayor Pina asked Council if they had any questions.

Senior Shoreline Planner Misty Blair, Washington Department of Ecology was also in attendance to answer Council questions.

At 8:28 p.m. Mayor Pina closed the Public Hearing.

Direction/Action

Motion made by Councilmember Back to pass consideration of Draft Ordinance No. 19-010 to a second reading on June 27, 2019, or as soon thereafter as the matter may be heard; seconded by Councilmember Bangs.
Motion passed 6-0

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Mahoney

- Commented on Consent Calendar Item #4, #7, #8, and #9
- Social Media

Councilmember Back

- Des Moines Marina Association Annual Meeting
- Transportation
- Commented on Consent Calendar Item #9

Councilmember Bangs

- Des Moines Marina Association Annual Meeting
- Des Moines Arts Commission Meeting
- Midway Park Garden Project
- Earth Day Clean Up
- Eggstravaganza at the Des Moines Beach Park
- Town Hall Meeting

Councilmember Buxton

- Earth Day Clean Up
- Sexual Assault Awareness Month
- Growth Management Policy Board
- Deputy Mayor Pennington's Birthday
- Public Issues Committee Meeting
- Human Services Advisory Committee Meeting

Deputy Mayor Vic Pennington

- Public Safety/Emergency Management Committee Meeting
- Des Moines Farmers Market

PRESIDING OFFICER'S REPORT

- Mayor's Roundtable
- Des Moines Marina Association Annual Meeting
- A League of Quiet Skies Voters upcoming Town Hall meeting

Direction/Action

Motion made by Mayor Pina to remand the issue regarding large developments coming in next to neighborhoods to the Economic Development Committee for discussion; seconded by Councilmember Buxton.

Motion passed 6-0

CONSENT CALENDAR

- Item 1: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers through April 4, 2019 included in the attached list and further described as follows:
- | | | |
|---------------------------------------------|----------------|----------------|
| Total A/P Checks/Vouchers | #157062-157232 | \$743,645.73 |
| Electronic Wire Transfers | # 1209-1210 | \$100,740.32 |
| Electronic Wire Transfers | # 1214-1215 | \$72,610.57 |
| Payroll Checks | # 19149-19153 | \$4,670.25 |
| Payroll Direct Deposit | # 14001-140173 | \$356,855.16 |
| Total Checks and Wires for A/P and Payroll: | | \$1,278,522.03 |
- Item 2: APPROVAL OF MINUTES
Motion is to approve the March 7, 2019 City Council Study Session Minutes, and the March 14, and March 28, 2019 City Council Regular Meeting Minutes.
- Item 3: SOUTH SOUND BOATING SEASON OPENING DAY PROCLAMATION
 Moved to May 9th Agenda
- Item 4: DES MOINES MEMORIAL DRIVE INTERLOCAL AGREEMENT WITH SEATAC, 200TH STREET INTERSECTION
Motion 1 is to approve the changes to the 2019 SWM CIP Budget to include costs associated with the Des Moines Memorial Drive/S. 200th Street Stormwater Extension Project and direct administration to include such changes in the next available budget amendment ordinance.
- Motion 2 is to approve the Interlocal Agreement with the City of SeaTac for the Des Moines Memorial Drive and South 200th Street Intersection Improvement Project, and further authorize the City Manager to sign said Interlocal Agreement substantially in the form as Submitted.
- Item 5: MUSIC 4LIFE PROCLAMATION
Motion is to approve the Proclamation recognizing May as Music4Life Month.
- Item 6: LODGING TAX ADVISORY COMMITTEE APPOINTMENT
Motion is to confirm the Mayoral appointment of Gianni Fontanoza to the Lodging Tax Advisory Committee effective immediately.

- Item 7: INTERFUND LOAN OF \$125,000 FOR THE PURCHASE OF THE VAN GASKEN PROPERTY
Motion 1 is to suspend Rule 26(a) in order to enact Draft Ordinance No. 19-028 on first reading.
- Motion 2 is to enact Draft Ordinance No. 19-028 authorizing an interfund loan of \$125,000 from the Equipment Rental Replacement Fund to the Municipal Capital Improvements Fund to complete the purchase of the Van Gasken property.
- Item 8: DRAFT ORDINANCE 19-035 UPDATING THE ADMINISTRATIVE PROVISIONS OF THE BUSINESS AND OCCUPATION TAX CODE
Motion 1 is to suspend Rule 26(a) in order to enact Draft Ordinance No. 19-035 on first reading.
- Motion 2 is to enact Draft Ordinance No. 19-035 authorizing an amendment to the Administrative Provisions of the Business and Occupation Tax Code, DMMC 3.85.210, to allow for contingent fee compensation when using a contract auditor.
- Item 9: TIB COMPLETE STREETS GRANT AWARD – BARNES CREEK TRAIL (ZENITH ELEMENTARY SCHOOL EXTENSION)
 Motion 1 is to accept the TIB Complete Streets Grant Award for the Barnes Creek Trail – Zenith Elementary School Extension project and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted.
- Direction/Motion**
Motion made by Councilmember Buxton to approve the consent calendar; seconded by Deputy Mayor Pennington.
 Motion passed 6-0.
- Mayor Pina read the Music 4Life Proclamation summary into the record.

NEXT MEETING DATE:

April 17, 2019 Highline School District Board Meeting.

ADJOURNMENT**Direction/Action**

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

The meeting adjourned at 9:02 p.m.

Respectfully Submitted,
 Taria Keane
 Deputy City Clerk

MINUTES

**DES MOINES CITY COUNCIL
STUDY SESSION
Highline School District Board Meeting
15675 Ambaum Blvd. SW. Burien, WA**

April 17, 2019 – 5:00 p.m.

CALL TO ORDER

Highline School Board President Bernie Dorsey called the meeting to order at 5:00 p.m. at the Highline School District Office.

ROLL CALL

Council present: Deputy Mayor Vic Pennington; Councilmembers Luisa Bangs, Robert Back and Matt Mahoney.

Staff present: City Manager Michael Matthias; Chief Strategic Officer Susan Cezar; City Attorney Tim George; Police Chief Ken Thomas; Assistant City Attorney Matt Hutchins; Deputy City Clerk Taria Keane.

DISCUSSION ITEMS

Item 1: DES MOINES ELEMENTARY SCHOOL

Item 2: SCHOOL RESOURCE OFFICER

Councilmember Buxton arrived to the meeting at 5:59 p.m.

NEXT MEETING DATE

May 9, 2019 City Council Regular Meeting

ADJOURNMENT

The meeting was adjourned at 6:00 p.m.

Respectfully Submitted,
Taria Keane
Deputy City Clerk

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Appointment of Claims for Damages
Acceptance Agents

ATTACHMENTS:

- 1. Draft Resolution No. 19-050

FOR AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: City Clerk

DATE SUBMITTED: April 24, 2019

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- Legal *RG*
- Finance
- Courts
- Police
- City Clerk/Communications Director *FW*

APPROVED BY CITY MANAGER
FOR SUBMITTAL *[Signature]*

Purpose

Draft Resolution No. 19-050 updates the appointed Acceptance Agents to receive Claims for Damages filed with the City.

Suggested Motion

Motion: "I move to adopt Draft Resolution No. 19-050 updating the Acceptance Agents for Claims for Damages filed against the City pursuant to chapter 4.96 RCW and superseding Resolution No. 1382."

Background

RCW 4.96.020 sets forth the procedures for accepting Claims for Damages arising out of the tortious conduct of local government entities and their agents. RCW 4.96.020(2) requires governing bodies of local governmental entities to identify an Acceptance Agent and the address where the Agent may be reached during normal business hours.

Discussion

Resolution No. 1382 appointed our City Clerk/Communications Director, Paralegal, and Deputy City Clerk as Acceptance Agents for Claims for Damages. The Public Records Analyst position was approved by Council in the 2019 budget. Sara Lee was hired April 22, 2019 and the City's Paralegal, Vicki Sheckler retired January, 2019. Due to these staff changes, the City needs to make new appointments. Resolution No. 19-050 appoints the current City Clerk/Communications Director as the Acceptance Agent for the City, along with two alternates to act as Interim Acceptance Agents when the Acceptance Agent is not available; and also directs the City Clerk/Communications Director to record a certified copy of this Resolution with the King County Recorder's Office.

Alternatives

None. This is a requirement of chapter 4.96 RCW.

Financial Impact

None, except for the King County Recorder's fee.

Recommendation

Administration and the Legal Department recommend approval of this Resolution.

CITY ATTORNEY'S FIRST DRAFT 04/24/2019

DRAFT RESOLUTION NO. 19-050

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, relating to Claims for Damages, appointing Acceptance Agents for Claim for Damages filed against the City pursuant to chapter 4.96 RCW, and superseding Resolution No. 1382.

WHEREAS, chapter 4.96 RCW sets forth the procedures for presenting Claims for Damages arising out of the tortious conduct of local governmental entities, including cities, or the tortious conduct of their past or present officers, employees or volunteers while performing or in good faith purporting to perform their official duties, and

WHEREAS, RCW 4.96.020 requires local governmental entities to appoint an agent to receive any Claims for Damages made under chapter 4.96 RCW, and

WHEREAS, Des Moines Resolution No. 1382, passed by the City Council on April 26, 2018, appointing Acceptance Agents for Claims for Damages, requires updating; now therefore,

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

Sec. 1. In accordance with RCW 4.96.020, the City Council hereby appoints:

Bonnie Wilkins, CMC, City Clerk/Communications Director
21630 11th Ave So., Suite A
Des Moines, WA 98198

and in the absence of the City Clerk/Communications Director, the following as alternates:

Taria Keane
Deputy City Clerk
21630 11th Ave So., Suite A
Des Moines, WA 98198

Sara Lee
Public Records Analyst
21630 11th Ave So., Suite A
Des Moines, WA 98198

to act as the Agents to receive any Claim For Damages made under chapter 4.96 RCW.

Sec. 2. In accordance with RCW 4.96.020, the City Council hereby adopts the following procedures for presenting Claims for Damages made under chapter 4.96 RCW:

Resolution No. _____
Page 2 of 3

(1) **Recording Information with Auditor.** The identity of the Agent(s) and the address where the Agent(s) may be reached during normal business hours of the City shall be recorded by the City with the auditor of King County (the "Auditor").

(2) **Procedure for Presenting Claims.** All Claims for Damages made under chapter 4.07 RCW shall be presented personally to the Agent(s) at the address and within the business hours recorded with the Auditor, from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays, and shall be presented within the applicable period of limitations in which such an action must commenced.

(3) **Content of Claim.** All Claims for Damages arising out of tortious conduct shall locate and describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damage claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim for a period of six (6) months immediately prior to the time the claim arose.

(4) **Notice Period.** No action shall be commenced against the City for damages arising out of tortious conduct until sixty (60) days have elapsed after the Claim has first been presented and filed in accordance with chapter 4.96 RCW and this Resolution.

Sec. 3. Resolution No. 1382 is superseded by this Resolution.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2019 and signed in authentication thereof this ____ day of _____, 2019.

M A Y O R

APPROVED AS TO FORM:

City Attorney

Resolution No. _____
Page 3 of 3

ATTEST:

City Clerk/Communications Director

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2019 Des Moines Farmers Market Agreement

AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Legal

ATTACHMENTS:
Agreement between the City of Des Moines and Des Moines Farmers Market for the 2019 Farmers Market

DATE SUBMITTED: May 1, 2019

CLEARANCES:
 Community Development _____
 Marina SJN
 Parks, Recreation & Senior Services Sme
 Public Works _____

CHIEF OPERATIONS OFFICER: DJB

Legal TS
 Finance Law
 Courts _____
 Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation:

The purpose of this presentation is seek City Council approval of the 2019 Agreement between the City of Des Moines and Des Moines Farmers Market for the 2019 Waterfront Farmers Market.

Suggested Motion

MOTION: "I move approve the Agreement with the Des Moines Farmers Market for the 2019 Des Moines Waterfront Farmers Market to be held at the Des Moines Marina on Saturdays from June through September, and Wednesday evenings from July 10 – August 21, and to authorize the City Manager to execute the Agreement substantially in the form as attached."

Background:

The Des Moines Farmers Market has operated a seasonal Farmers Market in the Marina since 2006. The Market is open every Saturday from June through the last Saturday in September and offers fresh and tasty seasonal crops direct from the growers, an appetizing array of food vendors, a veritable collection of local crafts people, and live musical offerings. A variety of special events also add to the diversity of the Farmers Market. On any given Saturday, people from within Des Moines or visitors from out of town, gather together to buy a variety of fruits and vegetables not found in grocery stores, visit with friends and

neighbors in a lively environment, enjoy lunch or dinner on the lush lawn overlooking the Marina, and experience concerts from local blues, rock, and country music bands. Situated right next to the fishing pier, beach, and walking trails, the Market is a special experience for children, couples, and friends.

This summer, the Market will also be operating a Wednesday evening market from July 10 – August 21.

Discussion

The Market was formed in 2006 as a non-profit entity requiring all of its farmers to meet a basic set of environmental stewardship principles that ensure that their practice protects the environment and sustains long-term viability of farmland. The Market continues to provide Des Moines and surrounding communities with a variety of vegetables, fruit, honey, cheeses, crafts, flowers, meats, and fish, ready-to-eat foods, education, information, and entertainment. The Market also provides a gathering place and is a positive asset for the City of Des Moines. The Market receives its operating costs from sponsors, donation, grants, and vendor application and stall fees. The attendance and sales have grown consistently since the beginning.

For a typical Saturday, the Farmers Market sets up in the Center Lot of the Marina. The Market uses the two compass rose areas and the promenade between them for an outdoor cafe and entertainment. Market patrons usually park in the North Lot with over-flow parking in the South Lot. Validated parking is provided for two hours to market patrons on Saturdays.

Financial Impact

This year the City is proposing a reduced rental fee of \$100.00 for the entire season. This is the same rental fee as last year. The Market pays for its own garbage and recycling and the Marina provides restroom supplies and clean-up, sink, hot water, and parking for the food vendors, and electricity.

The City receives an unquantifiable public benefit from hosting the Farmers Market on City property, including increased patrons in the City's pay parking lot, increased patrons to Des Moines businesses, and an increased sense of community among attendees and vendors.

Recommendation

Approve the Agreement for the 2019 Market.

AGREEMENT
between
THE CITY OF DES MOINES
and
DES MOINES FARMERS MARKET
for the
2019 DES MOINES FARMERS MARKET

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter “City”), a municipal corporation of the State of Washington, and **DES MOINES FARMERS MARKET** (hereinafter “DES MOINES FARMERS MARKET”), a Washington non-profit corporation, regarding the 2019 Des Moines Farmers Market.

WHEREAS, the City Council finds that the Des Moines Farmers Market enhances the quality of life for residents of the City of Des Moines and wishes to permit it to operate at the Des Moines Marina property on Saturdays from June through September, Wednesday evenings from July 10 – August 21, and other market days throughout the year as may be approved by the City Manager, and

WHEREAS, Des Moines Farmers Market, a 501(c)(4) non-profit organization, was created to operate the Des Moines Farmers Market, and

WHEREAS, the City receives an unquantifiable public benefit from hosting the Farmers Market on City property, including increased patrons in the City’s pay parking lot, increased patrons to Des Moines businesses, and an increased sense of community among attendees and vendors, and

WHEREAS, the City Council wishes to have Des Moines Farmers Market manage the Des Moines Farmers Market pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

(1) Des Moines Farmers Market agrees as follows:

(a) Des Moines Farmers Market shall conduct the 2019 Des Moines Farmers Market in compliance with the conditions outlined in this agreement and the attached Facility Rental Policies and Procedures (Exhibit 1), and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The prime leadership of all Des Moines Farmers Market activities shall be non-City personnel and it is clearly understood that assistance by City personnel is advisory to Des Moines Farmers Market.

Agreement For 2019 Des Moines Farmers Market
Page 2

(c) Des Moines Farmers Market shall defend, indemnify, and hold the City of Des Moines, 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 conduct of the event or its associated activities, except for injuries and damages caused by the sole negligence or intentional conduct of the City, its officers, agents, and employees. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, Des Moines Farmers Market shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and Des Moines Farmers Market and their respective officers, agents, and employees, or any of them, Des Moines Farmers Market shall satisfy the same.

(d) Des Moines Farmers Market will provide for expenses such as the Market Manager, portable sanitary facilities, advertising and/or promotional banners associated with the event. Des Moines Farmers Market shall provide adequate paid and/or volunteer staff, trained in courteous, efficient service to patrons of the Farmers Market. Des Moines Farmers Market shall ensure that persons handling and vending food and beverage products shall comply with all necessary health regulations.

(e) Des Moines Farmers Market will pay the City the total amount of \$100.00 for the 2019 season for the Market's use of the Des Moines Marina Lot. This discounted rental fee entitles the Market to use of all necessary power and water.

(f) Des Moines Farmers Market will provide and pay for its own garbage utility service.

(g) Des Moines Farmers Market will be allowed to have associated retail sales of food or merchandise as identified in the Des Moines Farmers Market 2019 Application Requirements. Des Moines Farmers Market shall not use the Des Moines Farmers Market premises for any purpose other than herein specifically designated without prior written consent of the City.

(h) Des Moines Farmers Market will obtain a City of Des Moines Business License prior to conducting business at the Farmers Market. The Farmers Market business license will allow all individual Market vendors to conduct business during approved Market hours at the approved Market location. A separate Des Moines business license will be required for any vendor who conducts business in Des Moines outside of approved Farmers Market events.

(i) Des Moines Farmers Market shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) aggregate to cover the Des Moines Farmers Market. The City of Des Moines shall be named as additional insured. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. The City shall be furnished with original certificates evidencing the insurance requirements thirty (30) days prior to the event.

Agreement For 2019 Des Moines Farmers Market
Page 3

Des Moines Farmers Market shall also work with their insurance provider to confirm that any motorized vehicle used by the Market, including the two City owned shuttle carts, are fully insured in an amount similar to the general liability insurance required above. The Market will provide proof of insurance to the City prior to use of the City owned carts.

(j) Des Moines Farmers Market will be permitted to erect such special signage as is appropriate and in compliance with the Des Moines Municipal Code in the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after the event.

(k) Des Moines Farmers Market will be allowed to solicit booth fees, a percentage of sales and/or charge an admission fee to vendors of the Des Moines Farmers Market to recover the cost of the community event. Des Moines Farmers Market shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the event, including, but not limited to costs associated with overhead, staff, promotion and security, will be reinvested, as Des Moines Farmers Market deems fit, in the Des Moines Farmers Market for the benefit of the Des Moines community. Des Moines Farmers Market shall maintain an accounting system meeting the City's approval and agrees to permit the City and its agents and representatives at reasonable intervals at any and all times during usual business hours, to inspect all books, records and accounts of the Des Moines Farmers Market showing gross sales and inventories.

(l) Des Moines Farmers Market agrees to take whatever reasonable measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of Des Moines Farmers Market's or its vendors' action taken in the conduct of the Des Moines Farmers Market.

(m) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire District will have the authority to close the Des Moines Farmers Market down at any time should it be necessary, following assessment of any security issue.

(n) Farmer's Market shall pay the City in full on or before the 1st day of June 2019 the amount due.

(o) In recognition of the reduction of the facility rental fees that the City of Des Moines is providing to the Des Moines Farmers Market, the Des Moines Farmers Market will recognize the City of Des Moines as a sponsor in the amount of the reduced rental rate (\$9,400).

(2) The CITY agrees as follows:

(a) Upon execution of this Agreement, the City Manager is authorized to grant permission to Des Moines Farmers Market to use and occupy, for the purpose of the Des Moines Farmers Market in 2019, City facilities and property at the Des Moines Marina.

Agreement For 2019 Des Moines Farmers Market
Page 4

(b) The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, City Web Page and Channel 21 to inform and educate the public about the event. Any City marketing costs will be paid to the City of Des Moines by Des Moines Farmers Market.

(c) The City Manager is authorized to provide City assistance to the Des Moines Farmers Market, which may include all necessary power and water utilities; services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, Marina area traffic control, parking lot management and pedestrian safety. The City will inform the Farmers Market of any City operational costs of the City and those costs will be paid to the City of Des Moines by Des Moines Farmers Market.

(d) The City retains the right from time to time during the term hereof to change the location or use of areas designated for the Des Moines Farmers Market. If such relocations or adjustments are required, the parties shall cooperate so that such changes shall not unnecessarily interrupt the quality and quantity of services rendered by the Farmers Market.

(e) The City will provide the Market with a mutually agreeable storage area for Market supplies at the cost of \$25 per month.

(3) **Parking.** For Saturday Markets, the City will provide to the Market parking coupons entitling the Market customer to two hours of free parking the days the Market is held. The City will provide these coupons as needed to the Market and the Market will limit coupon availability to paying customers. No coupons will be provided for Wednesday Markets.

(4) **Independent Accounting.** A true accounting of all receipts and disbursements shall be maintained by Des Moines Farmers Market and shall be made available for review and audit by the City at the discretion and expense of the City. Records of gross sales and receipts are to be kept for each revenue source and Des Moines Farmers Market is responsible for submittal of all taxes due in the ordinary course of operating the Des Moines Farmers Market.

(5) **Duration of Agreement.** The term of this Agreement shall be for one (1) year upon final execution of this Agreement.

(6) **Termination.** Either party may terminate this Agreement with or without cause with ninety (90) days prior written notice.

The terminating party shall be liable for its share of financial obligations entered into on its behalf prior to termination, including but not limited to, printing costs and media buys.

(7) **Discrimination Prohibited.** Des Moines Farmers Market shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in the Des Moines Farmers

Agreement For 2019 Des Moines Farmers Market
Page 5

Market on the basis of race, color, religion, creed, sex, national origin, marital status, sexual orientation, or presence of any sensory, mental, or physical handicap.

(8) **Assignment.** This Agreement may not be assigned by Des Moines Farmers Market except with written approval of the City to another non-profit organization with similar goals and purposes. Des Moines Farmers Market will provide prior written notice to the City of any assignment of this Agreement to another non-profit organization. Upon assignment, the assignee will be bound by the terms and conditions of this Agreement as Des Moines Farmers Market was.

(9) **Entire Agreement.** This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(10) **Governing Law.** The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(11) **Mediation/Arbitration.** If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(12) **Amendments/Authorization for Additional Services.** This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

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

(14) **Waiver.** The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

Agreement For 2019 Des Moines Farmers Market
Page 6

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

(16) **Time of Essence.** Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(17) **Concurrent Originals.** This Agreement may be signed in counterpart originals.

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF DES MOINES

**DES MOINES FARMERS
MARKET**

Michael Matthias
City Manager

By Kim Richmond
Its President

Date _____

Date _____

Approved as to Form:

City Attorney

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT. Lease With Fluid Motion, LLC (dba Ranger Tugs) for the Use of Dock Space in the Guest Moorage Area of the Marina.

FOR AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Marina

ATTACHMENTS:

DATE SUBMITTED: May 2, 2019

1. Draft Lease Agreement with Fluid Motion, LLC
2. Diagram of Guest Moorage Area showing Proposed lease area.

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DSB

- Legal MY
- Finance Baw
- Courts _____
- Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to request the Council’s approval of a lease agreement between the City and Fluid Motion, LLC, for the use of 250 feet of dock space on the north float until April 30, 2020, with up to four one-year renewal periods for the purpose of marketing and selling Ranger Tugs.

Suggested Motion: “I move that the Council ratify and confirm the lease agreement between the City and Fluid Motion, LLC, for the use of 250 feet of the North Float in the Guest Moorage area for the rate of \$2,180.00 dollars per month plus leasehold tax and authorize the City Manager to sign the agreement substantially in the form as attached.”

Background

Fluid Motion, LLC has been manufacturing Ranger Tugs in the Pacific Northwest since 1958. These vessels are high quality pleasure craft that maintain an excellent reputation and a loyal community of owners. Fluid Motion is seeking to lease space in guest moorage in the Marina in order to display and sell

their craft, as well as to provide their unique factory delivery experience, where buyers can take delivery of their vessel and go through a two day orientation with factory personnel on the water. This space was formerly leased by Bjornson Motors for a similar purpose.

Discussion

Use of guest moorage in the Marina is by nature volatile and is rarely fully utilized except for certain weekends during the boating season during special events involving visiting clubs or in connection with City events. Given the frequent vacancies in guest moorage, it has made financial sense in the past to lease a set length of dock space that would not otherwise be used on a full time basis to commercial operations related to boating. Marina staff found the previous lease with Bjornson Motors to be successful, and the proposed lease with Fluid Motion, LLC is modeled on the previous lease.

Ranger Tugs locally manufactures high quality, attractive vessels that would add to the scenic beauty that already exists at the Des Moines Marina. This operation would draw customers of Ranger Tugs to the Marina and give them a reason to experience what the Marina and the Marina District have to offer. This lease would provide the Marina with a steady source of income out of guest moorage and the general fund may see the benefit of sales and B & O taxes resulting from the operations.

Alternatives

The City Council may decline to approve the agreement. This alternative would result in lost revenue for the Marina and the general fund.

Financial Impact

The monthly rental rate of \$2,180.00 for 250 lineal feet of the North Float works out to \$8.72 per foot plus leasehold tax. Winter Moorage Program rates range from \$8.56 per foot to \$11.30 per foot on a month-to-month basis. Guest moorage is generally under-utilized in the off-season and only reaches capacity during special event weekends in the boating season. Vessels in guest moorage also become delinquent on moorage charges and/or become abandoned at a higher rate than vessels moored in regular moorage, involving significant expenditure of staff hours and resources. Given this experience, the staff believes \$8.72 per foot per month for continuous occupation of 250 feet of guest moorage by a year-round, stable, and solvent tenant will result in a net financial benefit for the marina.

In addition, B & O and sales tax arising from business activities occurring within the City will provide increased revenue to the City's general fund. The actual impact from these activities cannot be determined at this time, but impact from the sales of vessels priced above \$100,000.00 is potentially significant.

Recommendation

The staff recommends that the Council ratify and confirm the lease agreement with Fluid Motion, LLC.

LEASE FOR MARINA FACILITIES

This Lease is entered into between the CITY OF DES MOINES, a municipal corporation (hereinafter "Lessor") and FLUID MOTION, LLC, dba, RANGER TUGS, a Washington limited liability corporation (hereinafter "Lessee").

(1) Terms and Premises. Lessor grants to Lessee for a term of 12 months, commencing on the May 1, 2019 and ending on April 30, 2020 the exclusive right to use and occupy certain real and personal property located at the Des Moines Marina. Such property shall be hereinafter referred to as "premises". The premises are generally described as the first 250 feet of the south side of the north float in the Guest Moorage area, in which various vessels that are for sale will be moored. Owing to the difficulty of writing a legal description for the premises, the premises are schematically described on the diagram attached hereto as Exhibit "A" and by this reference incorporated herein.

(2) Option The Lessee shall have the option to extend the Lease for five (5) additional one (1) year terms. Such option must be exercised in writing by the lessee not later than 60 days before the expiration date of the current term.

(3) Conditions of use. The following conditions shall apply to the use of the leased area.

(a) The dock shall be used to moor boats that are for sale and are either owned by or consigned to the Lessee.

(b) Casual use of the dock by invitees of the Lessee, or any other use that may compete with the guest moorage business of the Lessor, is not allowed.

(4) Additional Facilities. Lessor and Lessee reserve the right to negotiate for expansion, and/or relocation of the premises. Lessee may also be placed on the waiting list for additional slips. The decision to allow the Lessee to Lease additional slips shall be at the sole discretion of the City of Des Moines.

Lessee may sub-lease other slips in the Marina, subject to Marina Rule 4.0. Lessee will be charged the regular and customary rate for such sub-leases. Marina facilities other than Leased or sub-leased facilities will be available to the Lessee at the regular posted rates therefore.

(5) Rent. Monthly rent shall for the initial one year term shall be \$2,180.00 (Two Thousand One Hundred Eighty dollars), plus applicable State and local Lease-hold Tax. Rent shall be payable in advance on or before the first day of each month of this Lease.

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

(6) Inspection of Moorage. During business hours, the City Manager, or his designated agent, shall have the right to inspect the dock structure. The right of inspection reserved to the City hereunder shall impose no obligation of the City to make inspections to ascertain the conditions of the premises and shall impose no liability upon the City for failure to make such inspections.

(7) Utilities. In addition to the above rent, Lessee shall be required to pay, within ten (10) days after billed, all utilities furnished to the premises, except surface water management charges and water, which are included in the monthly rent. Power rates billed to the Lessee during the initial term shall be billed at eight one-hundredths of one cent per kilowatt-hour (\$0.0008/kWH). Power rates billed to the Lessee during option terms shall be billed at the rates posted in the Marina office at the time of billing.

(8) Sales and Real Property Taxes. If required by law, Lessee shall be required to pay any sales tax on the rent or any property taxes or Leasehold tax, if levied.

(9) Restrictions on use of Leased Premises.

(a) The sale of gas, diesel fuels and propane gas is prohibited except when used by Lessee to test work performed and the excess conveyed to customer.

(b) The leased area may be structurally modified by Lessee only after prior written consent of Lessor. All additions and modifications permanently attached to structures shall be at the expense of Lessee and shall become the property of Lessor at the termination of this Lease and any extension thereof. Any non-attached additions, lighting fixtures, furniture and trade fixtures ever added by Lessee, which are removable without injury to the premises, shall be and remain the property of Lessee. Only such modifications that would normally be approved under the current Rules and Regulations of the Des Moines Marina will be allowed.

(10) Conduct of Business. Lessee shall be required to follow all City Ordinances, Federal, State and County laws and the Rules and Regulations of the Des Moines Marina. The Lessor shall have the right to restrict certain types of operations during the hours of 10 P.M. to 6 A.M. if they create a nuisance or have a detrimental effect upon adjacent residents and Marina tenants.

(11) Duties of Lessor. Lessor will at all times during the tenancy:

(a) Comply with all City ordinances, state, and federal regulations and any special provisions in this Lease related to environmental protection.

(b) Maintain the premises to substantially comply with all applicable codes, statutes, ordinances, or regulations pertaining to the Leased premises;

(c) Except where the conditions attributable to normal wear and tear, make repairs and arrangements necessary to put the premises in as good condition as it was at the

commencement of the tenancy;

(d) Maintain all electrical, plumbing, heating, and other facilities in reasonably good working order;

(e) No duty shall devolve upon the Lessor to repair a defective condition where the defective condition complained of was caused by the conduct of Lessee.

(12) Duties of Lessee. Lessee accepts the premises in its present condition, and will at all times during the tenancy:

(a) Comply with all city, state, and federal regulations related to environmental protection, and any special provisions described in this Lease.

(b) Keep the Leased premises as clean and sanitary as the conditions of the premises permit;

(c) Properly dispose all solid waste, liquids, and hazardous waste in a clean and lawful manner at reasonable and regular intervals;

(d) Properly use and operate all electrical, gas, heating, plumbing and other fixtures.

(e) Not permit a nuisance or common law waste.

(f) Not allow junk or debris to accumulate on the demised premises;(g)

At the expiration of the Lease term, or any extension thereof, surrender the premises in as good condition as they were at the beginning of the term, reasonable wear and tear excepted.

(13) Indemnification and Insurance. Lessee shall be responsible to Lessor for damages to the premises caused by Lessee, Lessee's agents, and parties using the premises with the permission of Lessee. Lessee shall keep the premises insured for fire, and other casualty. Lessee shall purchase and maintain a general liability insurance policy insuring against claims for personal injury and property damage in an amount with an annual aggregate limit of not less than two million dollars (\$2,000,000). Lessor shall be named as an additional insured under such general liability policy. Appropriate certifications of insurance coverage shall be delivered to Lessor. Lessee agrees to save, keep, defend and otherwise hold harmless Lessor, its officers, agents, employees and volunteers, from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damage to property or personal injury received by reason of or in the course of activities involving Lessee's use and occupancy of the premises or adjacent areas, including, but not limited to, claims arising out of the condition of the premises. Lessee's indemnification is intended to apply to all claims which are occasioned by any willful or negligent act or omission of Lessee, its employees, or any party using the premises with the permission of Lessee.

(14) Sign. Lessee shall be permitted to paint or install such signs as are permitted by

the Des Moines Municipal Code.

(15) Assignment. Lessee shall not assign this Lease or the rights granted hereunder or sublet the premises or any part thereof without first obtaining written consent of the City. Such consent shall not be unreasonably withheld. Lessor and Lessee recognize that the primary purpose of this Lease is to provide a boat brokerage and sales service for customers of the Des Moines Marina, and the boating community, and, accordingly, the primary standards for approving assignment or sublease shall be as follows: the qualifications, business ability, financial capability, technical competence, and personal reputation and integrity of the proposed assignee or sublessee.

(16) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under applicable rules of the American Arbitration Association. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, or upon the mutual written agreement of the parties to forgo the mediation process, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(17) Default.

(a) Event of Default. Each of the following shall be deemed an Event of Default:

- (i) Failure to make full and timely payment of rent;
- (ii) Failure by Lessee to perform or observe any covenant or condition of this Lease which is to be performed or observed by Lessee;
- (iii) Abandonment of the premises;
- (iv) The filing of execution or occurrence of:
 - (A) An adjudication of Lessee as a bankrupt or insolvent in the bankruptcy or equity sense, or;
 - (B) An assignment for the benefit of creditors, whether by trust or otherwise, or;
 - (C) The taking by any person of the rights hereunder upon execution or attachment or other process of law or equity.

(b) Cure of Default. Lessee may cure a default, except for failure to make full and timely payment of rent, and this Lease shall remain in effect, provided that Lessee cure such default or enters into good faith efforts with Lessor to cure such default, within fifteen (15) days of receiving written notice of default by Lessor. Lessee shall notify Lessor in writing of his intent to cure default and the amount of time required to cure the default. Subsequent failure of Lessee to cure the default under this subsection within a reasonable time shall be grounds for termination of the Lease.

(c) Termination of Lease. If Lessee fails to cure any default within the period of time described in the preceding subsection "b" herein, the Lessor may at its option, in addition to any other remedy or right given hereunder or by law,

(i) Except for failure to make full and timely payment of rent, give notice to Lessee that this Lease shall terminate upon the date specified in the notice, which date shall be not earlier than thirty (30) days after the giving of such notice, or

(ii) Immediately or at any time after occurrence of such Event of Default, and without notice or demand, enter upon the premises or any part thereof in the name of the whole, and upon the date specified in such notice or in any other notice pursuant to law, or upon such entry this Lease and the term thereof shall terminate.

(d) Repossession. Upon termination of this Lease as herein above provided, the Lessor may enter forthwith without further demand or notice and resume possession either by summary proceedings, or by action at law or in equity or by force or other-wise, as the Lessor may determine, without being liable in trespass. In no event shall such reentry or resumption of possession or reletting as hereinafter provided be deemed to be a waiver of the rights and remedies of the Lessor hereunder.

(e) Reletting. Upon termination of this Lease in any manner above provided, the Lessor shall use reasonable efforts to relet the premises. The Lessor shall be deemed to have used reasonable efforts if it Leases the whole or any part of the premises, separately or with other premises, for any period equal to or less than, or extending beyond, the remainder of the original term, for any sum or to any tenant or for any use it deems reasonably satisfactory or appropriate. Refusal to let to any person or for any use the Lessor deems objectionable, or for a use not expressly permitted under paragraph 11 of this Lease shall also be deemed a reasonable effort to relet.

(f) Damages. Upon termination of this Lease in any manner above provided, the Lessee shall pay the Lessor forthwith without demand or notice the sum of the following:

(i) All rent accrued to the date of such termination and a proportionate part of the rent otherwise payable for the month in which such termination occurs;

(ii) The cost of making all repairs, alterations and improvements required to be made by the Lessee hereunder, and of performing all covenants of the Lessee relating to the condition of the dock structure during the term, such cost to be deemed prima facie to be that cost

Lease for Marina Facilities, Fluid Motion, LLC
Page 6

estimated by a reputable architect or contractors selected by the Lessor or the amounts reasonable expended or incurred thereafter by the Lessor; and

(iii) Such other damages as are proper under applicable provisions of statutory and common law.

(18) Cancellation by Lessee. Lessee shall have the right to cancel this Lease upon ninety (90) days written notice. During such ninety-(90) day period the parties shall enter into a cancellation agreement defining the rights and duties of the parties upon cancellation of this Lease. There shall be two (2) mandatory provisions contained in the cancellation agreement: (1) following the ninety (90) day notice period, Lessee shall have no further obligation to pay rent, (2) on the effective date of the ninety (90) day notice, Lessee shall vacate the premises and Lessor shall have the right to re-enter and re-let. As to any other term of the cancellation agreement, should the parties be unable to agree on any provision, it shall be submitted to arbitration as provided in paragraph 20 herein.

(19) Written Notice. All notices, requests, demands, and other communications required or permitted under the Lease must be in writing. As of the effective date, Lessee maintains its right to receive notice affecting the Lease. Notice will be deemed to have been duly given immediately upon being mailed with postage prepaid to respective addresses, as follows:

Lessee:	Mailing Address	17300 Tye St SE Monroe, WA 98272
Lessor:		City of Des Moines Attention City Manager 21630 11th Ave. So., Suite A, Des Moines, WA 98198

Upon change of address, each party shall provide the updated address to all parties within ten (10) days after the effective date of the change of address. Failure to provide the updated address constitutes waiver of the right to notice under this section.

(20) This Lease shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

(21) Entire Lease. The written provisions and terms of this Lease, 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 Lease. All of the attached documents are hereby made a part of this Lease. However, should any language in any of the Attachments to this Lease conflict with any language contained in this Lease, the terms of this Lease shall prevail.

(22) Ratification/Confirmation. Any acts consistent with the authority and prior to the effective date of this Lease are hereby ratified and confirmed.

Lease for Marina Facilities, Fluid Motion, LLC
Page 7

(23) Counterparts. This Lease may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Lease.

IN WITNESS WHEREOF, Lessor and Lessee have affixed their signatures on the dates below written signifying agreement to the terms and conditions of the foregoing Lease for Marina Facilities.

LESSEE: Fluid Motion, LLC

LESSOR: City of Des Moines

By: Andrew Curtis
Andrew Curtis: ~~President~~ General Manager

By: [Signature]
Michael Matthias, City Manager

At the direction of the City Council by motion regularly passed in its open public meeting on _____, 2019.

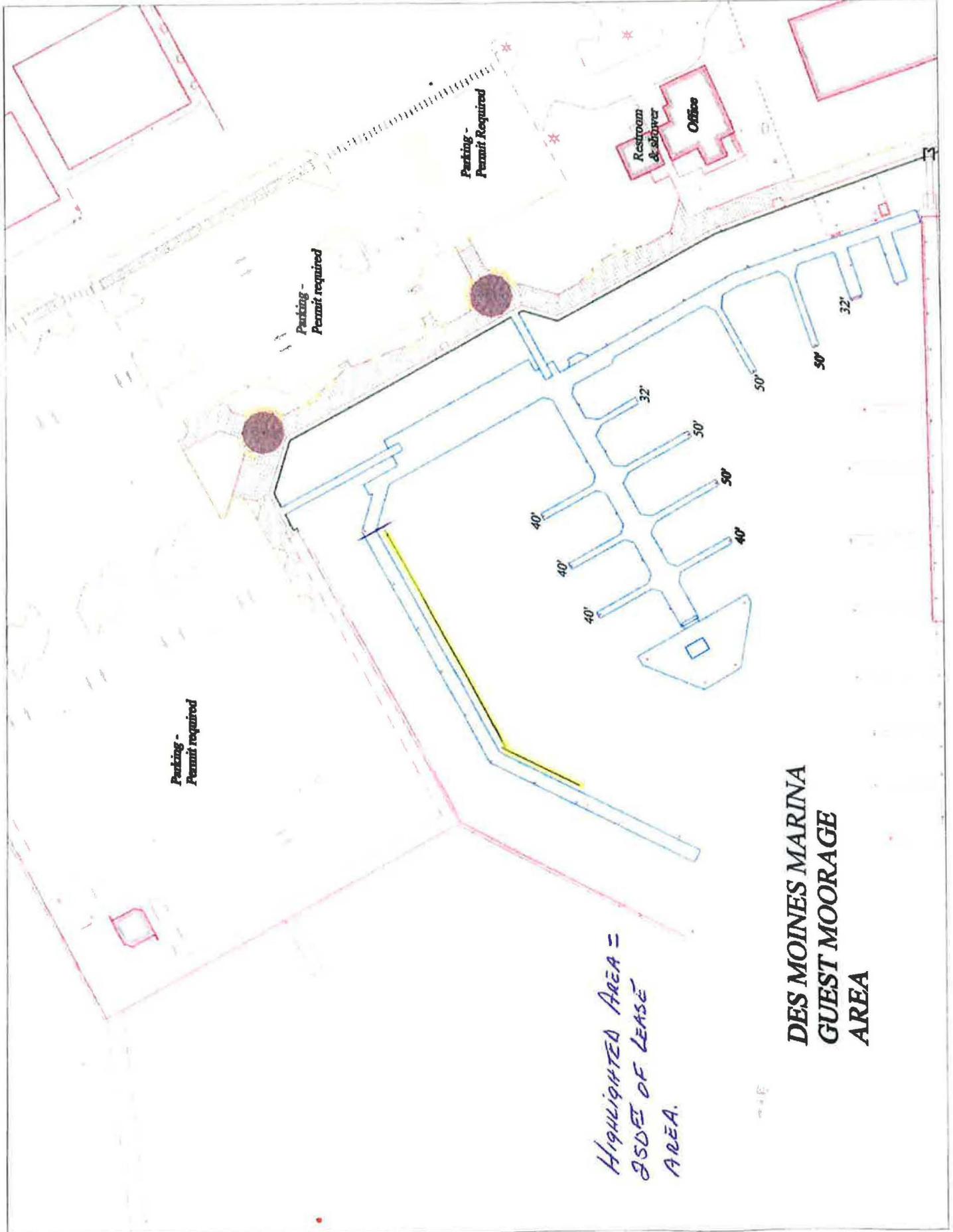
Date: 04/09/2019

Date: _____

APPROVED AS TO FORM:

[Signature]
Timothy A. George
City Attorney

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: South Sound Boating Season Opening
Day

AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Administration

ATTACHMENTS:
1. Proclamation

DATE SUBMITTED: April 2, 2019

CLEARANCES:

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to recognize the official opening of the 2019 South Sound Opening Day of Boating Season.

Suggested Motion

MOTION: “I move to approve the Proclamation recognizing the official opening of the South Sound Boating season on May 11, 2019.

Background:

The Des Moines Yacht Club has hosted an opening ceremony for over 50 years. The Des Moines Yacht Clubs present and past Commodores, and visiting Commodores from other South Puget Sound Yacht Clubs, participate in this annual celebration.

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City of Des Moines



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



Proclamation

WHEREAS, the City of Des Moines wishes to recognize and celebrate the 2019 South Sound Opening Day of Boating Season, and

WHEREAS, the Des Moines Yacht Club annually hosts the South Sound Opening of Boating Season ceremony which gathers the many south Puget Sound yacht clubs, along with Des Moines residents and their surrounding neighboring communities to participate and enjoy this ceremony, and

WHEREAS, the South Sound Opening Day of Boating Season celebration advocates for the safe enjoyment of boating and promotes the Des Moines waterfront amenities serving the boating community, now therefore

THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS May 11, 2019 as this year's

SOUTH SOUND OPENING DAY OF BOATING SEASON

SIGNED this 11th day of April, 2019

Matt Pina, Mayor

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Property Acquisition: 402 S. 222nd St

FOR AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: May 2, 2019

1. Second Amendment to Memorandum of Understanding between City of Des Moines and Forterra
2. First Amendment to Lease Agreement
3. Purchase and Sale Agreement
4. Memorandum of Understanding between City of Des Moines and Forterra
5. Lease Agreement

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DJB

- Legal TG
- Finance Saw
- Courts _____
- Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is for City Council to approve the Purchase and Sale Agreement with Forterra for the purposes of acquiring the property at 402 S. 222nd St. in Des Moines and to amend the existing agreements with Forterra to facilitate this transaction.

Suggested Motion

Motion 1: “I move to approve the second amendment to the Memorandum of Understanding between the City and Forterra, and the first amendment to the Lease Agreement, and authorize the City Manager to sign the amendments substantially in the form as attached.”

Motion 2: “I move to approve the Purchase and Sale Agreement for the purchase of the property at 402 S. 222nd St. in Des Moines, for the purchase price of \$1,190,000.00, and authorize the City Manager to sign the Agreement substantially in the form as attached.”

Background

Located at 402 S. 222nd St. in Des Moines, this site of local significance sits above Cliff Avenue overlooking Puget Sound and provides sweeping views of the water and the Marina floor. The parcel contains a gross land area of 28,998 square feet, or about 0.6657 acres, in one assessor's parcel, with frontage on the west side of S. 222nd St., and frontage on the east side of the undevelopable part of the steeply sloped right-of-way of Cliff Ave. S. The site currently supports a single-family residence constructed in 1889, a detached four-bay wood frame garage, and typical residential site improvements.

Discussion

In 2017, the City identified the site for acquisition 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.

The property was listed at that time for \$1.9 million dollars. After an agreement with a private developer fell through, the City was able to begin negotiations with the property owners. The City then began discussions with Forterra on a potential partnership in order to secure immediate funding which allowed the City to seek available grants or outside funding sources.

The parties agreed to a purchase price of \$1,190,000 which was initially funded by Forterra while the City worked to secure funding through available grants. In addition to grant funding, the City allocated "park in-lieu" fees which the City has already received from current and former development projects within the City to cover a portion of the purchase price. These funds are limited by state law to specific uses including the acquisition of additional park capacity. No funds that could be used for ongoing structural expenses in the General Fund (like additional staff), or for Capital Improvements (like the reconstruction of the Marina bulkhead) are being used for this purchase.

Financial Impact

The purchase price of the property is \$1,190,000.00. By partnering with Forterra and having them initially purchase the property, the City was able to seek grant funds to cover a portion of the cost of the purchase.

As a result of a competitive grant process, the City was awarded \$594,000 in King County Conservation Futures funds to acquire the property. The City will use Park In-lieu Fees to fund the rest 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 authorized a small interfund loan for approximately \$150,000 which will be repaid with future Park In-lieu Fees as collected.

Recommendation

Administration recommends approval of the motions as presented.

**Second Amendment to Memorandum of Understanding for Land Acquisition
Between City of Des Moines and Forterra**

This Second Amendment to Memorandum of Understanding for Land Acquisition (“Second Amendment”) is made as of the ____ day of May, 2019, by the City of Des Moines, a Washington municipal government (“City”) and Forterra, a Washington non-profit corporation (“Forterra”) to amend that certain Memorandum of Understanding for Land Acquisition between the City and Forterra, dated August 31, 2017, as amended on October 5, 2017 (collectively, the “MOU”). All capitalized terms not defined in this Second Amendment shall have the meaning ascribed to them in the MOU.

Now therefore, in consideration of the terms and conditions of this Second Amendment and the MOU, the City and Forterra agree and hereby amend the MOU as follows:

1. City Reimbursement of Costs. With respect to reimbursement of staff labor costs, as described in Section 5(b) of the MOU, the maximum amount is hereby increased to \$15,000 without prior written permission from the City.

2. Term and Amendment. Section 7 of the MOU is hereby deleted and replaced in its entirety by the following:

“7) Term and Amendment. This MOU anticipates acquisition of the Property by Forterra on or before September 29, 2017. If acquisition of the Property is not completed on or before that date, this MOU will terminate and the City may seek to directly acquire the Property. If Forterra acquires the Property on or before that date, this MOU will terminate on the earlier of (i) conveyance of the Property to the City or (ii) December 31, 2020.”

3. Applicable Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Washington.

4. No Other Amendment. Except as specifically amended herein, all terms and conditions of the Agreement remain unchanged and in full force and effect.

5. Counterparts. This Second Amendment may be signed in counterparts, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment to Memorandum of Understanding for Land Acquisition as of the date first above written.

CITY:
City of Des Moines

FORTERRA:
Forterra NW

By: _____
[Insert name/title]

By: _____
Michelle Connor, President and CEO

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**FIRST AMENDMENT TO
LEASE AGREEMENT**

This FIRST AMENDMENT TO LEASE AGREEMENT ("First Amendment") is made this ____ day of May, 2019, by and between FORTERRA NW, a Washington nonprofit corporation ("Forterra"), and the City of Des Moines, a Washington municipal government ("City"), to amend that certain Lease Agreement dated effective September 27, 2017 ("Lease"). Buyer and Seller are hereafter referred to individually as "Party" and collectively as the "Parties."

NOW THEREFORE, in consideration of the terms and conditions of this First Amendment and the Agreement, Buyer and Seller agree and hereby amend the Agreement as follows:

1. Lease Term. With respect to the Lease Term, as described in Section 1.01 of the Agreement, the Lease shall expire upon the earlier of (i) conveyance of the Property to the City or (ii) December 31, 2020, unless extended by mutual written agreement of the Parties.

2. Applicable Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Washington.

3. No Other Amendment. Except as specifically amended herein, all terms and conditions of the Lease remain in full force and effect.

4. Counterparts. This First Amendment may be signed in counterparts, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Lease Agreement as of the date first above written.

CITY:
City of Des Moines

FORTERRA:
Forterra NW

By: _____
[Insert name/title]

By: _____
Michelle Connor, President and CEO

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PURCHASE AND SALE AGREEMENT
Des Moines Waterfront Vista

This PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between the City of Des Moines, a Washington municipal corporation (“Buyer”), having an address of 21630 11th Avenue S, Suite A, Des Moines, WA 98198, and Forterra NW, a Washington nonprofit corporation (“Seller”), having an address of 901 5th Ave., Suite 2200, Seattle, WA 98064, as of the first date on which both Parties have signed this Agreement (the “Effective Date”). Buyer and Seller are hereafter referred to individually as “Party” and collectively as the “Parties.”

RECITALS

A. Seller owns certain real property in King County, Washington, more particularly described in this Agreement.

B. Buyer desires to purchase said real property because of its important conservation values, including, without limitation, open space, view shed, scenic, recreational, and community values that are of great importance to the people of the City of Des Moines and the State of Washington.

C. Seller is a conservation organization having among its purposes the acquisition of open space and critically important ecological systems, as well as urban property that has significant community importance, in King, Kittitas, Mason, Pierce, Snohomish and surrounding counties. Seller is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (as amended from time to time, the “Code”) and is included in the “Cumulative List of Organizations” published by the Internal Revenue Service and described in Section 170(c) of the Code. Seller is not a private foundation within the meaning of Section 509(a) of the Code.

D. Buyer and Seller entered into a certain Memorandum of Understanding for Land Acquisition, dated August 31, 2017, as amended from time to time, with respect to said real property (the “Memorandum”). Pursuant to the terms and conditions of the Memorandum, Seller acquired the Property, as hereinafter defined, on or about September 29, 2017 by means of assignment of Buyer’s interest in a Residential Real Estate Purchase and Sale Agreement, between Buyer and a third party seller, dated June 16, 2017 (“Third Party Purchase Agreement”).

E. Buyer now desires to acquire said real property using, among other sources, funding from the King County Conservation Futures Tax Levy funds administered through King County, Washington and will manage the land subject to open space use restrictions and restrictions on alienation as specified in RCE §84.34.200, et seq., and King County Code §26.12.005, et seq.

F. Seller desires to sell the Property, as hereinafter defined, to Buyer, and Buyer desires to purchase the Property from Seller, on the terms and conditions set forth in this Agreement.

Intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the Parties, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

1. Property. The “Property” subject to this Agreement consists of all of the following:

a. That certain real property consisting of 0.67 acres, more or less, located in King County, Washington and more particularly described in Exhibit A attached (the “Land”).

b. All rights, privileges and easements appurtenant to the Land, including, if any, without limitation: all minerals, oil, gas and other hydrocarbon substances on or under the Land; all development rights, air rights, water, stock water, and water rights relating to the Land; any and all easements, rights-of-way, rights of ingress or egress or other interest in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on, or across, in front of, abutting or adjoining the Land; all rights to utilities serving the Land; and all other appurtenances used in connection with the beneficial use and enjoyment of the Land.

c. All buildings upon and other improvements appurtenant to the Land.

2. Purchase. Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement. Buyer and Seller acknowledge that Buyer has inspected the Property. Buyer will be purchasing the Property in its present physical condition, “As Is,” subject to any and all latent and patent defects, and without warranty of any kind with respect to its physical condition. As of the Effective Date, Buyer agrees that Seller has made no representations or warranties or agreements of any kind or nature regarding the Property, except for the express warranties contained in this Agreement, none of which relate to the physical condition of the Property.

3. Purchase Price.

3.1. Amount. The purchase price (“Purchase Price”) for the Property shall be One Million One Hundred Ninety Thousand and No/100ths U.S. Dollars (\$1,190,000.00).

3.2. Payment. Buyer shall pay Seller the Purchase Price at Closing.

4. Title.

4.1. Condition of Title. Title shall be insurable by a 2006 ALTA Owner’s Standard Coverage Policy issued by WFG National Title Company (the “Title Company” or “Escrow Holder”) in the amount of the Purchase Price (the “Title Policy”), subject only to the Permitted Exceptions (as defined below).

4.2. Title Insurance Commitment. Buyer has obtained a current title insurance commitment issued by the Title Company, Order No. _____, dated effective _____, showing title to the Property as vested in Seller and committing to insure such title in Buyer by the issuance of the Title Policy. The commitment (or one or more updates thereto) (collectively, the "Commitment") shall also commit the Title Company to issue such policy endorsements as reasonably required by Buyer. If Buyer will require an extended coverage policy, Buyer shall promptly arrange for a survey of the Land to be performed and delivered to the Title Company for inclusion in an update to the Commitment (the "Survey").

4.3. Review of Title. Buyer has reviewed the Commitment and has acknowledged its satisfaction with title matters, which review was originally conducted as part of Buyer's investigation of the Property pursuant to the Third Party Purchase Agreement. General taxes and assessments, but not special assessments, due after Closing, and those matters of record as shown on Exhibit B, attached hereto and incorporated herein by reference, constitute permitted exceptions ("Permitted Exceptions").

4.4. Intervening Exceptions. Seller shall immediately notify Buyer of any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights-of-way and other matters affecting title to the Property that are created and which may appear of record or be revealed by survey or otherwise after the date of the Commitment but before the Closing (collectively, "Intervening Exceptions"). Intervening Exceptions shall be subject to Buyer's approval and Buyer shall have ten (10) Business Days after notice in writing of any Intervening Exception, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Exception, if any, to either accept it (whereupon the Intervening Exception shall become a Permitted Exception) or submit written objection. Seller will promptly remove all Intervening Exceptions that do not become Permitted Exceptions.

4.5. Non-Permitted Exceptions. Notwithstanding any provision of Section 4.3 or 4.4 to the contrary, the following are not considered Permitted Exceptions and must be removed by Seller at or prior to Closing: (i) liens and security interests securing loans obtained by Seller; (ii) any other monetary liens or security interests; excluding taxes and assessments due and payable for or applicable to any period prior to the Closing.

5. Buyer's Conditions Precedent.

5.1. Conditions to Purchase. Buyer's obligations with respect to the purchase of the Property and the Closing are subject to fulfillment of the conditions precedent ("Buyer's Conditions Precedent") described below, or waiver thereof by Buyer, not later than the Closing Date:

a. Title Policy. All requirements set forth in the Commitment (including any update) shall have been satisfied or waived by the Title Company and the Title Company shall be prepared to issue the Title Policy.

b. Representations, Warranties and Covenants of Seller. Seller shall have performed each and every obligation to be performed by Seller under this Agreement, and Seller's representations and warranties in this Agreement shall be true and correct as of the Closing.

c. No Seller Bankruptcy. There shall not have been filed against or by Seller a petition in bankruptcy or insolvency or a petition seeking to affect any plan or other arrangement with creditors or seeking the appointment of a receiver unless it shall have been discharged or dismissed before Closing. No receiver or liquidator has been appointed for all or substantially all of Seller's property. Seller shall not have made an assignment for the benefit of creditors or taken or had taken against it any other similar action for the benefit or protection of creditors.

d. Funding. Buyer shall have secured funding for the Property in an amount sufficient to pay the Purchase Price in full on Closing and otherwise on terms and conditions acceptable to Buyer in Buyer's sole and absolute discretion.

e. Buyer's Corporate Approval. Buyer shall have obtained such formal corporate authorization (which may include the approval of its City Council) to consummate the purchase and sale contemplated by this Agreement.

5.2. Benefit of Buyer. The Buyer's Conditions Precedent are solely for the benefit of Buyer and may be waived only in writing by Buyer. Buyer shall at all times have the right to waive any condition. The waiver by Buyer of any condition in any specific circumstances shall not be a waiver of such condition with respect to any other circumstances or a waiver of any other condition and shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller, unless the waiver expressly so provides.

5.3. Termination. If any of Buyer's Conditions Precedent is not timely fulfilled and is not waived by Buyer, Buyer may terminate this Agreement by written notice to Seller and Escrow Holder in which event any items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

6. Investigation of the Property.

6.1. Seller's Disclosure. Having conducted its independent investigation of the Property and having occupied the Property pursuant to the Lease Agreement, as defined below, since the time of Seller's acquisition of the Property, Buyer expressly waives the right to receive the disclosure form required to be delivered by sellers of real property in accordance with RCW Chapter 64.04.

6.2. Entry and Investigation. Pursuant to a Lease Agreement dated effective September 27, 2019 between Seller and Buyer ("Lease Agreement"), Buyer has occupied the Property since September 29, 2017 and has had an opportunity to inspect the Property. Buyer

enters into this Agreement solely in reliance on Buyer's own examination and inspection of the Property, and not by reason of any representation or warranty of Seller.

7. Seller's Obligations. Before the Closing Seller shall, at its sole expense:

7.1. Promptly notify Buyer upon learning of any fact or event that would result in the failure of Buyer's Conditions Precedent.

7.2. Notify Buyer promptly upon receiving notice of a claim or pending litigation affecting the Property, or notice of any event, transaction, or occurrence before Closing that would materially and adversely affect the Property or any part thereof.

7.3. With respect to the Property or any interest therein or part thereof, not take any action that will adversely affect title including, without limitation, convey, mortgage, grant a deed of trust, abandon, relinquish, cloud or encumber title, or contract to do any of the foregoing or consent to any of the foregoing.

8. Deliveries to Escrow Holder.

8.1. By Seller. Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

a. Deed and Other Conveyance Documents. A statutory warranty deed, in form and substance satisfactory to Buyer and the Title Company, duly executed and acknowledged by Seller (the "Deed"), together with an assignment or other appropriate instrument(s) conveying personal property, in form and substance satisfactory to Buyer and duly executed by Seller, conveying to Buyer or its designee indefeasible good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions and easements, except only the Permitted Exceptions.

b. FIRPTA Affidavit. A certificate in form and substance acceptable to Buyer and its counsel, duly executed by Seller, evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Code. If Seller is a foreign person, and this transaction is not exempt under the Foreign Investment in Real Property Tax Act, Escrow Holder is instructed to withhold at Closing the required amount from amounts otherwise due Seller and pay that amount to the Internal Revenue Service.

c. ALTA Affidavits. Any affidavits, certifications or instruments, duly executed and acknowledged by Seller, as reasonably may be required by the Title Company in order to issue the Title Policy.

d. Excise Tax Affidavit. A real estate excise tax affidavit signed by Seller or its agent reasonably satisfactory to the Title Company and Buyer.

e. **Certificates of Authority.** Such certificates as are necessary or reasonably required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Seller.

8.2. By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date, the delivery of each of which shall be a condition to the performance by Seller of its obligations under this Agreement:

a. **Closing Funds.** Cash by federal funds, wire transfer or cashier's check in the amount necessary to pay the Purchase Price due at Closing and all Closing costs and prorations.

b. **Excise Tax Affidavit.** A real estate excise tax affidavit signed by Buyer or its agent reasonably satisfactory to the Title Company and Seller.

c. **Certificates of Authority.** Such certificates as are necessary or reasonably required by Seller or the Title Company to evidence the authority of Buyer and its signatories to execute the instruments to be executed by Buyer in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Buyer.

9. Close of Escrow.

9.1. Time. The close of escrow (the "Closing") shall occur at the offices of Escrow Holder on a date to be agreed by Buyer and Seller that is not later than June 30, 2019 (the "Closing Date"). When all documents and funds have been deposited with Escrow Holder and the Title Company is in a position to issue the Title Policy, Escrow Holder shall immediately proceed with Closing as provided in Section 9.2. The failure of either Seller or Buyer to be in position to close by the Closing Date, without lawful excuse under this Agreement, shall constitute a default by such Party.

9.2. Procedure. Escrow Holder shall proceed with Closing as follows:

a. Obtain the release of the Property from any liens described in the Commitment except the Permitted Exceptions.

b. Pay applicable real estate transfer excise taxes and record the Deed and complete the prorations.

c. Issue and deliver the Title Policy to Buyer.

d. Deliver to Buyer any other documents deposited by Seller into Escrow that are intended for Buyer.

e. Deliver the Purchase Price to Seller.

f. Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each Party and copies of all executed and recorded or filed documents deposited into escrow, with such recording and filing date endorsed thereon.

9.3. Escrow Instructions. An executed copy of this Agreement shall be deposited by Buyer with Escrow Holder following its execution. The Parties may execute additional escrow instructions as desired by the Parties or required by Escrow Holder, provided that such additional escrow instructions shall not change the terms of this Agreement without mutual agreement of the Parties.

9.4. Closing Costs and Prorations.

a. **Closing Costs.** Buyer and Seller shall each pay its own attorneys' fees. Pursuant to the Memorandum, Buyer shall pay all closing costs related to the transfer of title from Seller to Buyer, including but not limited to, escrow service fees, recording fees, title insurance, and Real Estate Excise Tax.

b. **Prorations.** Pursuant to the Memorandum, Buyer shall be responsible for paying real property taxes, general assessments, utilities and operating expenses relating to the Property through the Closing Date including, for these purposes, any additional or deferred taxes due as a consequence of the Property ceasing to be eligible for a current use classification under RCW Ch. 84.34 or similar law. Any special assessments against the Property in existence as of the Closing Date shall be paid in full by Buyer. After Closing, Buyer and Seller shall reconcile the actual amounts of revenues and expenses upon receipt or payment thereof to the extent those items were prorated or credited at Closing based on estimates or otherwise payable or reimbursable pursuant to the terms and conditions of the Memorandum or Lease Agreement.

9.5. Possession. The Parties acknowledge that pursuant to the Lease Agreement, Buyer is in possession of the Property and intend that Buyer will remain in possession upon Closing.

10. Brokerage Commission. Each Party represents and warrants to the other Party that its sole contact with the other and with the Property regarding this transaction has been directly with the other Party and has not involved any broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that Party with respect to the other Party or the Property. Each Party shall indemnify, defend and hold the other Party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying Party's actions. The obligations of the Parties under this Section shall survive the termination of this Agreement.

11. Casualty or Condemnation.

11.1. If there is a condemnation of all or part of the Property initiated before Closing, Seller shall promptly notify Buyer and Buyer shall have the option for ten (10) Business Days following the date the notice is received either to, by notice to Seller: (i) proceed with the Closing, in which event all condemnation proceeds received by Seller prior to Closing shall be paid to Buyer and the right to receive such proceeds not yet received by Seller shall be assigned to Buyer at the Closing, or (ii) terminate this Agreement. Unless this Agreement is terminated, Seller shall take no action with respect to any condemnation proceedings without the prior written consent of Buyer.

11.2. Before Closing, the entire risk of loss or damage by casualty to the Property however caused shall be borne and assumed by Seller. Seller shall promptly notify Buyer of any casualty:

a. If the casualty to the Property would cost less than \$10,000.00 to repair, there will be no termination of this Agreement; or

b. If the casualty to the Property would cost \$10,000.00 or more to repair, Buyer shall have the option for ten (10) Business Days following the date the notice is received either to, by notice to Seller: (i) proceed with the Closing, in which event all insurance proceeds received by Seller shall be applied by Seller to the repair of the Property or if not applied or received prior to Closing, assigned to Buyer at Closing, or (ii) terminate this Agreement.

In either event, Seller is responsible for performing all repairs to the reasonable satisfaction of Buyer and paying the full cost of the repairs even if insurance proceeds are insufficient to pay for all repairs. If repairs are not completed by Closing, then the remaining cost of repair shall be withheld by Buyer from the Purchase Price and paid over to Seller upon Seller's completion of the repairs to Buyer's reasonable satisfaction.

11.3 The termination of this Agreement by Buyer under this Section 11 shall be by notice to Seller and Escrow Holder in which event any items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

12. Representations, Warranties and Covenants.

12.1. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Seller, as of the date of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:

a. Title. Seller is the sole owner of the Property. At Closing, Buyer will acquire the entire fee simple estate and right, title and interest in and to the Property, free and clear of all recorded or unrecorded liens, encumbrances, covenants, restrictions, reservations, easements, options, tenancies, leases, encroachments, claims or other matters affecting title or possession of the Property, subject only to the Permitted Exceptions. Any existing financing as to the Property is not subject to any “lock out” or similar covenant which would prevent the lender’s lien from being released at Closing.

b. Agreements to Transfer or Encumber. Seller has neither committed nor obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any person or entity other than Buyer.

c. Bankruptcy, Etc. To Seller’s knowledge, no bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by Seller.

d. Litigation. To Seller’s knowledge, there is no pending or threatened, judicial, municipal or administrative proceedings with respect to Seller, this transaction or in any manner affecting the Property or in which Seller is or will be a party by reason of Seller’s ownership of the Property or any portion thereof.

e. Notices. Seller has not received any notices from any insurance company, governmental agency or from any other persons or entities with respect to any violations or other matters concerning the Property.

f. Good Standing and Due Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller’s legal, valid and binding obligations enforceable against Seller in accordance with their terms. The consummation by Seller of the sale of the Property is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Seller is subject.

g. Provide Further Information. From the Effective Date to the Closing Date, Seller will notify Buyer of each material event of which Seller becomes aware affecting the Property or any part thereof promptly upon learning of the occurrence of such event.

12.2. Effect of Buyer’s Inspections. The representations, warranties and covenants made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

12.3 Buyer's Representation. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Buyer, as of the date of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:

a. Good Standing. Buyer is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Washington.

b. Due Authority. Buyer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligation under this Agreement and the transactions contemplated by this Agreement. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Buyer and constitute the Buyer's legal, valid and binding obligations enforceable against Buyer in accordance with their terms. The consummation by Buyer of the purchase of the Property is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Buyer is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Buyer is subject.

13. Reserved.

14. Indemnification.

14.1. Seller's Indemnity. Seller shall pay, protect, defend, indemnify and hold Buyer and its successors and assigns harmless from and against any and all loss, liability, damage and expense suffered or incurred by reason of: (i) the breach of any representation, warranty or agreement of Seller set forth in this Agreement; (ii) the ownership, maintenance, and/or operation of the Property by Seller prior to Closing; or (iii) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractor or suppliers that occurred before Closing. Seller shall defend any claim covered by this indemnity using counsel reasonably acceptable to Buyer.

14.2. Buyer's Indemnity. Buyer shall pay, protect, defend, indemnify and hold Seller and its successors and assigns harmless from and against any and all loss, liability, damage and expense suffered or incurred by reason of: (i) the breach of any representation, warranty or agreement of Buyer set forth in this Agreement; (ii) the ownership, maintenance, and/or operation of the Property by Buyer after Closing; or (iii) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of Buyer, its representatives, employees, contractor or suppliers that occurred after Closing. Buyer shall defend any claim covered by this indemnity using counsel reasonably acceptable to Seller.

15. Survival. The covenants, agreements, representations, warranties made in this Agreement, and the remedies and indemnities provided for in this Agreement, shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

16. Entire Agreement. Except as set forth in the Memorandum and Lease Agreement, this Agreement contains the entire integrated agreement of the Parties, including all of the covenants and conditions between the Parties with respect to the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by Seller and Buyer. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

17. Default; Remedies

17.1. Specific Performance. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right: (i) to specific performance of this Agreement; or (ii) to terminate this Agreement by notice to Seller and Escrow Holder in which event any items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

17.2. Attorneys' Fees. If either Party brings an action or other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the Party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other Party, and in the event any judgment is obtained by the prevailing Party all such costs and attorneys' fees shall be included in the judgment.

18. Notices. All notices required to be given pursuant to the terms hereof are required to be in writing and shall be either delivered personally, deposited in the United States mail, certified mail, return receipt requested, postage prepaid, sent by email so long as receipt is confirmed, and addressed to the addresses listed below, with copies as indicated:

If to Buyer:

City of Des Moines
21630 11th Avenue S, Suite A
Des Moines, WA 98198

Attn: _____

Email: _____

With a copy to:

[Name]

[Address]

Attn:

Email:

If to Seller:

Forterra NW
 901 5th Avenue, Suite 2200
 Seattle, WA 98164
 Attn: Darcey Hughes, Conservation Director
 dhughes@forterra.org

With a copy to:

Forterra NW
 901 5th Ave., Suite 2200
 Seattle, WA 98164
 Attn: Corporate Counsel
 Email: legal@forterra.org

The foregoing addresses may be changed by notice to the other Party as provided herein. Mailed notice properly given shall be deemed received 3 (3) Business Days after deposit in the mail. Electronic transmission of any signed original document or notice shall be the same as delivery of an original. At the request of either Party or the Escrow Holder, the Parties will confirm electronically transmitted signatures by signing an original document.

19. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

20. Waivers. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

21. Construction. Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action shall be taken on the next succeeding Business Day.

22. Time. Time is of the essence for every provision of this Agreement. As used in this Agreement, the term “Business Days” refers to Monday – Friday other than legal holidays in the State of Washington.

23. Force Majeure. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the Party who is obligated to render performance (but excluding financial inability to perform, however caused). A Party desiring to assert force majeure is required to promptly notify the other Party of the event upon which the assertion will be based and thereafter provide the other Party with such information regarding the event and its duration as the other Party may reasonably request.

24. Successors. The terms, conditions and covenants contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. Any assignment by a Party shall not relieve the assignor of its obligations under this Agreement except that if the original Buyer shall have assigned its rights under this Agreement and Closing shall thereafter occur, then the assignor shall no longer have any rights, liabilities or obligations under, and instead the assignee that actually acquires title to the Property at Closing shall have all rights, liabilities and obligations under, this Agreement and under any other agreement, instrument or other writing executed incident to the Closing.

25. Applicable Law. This Agreement shall be governed by the laws of the State of Washington.

26. Recitals and Exhibits. The Recitals and Exhibits are incorporated into this Agreement by this reference.

27. Counterparts. This Agreement may be signed in counterparts, any of which shall be deemed an original.

[Remainder of this page intentionally blank]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

BUYER:

CITY OF DES MOINES,
a Washington municipal corporation

By: _____
NAME, TITLE

Date: _____

Approved as to form:

By: _____
Name, City Attorney

SELLER:

FORTERRA NW,
a Washington nonprofit corporation

By: _____
Michelle Connor, President and CEO

Date: _____

Exhibit A

LEGAL DESCRIPTION

All that certain real property in the County of King, State of Washington, described as follows:

LOTS 9 THROUGH 16, INCLUSIVE, IN BLOCK 41 OF TOWN OF DES MOINES, AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 165, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED STREETS OR ALLEYS ADJOINING OR ABUTTING THE SAME;

APN(s): 2009003295

Exhibit B

PERMITTED EXCEPTIONS

1. Ordinance No. 506 and the terms and conditions thereof, recorded on September 30, 1980, in 8009300994, of Official Records, regarding: vacated area.
2. Easement and the terms and conditions thereof, granted to: Des Moines Sewer District, for the purpose of sewer mains, affecting a portion of said premises, recorded on October 14, 1980, in 8010140841, of Official Records.
3. Matters set forth by survey recorded on June 9, 1988, in 8806099002, of Official Records.
Note: Possible encroachment by adjacent property to the north of Lot 9.
4. Easement and the terms and conditions thereof, granted to: City of Des Moines, for the purpose of right of entry, affecting a portion of said premises, recorded on July 18, 1988, in 8807181198, of Official Records.
5. Easement rights and maintenance agreements, if any, for utilities which may have been granted in vacated streets and alleys prior to their vacation.
6. Taxes and charges, together with interest, penalty and statutory foreclosure costs, if any, after delinquency:

**Memorandum of Understanding for Land Acquisition
Between City of Des Moines and Forterra**

This Memorandum of Understanding ("MOU") is entered into on August 31st, 2017, by City of Des Moines, a Washington municipal government ("City") and Forterra, a Washington non-profit corporation ("Forterra").

Whereas, the City has identified certain real property comprising approximately 0.67 acres and identified as King County Parcel 200900-3295 (the "Property") for acquisition; and

Whereas the Property possesses important open space, viewshed, scenic, recreational and community values that are of great importance to the people of the City. These values are referred to herein as the "Conservation Values" of the Protected Property; and

Whereas, the Property is available for sale, but the City does not have funding available to complete the transaction at this time; and

Whereas, City requested Forterra to proceed with acquisition of the Property with the understanding that City would exercise best efforts to secure funding to purchase the Property from Forterra and to obtain City Council approval for the purchase of the Property with such funds; and

Whereas, because of the significant Conservation Values associated with the Property and the City's commitment to make best efforts to secure funding as further detailed in this MOU, Forterra is prepared to proceed with acquisition of the Property based on the terms set forth below.

Now therefore, based on the mutual promises made herein, the parties agree as follows:

1) Forterra Property Acquisition. Forterra will accept the assignment of the existing purchase and sale agreement (attached as Exhibit B) from City in order to acquire the Property from the landowners, and will seek to acquire the Property by September 29, 2017 for one million, one hundred-ninety thousand dollars (\$1,190,000) as agreed to by the City and the landowners on August 2, 2017. Forterra will complete this acquisition, provided that Forterra and the City jointly determine to proceed with the acquisition based upon the results of the transactional due diligence, as defined below.

- a. Legal document review: Forterra will review the City's title report, deed, and other due diligence materials (e.g., deed) prior to closing, and will submit its satisfaction or objections in writing 20 days prior to the closing date, and will work with the Title Company and/or Seller to resolve any due diligence concerns prior to close.
- b. Environmental Assessment: Forterra, while it typically completes Phase I Environmental Site Assessments on properties it acquires, will not complete this step. City agrees to release and defend, indemnify and hold Forterra, its agents, directors,

employees, officers, and partners, harmless from and against (1) any and all site contamination existing on or under the Property before or during Forterra's ownership of the Property, and (2) any and all actions, damages, expenses, liabilities, liens, losses, suits, and other claims (including attorneys' fees and costs) arising from or relating to any such site contamination or to Forterra's investigation of the Property and the entry upon the Property by Forterra, its agents, contractors, and employees, except to the extent the same are caused solely by the negligence of Forterra, its agents, directors, employees, officers, and partners.

2) **City Funding.** City will apply for funding to acquire the Property utilizing appropriate funding sources (e.g., King County Conservation Futures) and will seek approval and authorization from the City Council to spend such grant funds. If City is unsuccessful in its efforts to obtain such grants sufficient to complete the entire purchase, it will pursue other funding opportunities and City and Forterra may mutually agree to an extension of the time for performance of this MOU as further provided below.

3) **City Council Authorization.** Upon securing sufficient funds to acquire the Property from Forterra, City will request its City Council's authorization to approve and authorize the expenditure of such funds for the acquisition of the Property from Forterra. It is understood by Forterra that the City's acquisition of the Property is contingent upon receipt of sufficient grant funds and approval and authorization by City Council to expend such funds for the acquisition of the Property. In the event the City is for any reason unable to acquire the Property from Forterra as contemplated in this MOU, the City understands and agrees that, given Forterra's commitment of financial resources, Forterra is free to pursue any divestment or use of the Property deemed necessary by Forterra in its sole and absolute discretion.

4) **Purchase Price.** The purchase price paid by Forterra to the Landowner for the Property (the "Forterra Purchase Price") shall be the agreed-to sale price mutually-established by City and the landowners on August 2, 2017. The Purchase Price paid by the City to Forterra for the Property shall be the same Purchase Price paid by Forterra to the Landowner for the Property (the "City Purchase Price"). If the City and Forterra decide to remove the buildings and/or other structures on the Property, the City will cover any loss in value to the Property resulting from such removal.

5) **City Reimbursement of Costs.** In addition to the City Purchase Price, the City will reimburse Forterra as follows:

a. Forterra's holding costs, consisting of property taxes and any other governmental fees incurred and paid by Forterra after acquisition and prior to conveyance to the City or termination of this MOU, whichever occurs first ("Holding Costs").

i. In the event Forterra acquires the Property as contemplated in this MOU, the City has determined that it will lease the Property from Forterra beginning on the date Forterra acquires the Property until such time as Forterra sells all of its interest in the Property or termination of this MOU, whichever occurs first. As part of such lease, the City will be responsible for all management, maintenance and insurance of the

Property and all costs related to such responsibilities, and shall be liable for all enforcement costs, including without limitation legal costs, in the event of trespass, damage and/or other negative impacts to the conservation and/or economic values of the Property during Forterra's ownership. Terms of the lease shall be mutually agreed upon by Forterra and the City in writing before Forterra acquires an interest in the Property. In no event shall the lease require the City to pay any rent.

- b. Staff labor costs invoiced on a flat fee basis, including without limitation transactional staff time and stewardship during Forterra's ownership of the Property, not to exceed a maximum of \$10,000 without prior written permission from the City. Any amount(s) approved by City in excess of \$10,000 shall be invoiced on an hourly basis with descriptions of work performed.
- c. Closing costs related to the transfer of title from landowner to Forterra, including but not limited to escrow service fees, recording fees, and title insurance ("First Closing Costs").
- d. Closing costs related to the transfer of title from Forterra to the City, including but not limited to escrow service fees, recording fees, title insurance, and Real Estate Excise Tax ("Second Closing Costs").
- e. Loan costs in the event Forterra utilizes a loan or any other interest-accruing financial vehicle from a third party to acquire the Property, consisting of actual loan fees and actual interest accrued at a rate not to exceed prime plus 0.25% per year on the funds provided by the third party to Forterra for the Property (i.e. Purchase Price, Closing Costs, and any interest added to principal) covering the period from Forterra's acquisition until conveyance of the Property to the City or December 31, 2020, whichever occurs first.
- f. An opportunity fee equal to the sum of 1) 6% of the Purchase Price on the first one million dollars in value, and 2) 5% of the Purchase Price for the value in excess of one million dollars, paid at the closing of the acquisition by City.
- g. In the event the City does not purchase the Property from Forterra as contemplated in this MOU, any decrease in the value of the Property resulting directly from actions taken or directed by the City during the Term of this MOU, including without limitation any decrease in value related to the removal/demolition of structures or other infrastructure on the Property. Such decrease in value shall be determined by an update to the Appraisal using the original appraised value, with such update commissioned and paid for by the City.

The City's reimbursement for items identified in sections 5) d and f is contingent upon (1) Forterra's successful acquisition of the Property from the landowner, and (2) execution of a purchase and sale agreement or assignment agreement ("Transactional Document") by Forterra and the City for conveyance of the Property to the City. The City's reimbursement for items identified in sections 5) a, c, e, and g is contingent upon only Forterra's successful acquisition of

the Property from the landowner. The City shall reimburse Forterra for items identified in section 5) b within thirty (30) days of receipt of written invoice from Forterra regardless of whether or not Forterra has been able to complete the acquisition of the Property.

On a quarterly basis, Forterra shall submit a written invoice to the City for items in sections 5) a, b, and e. Within thirty (30) days after Forterra acquires the Property, Forterra shall submit a written invoice to the City for First Closing Costs under section 5) c. Within thirty (30) days after the City acquires the Property from Forterra, Forterra shall submit a written invoice to the City for the opportunity fee under Section 5) f and the Second Closing Costs under Section 5) d. The City shall pay Forterra within thirty (30) days of receipt of each invoice.

6) Enforceability. This MOU constitutes a binding contract for the City to reimburse Forterra for its costs incurred under above sections 5) a, b, c, and e. This MOU is not and shall not be construed as creating a binding contract with respect to the City's acquisition of the Property, and a binding contract for the City to purchase the Property will not exist unless and until the City and Forterra have executed a Transactional Document with mutual consideration that has been approved as may be necessary by the appropriate authorities; provided, however, that if the City secures funding and appropriate City Council approval to acquire the Property as intended under this MOU, then the City and Forterra will proceed with the necessary steps to negotiate and execute the Transactional Documents whereby, in addition to paying Forterra the Purchase Price, the City shall reimburse Forterra for items 5) d and f.

7) Term and Amendment. This MOU anticipates acquisition of the Property by Forterra on or before September 29, 2017. If acquisition of the Property is not completed on or before that date, this MOU will terminate and the City may seek to directly acquire the Property. If Forterra acquires the Property prior to that date, this MOU will terminate on the earlier of execution of a fully authorized Transactional Document by the City and Forterra for conveyance of the Property to the City on or before December 31, 2020. The parties may mutually agree to extend this MOU beyond these dates. Any amendment to this MOU must be in writing and mutually agreed to by the City and Forterra.

8) Limitations on Forterra. Forterra is precluded from disposing of the Property during the term of this MOU.

9) Authority. Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

Entered into this 2nd day of August, 2017.

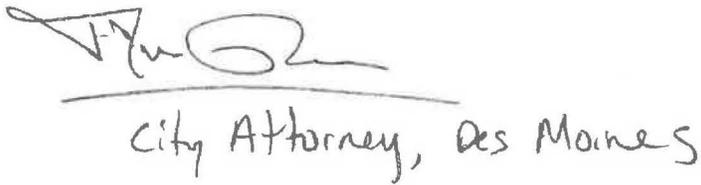
Forterra, a Washington non-profit corporation

BY: 
Title: President

City of Des Moines, a political subdivision of the State of Washington

BY:  City Manager
Name, Title
City of Des Moines

Approved to form


City Attorney, Des Moines

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LEASE AGREEMENT

BY THIS LEASE AGREEMENT (the "Lease"), Forterra NW, a Washington non-profit corporation ("Forterra") leases to the City of Des Moines, a Washington municipal government (the "City") that real property and all improvements located thereon and all rights appurtenant thereto, as described on Exhibit A, upon the terms and conditions set forth below. The real property, improvements and rights leased hereby are referred to in this Lease collectively as the "Property".

SECTION 1 OCCUPANCY

1.01 Lease Term. This Lease shall commence on September 29, 2017 ("Commencement Date") and expire on December 31, 2020, or upon the execution of a fully authorized Transactional Document by the City and Forterra for conveyance of the Property to the City, unless extended by mutual written agreement of the parties to this Lease.

1.02 Occupancy. The City's occupancy of the Property shall commence beginning on the Commencement Date.

1.03 Condition of Property. The City has had an opportunity to inspect the Property and enters into this Lease solely in reliance on the City's own examination and not by reason of any representation by Forterra. The Property is accepted in its present condition "AS IS, WHERE IS".

SECTION 2 USE OF PROPERTY

2.01 Permitted Uses. the City may use the Property for any lawful purposes. Forterra disclaims any warranty that the Property is suitable for the intended uses.

2.01 Sublease. the City may sublease the Property on terms and conditions acceptable to the City. Nothing in any sublease shall relieve the City from any of its rights, duties or obligations under this Lease.

SECTION 3 PAYMENT

3.01 Rent. There shall be no monthly or other rent payable under this Lease. The City shall be responsible for the management, property taxes and other obligations set forth in the Memorandum of Understanding between Forterra and the City dated August 31, 2017 and in any amendments thereto, and as set forth below.

SECTION 4 RESERVATIONS

4.01 Access. Forterra shall have the right to enter the Property during normal business hours after 24 hours advance notice to the City for any lawful purpose under this Lease and to examine the condition of the Property and to ensure compliance with the terms of this Lease. In all cases of Forterra's entry into the Property, the City shall have the right to have a representative present.

SECTION 5 REPAIRS, MAINTENANCE AND CARE OF PROPERTY

5.01 Repairs and Maintenance. The City shall, at its sole cost and expense, keep and maintain the Property and all improvements thereon, and all facilities appurtenant thereto (regardless of ownership), in good order and repair and in safe condition for the safe conduct of any activities or enterprises conducted on the Property by the City.

5.02 Care of Property. The City shall, at its sole cost and expense, keep and maintain the whole of the Property, including all improvements, in a clean, sanitary and attractive condition. Forterra shall not be called upon to make any improvement or repair of any kind upon the Property, and the Property shall at all times be kept and used in accordance with the laws of the State of Washington and ordinances of the governments of local jurisdiction at the sole cost and expense of the City. The City will permit no waste, damage or injury to the Property.

SECTION 6 SPECIAL RESTRICTONS

6.01 Permits and Conformance with Laws.

(a) The City shall obtain all building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Lease and the City's permitted uses, including construction of any improvements, changes, alterations, additions, repairs, maintenance to or replacement of the Property, or for the conduct of any business upon the Property at the sole cost and expense of the City. Copies of such permits, licenses, permissions, consents, and approvals shall be supplied to Forterra on request.

(b) The City shall conform to all applicable laws, regulations, permits, orders, or requirements of any public authority affecting the Property and the use thereof, and shall correct at the City's own cost and expense any failure of compliance created through the City's fault or by reason of the City's use. In no event shall the City undertake or suffer any activity to be conducted upon the Property which constitutes a nuisance or which is a threat to the health or welfare of the general public.

(c) The City shall cause all work on the Property and all business conducted thereon during the term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

SECTION 7 UTILITIES, TAXES, AND LIENS

7.01 Utilities. The City shall promptly pay when due all charges for heat, light, water, sewer and refuse and for all other public utilities which shall be used in or charged against the Property during the full term of this lease. Forterra shall not be liable for the failure of any such services for any reason whatsoever. The City shall indemnify and hold Forterra harmless against any loss, liability, or expense resulting from any failure of the City to pay all such charges when due.

7.02 Taxes and Assessments.

(a) The City shall pay during the term of this Lease all taxes and other governmental charges of any kind applicable or attributable to the Property, the City's leasehold interest therein, and the City's use and enjoyment thereof. Forterra shall cooperate with the City in any effort to have the Property declared eligible for tax-exempt status given its intended use by the City as a public park.

(b) The City shall pay all assessments that are legally required to be paid now or may be charged during the lease term to the Property or improvements thereon. The City shall not cause or suffer the imposition of any assessment upon the Property without the prior written consent of Forterra. In the event any new assessment is proposed which affects the Property, the City shall immediately notify Forterra of such proposal after the City has knowledge or receives notice thereof.

7.03 Liens. The City shall not suffer or permit any lien to be filed against Forterra's interest in the Property, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the City. If any such lien is filed, the City shall cause the same to be discharged of record within thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in writing by Forterra in advance. the City shall indemnify Forterra for any costs, damages or expenses (including attorneys' fees and court costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to termination or cancellation of this Lease.

SECTION 8 KING COUNTY'S INDEMNITY; INSURANCE REQUIREMENTS

8.01 Indemnity. To the fullest extent permitted by law, the City shall indemnify, defend and hold harmless Forterra, and all officers, agents and employees of Forterra, from and against all claims arising out of or resulting from the City's use of the Property under this Lease. A "claim" as used in this Lease means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. The City's obligation to indemnify, defend, and hold Forterra harmless includes any claim by the City's agents, employees, representatives, or any subcontractor or its employees. The City expressly agrees to indemnify, defend, and hold harmless Forterra for any claim arising out of or incident to the City's or any subcontractor's performance or failure to perform under this Lease.

8.02 Insurance Requirements. To the extent that the City maintains insurance of any type that is or may provide coverage to the Property or to users of the Property, the City shall take all necessary steps to see that the Property is in fact included within the coverage of such insurance policies, and shall instruct such insurers that Forterra be named as an additional insured on all general liability, excess, umbrella, and property insurance policies applicable to the Property.

If the City is self-insured, evidence of its status as a self-insured entity shall be provided to Forterra if requested by Forterra.

In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described above, the parties to this Lease shall proceed cooperatively to settle the loss and collect and apply the proceeds of such insurance.

SECTION 9 DAMAGE OR DESTRUCTION

9.01 Damage or Destruction. In the event the Property is damaged to such an extent as to render the same untenable in whole or in a substantial part thereof, or is destroyed, it shall be optional with Forterra (with consultation with the City) to repair or rebuild the same, and after the happening of any such contingency, the City shall give Forterra immediate written notice thereof.

SECTION 10 HAZARDOUS, TOXIC, OR HARMFUL SUBSTANCES

10.01 Hazardous, Toxic, or Harmful Substances.

(a) The City shall not keep on or about the Property, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out the City's permitted uses under Subsection 2.01 (Permitted Uses) and unless the City fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. The City shall:

(1) Immediately notify Forterra of: all spills or releases of any Hazardous Substance affecting the Property; all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended; and

(2) On request, provide copies to Forterra of any and all correspondence, pleadings, and/or reports received by or required of the City or issued or written by the City or on the City's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Property.

(b) The City shall indemnify, defend, and save harmless Forterra and its employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of the City's use, storage, handling, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Property or that of the City's employees, agents, assigns, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

SECTION 11 ASSIGNMENTS

11.01 Assignment. The City may sublease the Property or any interest therein, with the prior written consent of Forterra, which consent will not be unreasonably withheld. Any sublease shall not relieve the City from any obligations under this Lease, and the City shall remain joint and severally liable as primary obligor and not as surety. Forterra may not assign its rights or obligations under this Lease without the prior written consent of the City.

SECTION 12 IMPROVEMENTS

12.01 Authorized Improvements. No improvement shall be placed, replaced or materially altered on the Property without the prior written consent of Forterra, which consent shall not be unreasonably withheld. Cosmetic alterations and routine maintenance will not require Forterra's approval.

12.02 Ownership of Improvements. During the Term of this Lease, any improvements constructed by the City, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of the City. At the expiration or earlier termination of this Lease, all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein excluding the City's furniture and non-appurtenant fixtures and equipment shall become the property of Forterra.

12.03 Condition at End of Lease. Upon vacating the Property at the expiration or sooner termination of this Lease, the City shall leave the Property and all improvements thereon in the degree of repair and cleanliness required to be maintained by the City during the Term of this Lease subject to reasonable wear and tear and shall peaceably surrender the same to Forterra.

SECTION 13 DEFAULT AND REMEDIES

13.01 Default. In the event of any material breach of any provision of this Lease by the City, the breach, after expiration of any grace period as provided in this subsection, shall be deemed a default entitling Forterra to cancel this Lease and seek any other remedies set forth in this Lease or otherwise available at law or equity. Forterra shall deliver to the City notice of the breach and a demand that the same be remedied immediately. The City shall not be in default if the breach pertains to the payment of money and the City cures the breach within forty-five (45) days after receipt of the notice. If such breach is non-monetary in nature, and, as determined by Forterra, is not reasonably susceptible of being cured in said forty-five (45) days (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), the City shall commence to cure such breach within said period and diligently pursue such action with continuity to completion.

13.02 Survival. All obligations of the City to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Lease and shall continue as obligations until fully performed. All clauses of this Lease that require performance beyond the termination or expiration date including, without limitation, all indemnification obligations, shall

survive the termination or expiration date of this Lease. Upon expiration or earlier termination of this Lease, the rights of the City in and to the Property and all improvements hereon, unless specified otherwise in this Lease, shall cease.

13.03 Remedies Cumulative. The specified remedies to which Forterra may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Forterra may lawfully be entitled in case of any breach or threatened breach by the City of any provision of this Lease.

13.04 Nonwaiver. Waiver by Forterra of strict performance of any provision of this Lease shall not be a waiver of nor prejudice Forterra's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance by Forterra following a breach by the City of any provision of this Lease shall not constitute a waiver of any right of Forterra with respect to such breach and Forterra shall be deemed to have waived any right hereunder only if Forterra shall expressly do so in writing.

13.05 Force Majeure. The City's failure to comply with any of the obligations under this Lease shall be excused only if due to causes beyond the City's control and without the fault or negligence of the City, including acts of nature, acts of the public enemy, acts of any government, fires, floods, epidemics, and strikes.

SECTION 14 GENERAL PROVISIONS

14.01 Governing Law. This Lease shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue shall be in the City. The terms of this Lease shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

14.02 No Partnership. Forterra is not a partner nor a joint venturer with the City in connection with the activities conducted and business carried on under this Lease, and Forterra shall have no obligation with respect to the City's debts or other liabilities.

14.03 The City's Authority. Persons executing this Lease on behalf of the City represent that they are authorized to do so and represent and warrant that this Lease is a legal, valid, and binding obligation on behalf of the City, and is enforceable in accordance with its terms.

14.04 Forterra's Authority. Persons executing this Lease on behalf of Forterra represent that they are authorized to do so and represent and warrant that this Lease is a legal, valid, and binding obligation on behalf of Forterra, and is enforceable in accordance with its terms.

14.05 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of the City and Forterra hereunder.

14.06 Amendments. Any amendments, revisions, supplements, or additions to this Lease or the attached exhibits shall be made in writing executed by the parties hereto, and neither Forterra nor the City shall be bound by verbal or implied agreements. Such changes may be made by re-execution of the signature page and the deletion and addition of the appropriate new effective pages or exhibits governing the change, if any.

14.07 Entire Lease. This written Lease, the Memorandum of Understanding and the Purchase and Sale Agreement or the successor or replacement of any of the foregoing contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

14.08 Costs and Attorney Fees. If by reason of any default on the part of either party it becomes necessary for the other party to employ an attorney or in case either party shall bring suit for any breach of any provision of this Lease, then and in any of such events the substantially prevailing party shall be entitled to recover reasonable attorney fees and all costs and expenses expended or incurred by the prevailing party in connection with such default or action from the other party. Any such action shall be commenced and maintained in King County, Washington.

14.09 Notices and Submittals. Any notice or submittal given under this Lease shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted, or by email if receipt is acknowledged. Changes of address may be given in accordance with this section. Any notice or submittal given under this Lease shall be addressed:

To Forterra:

Forterra NW
Attn: Staff Attorney
901 Fifth Avenue, Suite 2200
Seattle, Washington 98164
adraper@forterra.org

To the City:

City of Des Moines
Attn: Michael Matthias, City Manager
21630 11th Ave S, Suite A
Des Moines, Washington 98198
mmatthias@desmoineswa.gov

FORTERRA NW

By: 

Title: EVP-000

Date: 25 September 2017

CITY OF DES MOINES

By: 

Title: City Manager

Date: 9/27/17

Approved to Form

city Attorney

EXHIBIT ALegal Description of Property

LOTS 9 THROUGH 16, INCLUSIVE, IN BLOCK 41 OF TOWN OF DES MOINES, AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 165, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED STREETS OR ALLEYS ADJOINING OR ABUTTING THE SAME;

SITUATE IN THE CITY OF DES MOINES, COUNTY OF KING, STATE OF WASHINGTON.

Parcel #: 2009003295

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2019 4Culture Arts Sustained Support Grant Acceptance

FOR AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

ATTACHMENTS:

- 1. Contract for Grant Acceptance

DATE SUBMITTED: May 1, 2019

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: *DJB* _____

- Legal *TS*
- Finance *Baw*
- Courts _____
- Police _____

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

Purpose and Recommendation

The purpose of this agenda item is to seek City Council acceptance of a 2019 4Culture Grant to support the City's Arts Commission.

Suggested Motion

Motion 1: "I move to accept the grant from 4Culture for 2019 Arts Sustained Support in the amount of \$7,500 for the City of Des Moines Arts Commission programs, and authorize the City Manager to sign the grant documents substantially in the form as attached."

Background

The City of Des Moines Parks, Recreation and Senior Services Department applies annually for 4Culture Grants on behalf of the Arts Commission and the Department to provide funding for its programs and services.

Discussion

4Culture, the Cultural Development Authority of King County funded by King County Hotel-Motel tax, supports local arts agencies by providing sustaining funds and other project specific grant awards. For 2019, staff applied for a 4Culture Arts Sustained Support Grant in the amount of \$7,500 for City of Des Moines Arts Commission cultural programs such as the Beach Park Summer Concert Series.

Alternatives

Not accept the 4Culture Grant for 2019 Arts Sustained Support (not recommended).

Financial Impact

Acceptance of this grant would provide a \$7,500 revenue sources to support Arts Commission programs and services as part of the City's 2019 budget process.

Recommendation

The Parks, Recreation and Senior Services Department and Arts Commission support this request.



TEL 206.296.7580
TTY 711

101 PREFONTAINE PL S
SEATTLE WA 98104

WWW.4CULTURE.ORG

GRANT INFORMATION

CONTRACTOR INFORMATION

City of Des Moines
Shannon Kirchberg
Arts Commission Liaison
1000 S 220th Street
Des Moines, Washington 98198
(206) 870-9370

Your Contract #: 119198A
Arts Sustained Support - 1750
Motion #: 2019-13

PROGRAM INFORMATION

Attached is your Contract with 4Culture for \$7,500.00 for the *2019-2020 Arts Sustained Support - LAA* project. The contract starts on 01/01/19 and ends on 12/31/19.

For questions, contact Bret Fetzer at bret.fetzer@4culture.org or (206) 263-1599.

SCOPE OF SERVICE

City of Des Moines and 4Culture, the Cultural Development Authority of King County, mutually agree that the following services be provided in accordance with the application submitted to and approved by the 4Culture Board.

Support for 2019 Programs, including events or activities with actual expenses in excess of the amount of this organization's Arts Sustained Support award, occurring between Jan 1 and Dec 31 of this year, and which are open and publicized to the community. Funds are provided on a cost reimbursement basis, including any overhead, personnel, rent, insurance, and related operating expenses necessary as part of the production of activities and experiences supported by this award.

Payable upon completion of events or activities that fulfill the requirements above and submittal of an invoice, including documentation regarding:

- Final project budget, actual
- Samples of programs, brochures, or other marketing materials featuring the 4Culture logo, if available
- Photos of the event, if available

Final payment will not be made until acknowledgment is submitted

PUBLIC BENEFIT

The Des Moines Arts Commission prides itself on the fact that all of its events are offered to the community at no charge. As a commission that is funded by the City of Des Moines it strives to continue to find local funding to ensure that all of the community has the opportunity to enjoy its events at no cost. In offering these events at no cost, the commission enables participation from all citizens no matter their income level. These free community events bring our residents together at a fun, welcoming, inclusive, diverse event of which encourages interaction with performing artists from the surrounding area. Our sculpture project Art on Poverty Bay is an out door public gallery. We offer free walking tours to all. These sculptures stay on display for 2 years and are rotated out every other year with new, engaging sculptures that capture the imagination and engage our community.

CONTRACTOR INSTRUCTIONS

Please electronically sign this Contract within two weeks of receipt and return any required enclosures. You will not be able to make changes to this Contract. If there is an error in the document, or if you need to request changes in your Scope of Service or other items, please contact your Program Manager listed above.

1. **Services** – Please review the information, Scope of Service, and Public Benefit sections above carefully. These explain the services you are agreeing to provide in accordance with the application you submitted to 4Culture.
2. **Enclosures** – Please download and complete any required enclosures listed below and e-mail to 4Culture at attachments@4culture.org. Enclosures with private information (e.g. social security numbers on a W-9) may be mailed to 4Culture, 101 Prefontaine Pl S, Seattle, WA 98104-2672.
 - a. Items to be returned **at the time you sign the contract**:
 - W-9
 - b. **At the time you are requesting payment**, you will need to provide appropriate documentation such as an interim invoice, final invoice, evaluation, or digital photos. Please review your specific grant program requirements at 4Culture’s website: Manage Your Award.
3. **4Culture Logo** – For details of the requirements for acknowledging 4Culture support, please refer to the Letter of Agreement. The 4Culture logo is available for download in PDF, EPS, and Jpeg formats.

Promote your 4Culture funded project using our Media Kit. Find out what’s required, what you can do, and how we can help.

4. **Signature** – Follow the link in the e-mail message - you will be walked through a few simple steps to read and sign the contract at DocuSign. A copy of the Contract will be e-mailed to you as a PDF after it has been signed by 4Culture’s Executive Director.

LETTER OF AGREEMENT

Contractor agrees to provide the services as specified on the Grant Information sheet.

4Culture, the Cultural Development Authority of King County agrees to pay the Contractor for services described on the Grant Information sheet. Payment will be made upon receipt of the invoices provided by 4Culture and any other required documents as specified in the scope of service or listed as Enclosures in the Grant Information sheet.

4Culture is organized pursuant to King County Ordinance 14482 and RCW 35.21.730, et seq. RCW 35.21.750 provides as follows: "[All] liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority."

The legislative authority of 4Culture has found and declared that providing funds to Contractor to reimburse Project costs in consideration of services provided hereunder constitutes a public purpose with the meaning of Article VII, Section 1 of the Washington State Constitution for which public funds may properly be expended or advanced.

Arts and Heritage organizations receiving funding from King County through the cultural development authority shall comply with all applicable federal, state and local laws pertaining to access for people with disabilities, and nondiscrimination in employment and the provision of services to the public, as delineated in K.C.C. 2.48.125.

In providing services under this Agreement, the Contractor is an independent contractor, and shall determine the means of accomplishing the results contemplated by this Agreement. Neither the Contractor nor its officers, agents or employees are employees of 4Culture for any purpose. 4Culture assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the Contractor, its employees and/or others by reason of this Agreement. Contractor shall protect, defend, indemnify and save harmless 4Culture and its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits, or taxes; (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Agreement. The Contractor shall also defend, indemnify, and save harmless 4Culture, and its officers, agents, and employees, from and against any and all claims made by Contractor's employees arising from their employment with Contractor.

If any patentable or copyrightable material or article should result from the Project, all rights accruing from such material or article shall be the sole property of Contractor. Contractor agrees to and does hereby grant to 4Culture, an 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 solely for non-commercial publicity and marketing purposes. The foregoing license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of Contractor which are modified for use in the performance of this Agreement. 4Culture will not use, license, distribute or gift any of Contractor's work, material, article or method for profit.

To the full extent provided by applicable law, the Contractor shall protect, defend, indemnify, and save harmless 4Culture 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 acts or omissions of the Contractor, its officers, employees, and/or agents, except to the extent resulting from 4Culture's sole negligence. The Contractor agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For the purpose of this agreement, the Contractor, by mutual negotiation, hereby waives, as respects 4Culture only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

The Contractor shall procure and maintain for the duration of this Agreement insurance as described below:

A. Contractor shall procure, at its sole cost and expense, Commercial General Liability insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Contractor, his agents, representatives, employees, and/or subcontractors. The costs of such insurance shall be paid by the Contractor or subcontractors. Each policy shall be written on an "Occurrence" basis.

B. Minimum Scope of Insurance shall be Insurance Services Office form number (CG 00 01 Ed. 11-88)—Minimum Combined Single Limit of \$1,000,000 BI & PD with a General Aggregate per project.

C. Deductibles and Self Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, 4Culture. The deductible and/or self-insured retention of the policies shall not apply to the Contractor's liability to 4Culture and shall be the sole responsibility of the Contractor.

D. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability Policies

a.) 4Culture, its officers, employees and agents are to be covered as primary additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.

b.) To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects 4Culture, its officers, employees, and agents. Any insurance and/or self-insurance maintained by 4Culture, its officers, employees, or agents shall not contribute with the Contractor's insurance or benefit the Contractor in any way.

c.) The Contractor's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies

a.) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except as reduced in aggregate by paid claims, at any point during the life of this contract. No material change, or cancellation or nonrenewal of any policy required by this contract shall occur without thirty (30) days' prior written notice to 4Culture.

E. Acceptability of Insurers

Unless otherwise approved in writing by 4Culture, insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

F. Verification of Coverage

4Culture, reserves the right to request that contractor submit the certificate(s) of insurance evidencing compliance with all requirements set forth above.

In the event 4Culture incurs any judgment, award and/or cost arising there from including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor. Claims shall include, but are not 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.

The Contractor agrees to acknowledge **4Culture** support in all marketing and promotional materials, websites, brochures, press releases, advertisements, signage and other related materials during the period this contract is in force, by using either the credit line "this project was supported, in part, by 4Culture/King County Lodging Tax", and/or whenever possible, by the use of the 4Culture logo. See "manage your awards" on the 4Culture website for examples of logo use for your specific award program.

4CULTURE:

CONTRACTOR:

APPROVED AS TO FORM:

-
City Attorney

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Grant acceptance and Economic Development Partnership Agreement with Port of Seattle

ATTACHMENTS:

1. Port of Seattle Economic Development Partnership Agreement

AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: May 1, 2019

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DJS

- Legal T6
 Finance BAW
 Courts _____
 Police _____

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

Purpose and Recommendation: The purpose of this item is to seek Council acceptance of Port of Seattle Phase 3 grant funding in the amount of \$31,140 and to approve the Economic Development Partnership Agreement.

Suggested Motion “I move to accept the Phase 3 grant funding from the Port of Seattle in the amount of \$31,140 and authorize the City Manager to sign the Economic Development Partnership Agreement substantially in the form as attached.”

Background: The Port of Seattle has established the Century Agenda to “add 100,000 jobs through economic growth led by the Port of Seattle, for a total of 300,000 port-related jobs in the region.” This in keeping with requirements under RCW 53.08.245 that established the importance and central role that port districts can and need to perform in regard to economic development activities. The RCW that authorizes economic development programs states:

- (1) It shall be in the public purpose for all port districts to engage in economic development programs.”

The Port’s Century Agenda identifies efforts to work with local jurisdictions to further partnerships and accomplish a number strategic objectives, including:

- Position the Puget Sound region as a premier international logistics hub
- Advance this region as a leading tourism destination and business gateway
- Use our influence as an institution to promote small business growth and workforce development
- Be the greenest, and most energy efficient port in North America
- The Port of Seattle will use its real estate, capital assets and financial capabilities to accomplish the Century Agenda.

In order to further these strategic objectives of the Century Agenda, the Port has initiated the Economic Development Partnership Program offering cities in King County non-competitive grants based on population to further economic development activities, “that align with city’s economic development strategies and support the Century Agenda.”

Discussion:

Building on the successful outcomes of the Phase 1 and 2 Port of Seattle Economic Development Partnership Program, Phase 3 funds will be utilized to continue work toward the redevelopment of the Des Moines Marina.

Phase 1 procured THG as a consultant and accomplished a feasibility analysis, potential development scenarios for the Marina floor as well as completion of a parking study to clarify needs in the downtown and Marina District. Phase 2 funds were utilized to further contract with THG Consulting (sub-consultants Skylab Architecture and Concord Group) to refine the market analysis, complete financial feasibility work and concept plans for the Marina Steps. Key inputs to Phase 2 included the results of outreach to key stakeholders, including the public and the development community. A development strategy for early phase development was completed and the results of each phase were presented to the Des Moines City Council in an extended study session. City Council was very engaged in the process of understanding and developing strategic approaches as we move forward.

The City of Des Moines (City) is moving into Phase 3 of the marina redevelopment efforts through building off of the successes of Phase 1 and 2. This grant will be used for development and publication of a Request for Proposal (RFP) or possibly a Request for Qualifications (RFQ) for a refined design of Marina Steps to possibly incorporate a water feature, mixed use retail/office space, makerspace and hotel. The design approach will increase connectivity between the downtown and the waterfront through sustainable design and improvements to create a welcoming and lively environment that will spur economic growth and further development within the community and region. The grant resources will also be used to attract and provide information to developers with an interest in participating through the RFP process. There will be a significant community input process as part of developing the RFP.

Alternatives:

There are no non-competitive grant opportunities to accomplish the purposes described above.

Financial Impact

The City has provided a 100% match of the previous Port of Seattle grant and will continue to do so with Phase 3 efforts. The proposed, non-competitive grant amount is \$31,140 to be matched with \$31,140 from the City to cover the costs of development and publishing of the completed RFP/RFQ.

Recommendation or Conclusion

It is recommended that the Council pass the motion as written.



**ECONOMIC DEVELOPMENT PARTNERSHIP AGREEMENT
BETWEEN
THE PORT OF SEATTLE AND CITY OF DES MOINES
S-00319827**

This Economic Development Partnership Agreement (the "Agreement") is made by and between the Port of Seattle (the "Port") and the City of Des Moines ("Agency"), both municipal corporations of the State of Washington (each, a "Party" or, collectively, the "Parties").

RECITALS

WHEREAS, engaging in the promotion of economic development is a recognized Port purpose authorized under RCW 53.08.245; and

WHEREAS, RCW 35.21.703 similarly authorizes cities to engage in economic development programs; and

WHEREAS, RCW 53.08.240(2) permits the Port to contract with another municipality to perform such undertakings each is authorized to perform; and

WHEREAS, the Port Commission of the Port of Seattle established the Economic Development Partnership Program (the "Program"), to advance the Port's Century Agenda, promote a dramatic growth agenda, support the creation of middle class jobs and help address the lack of economic development funding for local projects; and

WHEREAS, grant funding across the region is very limited for cities that want to pursue economic development projects or initiatives, and Washington State has not had an economic development grant program for over 20 years; and

WHEREAS, the Program will provide 38 King County cities per capita funding to advance local economic development throughout the region, and requires a 50% local match by the cities that receive the grants; and

WHEREAS, the Program will help the Port advance regional economic vitality through focused partnerships with King County cities; and

WHEREAS, the Program will make grants to cities that pursue programs and projects that stimulate business development, job creation and community revitalization, such as small business development, industry retention and expansion, and other economic development projects that support new investment and job

creation;

NOW, THEREFORE the parties agree as follows:

1. Purpose. The purpose of this Agreement is to establish a contractual arrangement under which the Port will pay the Agency Program funds in the amount set forth on Section 2 solely for the purpose of carrying out the local initiative described in Exhibit A, attached and incorporated hereto by this reference (the "Project"). This Agreement shall be interpreted in furtherance of this purpose.
2. Responsibilities of the Port. The Port shall contribute Thirty-one Thousand One Hundred Forty and 00/100 Dollars (\$31,140.00) (the "Grant Funds") to assist the Agency in funding the Project. The Port shall disburse the Grant Funds to the Agency no later than thirty (30) days after receipt of a complete and correct invoice detailing those Project deliverables completed in accordance with Exhibit A. Subject to the requirements of this Section and of Section 18 (where applicable), the Port shall make the final payment of the Grant Funds to the Agency no later than November 1, 2019, or receipt of the final report, whichever occurs later.
3. Responsibilities of the Agency.
 - 3.1 The Agency shall contribute local funds equivalent to at least fifty percent (50%) of the Grant Funds towards the Project.
 - 3.2 The Agency may contract with local non-profits to complete the Project or elements of the Project; *provided*, that the Port shall not, under any circumstance, disburse the Grant Funds to any of the Agency's contractors or subcontractors.
 - 3.3 The Agency shall complete the Project by November 1, 2019.
4. Term. This Agreement shall become effective as of the date the Port executes this Agreement and shall terminate on November 1, 2019, unless earlier terminated under another provision of this Agreement.
5. Termination for Convenience. The Port may terminate this Agreement at any time for any reason, by giving the Agency thirty (30) days' written notice. In the event the Agency has completed any portion of the Project by the time it receives the Port's notice of termination, the Port shall pay the Agency the percentage of the Grant Funds attributable to the Agency's completed portion of the Project.
6. Termination for Default. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Agency, the Port shall be entitled, by written or oral notice to the Agency, to terminate Agreement for breach of any of the terms and to have all other rights against the Agency by reason of the Agency's breach as provided by law.
7. Waiver. Failure at any time of the Port to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of the

Port to enforce such provision at any subsequent time. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written amendment signed by the Parties

8. Partial Invalidity. If any provision of this Agreement is or becomes void or unenforceable by force or operation of law, all other provisions hereof shall remain valid and enforceable.

9. Indemnification and Hold Harmless Agreement. The Agency shall defend, indemnify, and hold harmless the Port, its Commissioners, officers, employees, and agents (hereafter, collectively, the "Port") from all liability, claims, damages, losses, and expenses (including, but not limited to attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of or related to the fulfillment of this Agreement; *provided*, however, if and to the extent that this Agreement is construed to be relative to the construction, alternation, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving or demolition in connection therewith, and therefore subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (i) the Port, and (ii) the Agency, its agents, or its employees, it is expressly agreed that the Agency's obligations of indemnity under this paragraph shall be effective only to the extent of the Agency's negligence. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this paragraph. This paragraph shall not be construed so as to require the Agency to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port.

In any and all claims against the Port, by any employee of the Agency, its agent, anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable, the indemnification obligation of this paragraph shall not be limited in any way by any limitation on the amount or type of damages compensation benefits payable by or for the Agency, or other person under applicable industrial insurance laws (including, but not limited to Title 51 of the Revised Code of Washington), it being clearly agreed and understood by the Parties hereto that the Agency expressly waives any immunity the Agency might have had under such laws. By executing this Agreement, the Agency acknowledges that the foregoing waiver has been mutually negotiated by the parties.

The Agency shall pay all attorneys' fees and expenses incurred by the Port in establishing and enforcing the Port's right under this paragraph, whether or not suit was instituted.

10. Comply with All Laws. The Agency shall at all times comply with all federal, state and local laws, ordinances and regulations, including but not limited to all environmental laws, which in any manner apply to the performance of this

Agreement.

11. Integration. This Agreement, together with the attached Exhibit A, constitutes the entire agreement between the Parties and unless modified in writing by an amendment executed by the Parties, shall be implemented only as described herein.
12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County.
13. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the Agency and the Port.
14. No Entity Created. The Parties agree that nothing in this Agreement shall be construed to create a joint entity between the Agency and the Port.
15. Notices. Notices to the Port shall be sent to the following address:

Port of Seattle
 Economic Development Division
 P. O. Box 1209
 Seattle, WA 98111

Notices to the Agency shall be sent to the following address:

City of Des Moines
 Michael Matthias, City Manager
 21630 11th Ave S
 Des Moines, WA 98198

16. Audits and Retention of Records. The Agency in and make all books, records and documents (the "Records") relating to the performance of this Agreement open to inspection or audit by representatives of the Port or Washington State during the term of this Agreement and for a period of not less than six (6) years after termination of the Agreement; *provided*, that if any litigation, claim or audit arising out of, in connection with or related to this Agreement is initiated, the Agency shall retain such Records until the later of (a) resolution or completion of litigation, claim or audit; or (b) six (6) years after the termination of this Agreement.

17. Amendment. This Agreement may only be amended by written agreement of the Parties.

18. Dispute Resolution. The Parties shall use their best, good faith efforts to cooperatively resolve disputes that arise in connection with this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the date first set forth above.

PORT OF SEATTLE

CITY OF DES MOINES

By: Sherry Weiss
Buyer, Purchasing

By: Michael Matthias
City Manager

Signature

Signature

Dated

Dated



EXHIBIT A - PROJECT

Project Description:

Building on the successful outcomes of the Phase 1 and 2 Port of Seattle Economic Development Partnership Program, Phase 3 funds will be utilized to continue work toward the redevelopment of the Des Moines Marina. Phase 1 procured THG as a consultant and accomplished a feasibility analysis, potential development scenarios for the Marina floor as well as completion of a parking study to clarify needs in the downtown and Marina District.

Phase 2 funds were utilized to further contract with THG Consulting (sub-consultants Skylab Architecture and Concord Group) to refine the market analysis, complete financial feasibility work and concept plans for the Marina Steps. Key inputs to Phase 2 included the results of outreach to key stakeholders, including the public and the development community. A development strategy for early phase development was completed and the results of each phase were presented to the Des Moines City Council in an extended study session. City Council was very engaged in the process of understanding and developing strategic approaches as we move forward.

The City of Des Moines (City) is moving into Phase 3 of the marina redevelopment efforts through building off of the successes of Phase 1 and 2. This grant will be used for development and publication of a Request for Proposal (RFP) or possibly a Request for Qualifications (RFQ) for a refined design of Marina Steps to incorporate a water feature, mixed use retail/office space, makerspace and hotel. The design approach will increase connectivity between the downtown and the waterfront through sustainable design and improvements to create a welcoming and lively environment that will spur economic growth and further development within the community and region. The grant resources will also be used to attract and provide information to developers with an interest in participating through the RFP process.

The City has provided a 100% match of the previous Port of Seattle grant and will continue to do so with Phase 3 efforts. The proposed, non-competitive grant amount is \$31,140 to be matched with \$31,140 from the City to cover the costs of development and publishing of the completed RFP/RFQ.

The elements of the Phase 3 grant are set forth in the scope of work provided in the table below.

Scope of Work Description:

Project or component:	Project goal(s):	Outcome(s) and final deliverable(s):	Estimated completion:	Metrics or measures of success:
Continue to build on the success of the on-going public/private partnership between the City and the Port through further efforts of Marina redevelopment by preparing an RFQ/RFP for the Marina Steps and associated development.	<ul style="list-style-type: none"> Work with Robert Holmes of THG, LLC. And sub-consultants to complete RFQ/RFP for consultant/design team to create a refined design for Marina Steps to include a water feature, mixed use retail/office space, hotel and makerspace, similar to the Seattle Harbor Steps. 	<ul style="list-style-type: none"> Provide list of respondents 	<ul style="list-style-type: none"> Have a complete RFQ/RFP published and distributed with a target date by the end of July 2019 with response due date of 4-6 weeks after publication. 	<ul style="list-style-type: none"> Report number of respondents and an analysis of skills and experience related to project proposal.
Report to City Council	<ul style="list-style-type: none"> THG Consultants will report to City Council the results of the Phase 3 grant 	<ul style="list-style-type: none"> City Council presentation 	<ul style="list-style-type: none"> Prior to RFP/RFQ being published and distributed 	<ul style="list-style-type: none"> Completed presentation

Connection to Port of Seattle interests:

The proposed project moves the Port of Seattle's Century Agenda goals forward. The further development and improvements of the Des Moines downtown and waterfront will enhance the destination value of Des Moines consistent with one of the significant Century Agenda goals. Building on the success of the public/private partnership between the Port of Seattle, Panattoni (the private developer) and the City of Des Moines on the Des Moines Creek Business Park, Marina redevelopment will serve as a valuable resource to the 4,000 to 5,000 new employees at the Business Park. Employment creation is also a significant goal of the Century Agenda, and Marina redevelopment will not only create jobs, but will serve as an amenity for these new employees.

Proposed improvements and pedestrian connectivity to the Marina District will create a dynamic sense of place in the Des Moines Marina, further advancing the area as a tourism destination.

The RFP/RFQ developed with Phase 3 funds will require sustainable design aspects to be incorporated in the redevelopment, aligning with the mission of the Port to have a far reaching "green" influence within the region.

Project Budget:

Category:	Port of Seattle Funds:	City Monetary Matching Funds:	City In-kind Matching Funds:	Total Funds (Including In-Kind):
Consultants	\$31,140	\$31,140		\$62,280
<u>Total Funds:</u>	\$31,140	\$31,140		\$62,280
<u>Percentage contribution to Port Funds*:</u>	100%	100%		

*City monetary and in-kind matching funds must add up to at least 50% of the Port of Seattle's total contribution.

Collaboration with Partners:

The City will keep the Soundside Alliance apprised throughout the process. There is potential for the City to coordinate with the Southside Chamber of Commerce nearer to the building phases of development. The city may also work with the Urban Land Institute and the Small Business Development Center of Highline College.

Use of Consultants or Contractors:

Robert Holmes of THG, LLC will be contracted to develop the RFQ/RFP

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing to consider Draft Ordinance No. 19-048 relating to zoning, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050.

ATTACHMENTS:

1. Draft Ordinance No. 19-048
2. Ordinance 1714
3. Emailed comments from Noble Health

FOR AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: May 2, 2019

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: *DSS*

- Legal *VB*
 Finance _____
 Courts _____
 Police _____

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

Purpose and Recommendation

The purpose of this agenda item is for the City Council to hold a public hearing to consider Draft Ordinance No. 19-048 (Attachment 1) amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050.

Option 1 – Department of Commerce review complete

Suggested Motions

Motion 1: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No 19-048 on first reading.”

Motion 2: “I move to enact Draft Ordinance No. 19-048 amending the use table in DMMC 18.52.010B and adding and revising definitions in DMMC 18.01.050 to make the interim zoning controls enacted by Ordinance 1714 permanent.”

Option 2 – Department of Commerce review not complete

Motion: “I move to pass Draft Ordinance No. 19-048 to a second reading on June 27, 2019 or as soon thereafter as the matter may be heard.”

Background

The City of Des Moines adopted a policy for identifying and siting Essential Public Facilities (EPF) in Ordinance no. 1697, codified in Chapter 18.255 DMMC. EPFs are public facilities that are typically difficult to site, including in-patient facilities, mental health facilities, group homes, and secure community transition facilities. In 2014, the State of Washington began offering licenses to operate a new type of residential facility serving up to 16 individuals who have complex personal care and behavioral challenges known as Enhanced Services Facilities (“ESFs”) under chapter 70.97 RCW.

In order to clarify the City’s existing requirements and definitions, the proposed amendments revise the definitions and use table in the Des Moines Municipal Code to account for this new type of essential public facility.

Discussion

On March 14, 2019 the Des Moines City Council adopted Ordinance 1714 adopting the proposed zoning amendments as interim regulations, declaring an emergency and setting the hearing date for May 9, 2019. The purpose of Draft Ordinance 19-048 is to permanently adopt the interim zoning controls established by Ordinance 1714.

As interim regulations, a public hearing is required within 60 days of adoption.

A notice of amendment and request for expedited review was sent to the Washington State Department of Commerce as required by state law, and the City’s request for expedited review is under consideration. The City Council may only adopt the permanent regulations once the Commerce review period has lapsed. Therefore, further consideration of Draft Ordinance 19-048 will require a second reading if expedited review is not granted. The second reading, if required, is proposed for June 27, 2019 or as soon thereafter as the matter may be heard.

Alternatives

The City Council may:

1. Enact Draft Ordinance 19-048 as written or with amendments, if the Department of Commerce has granted expedited review.
2. Pass Draft Ordinance No. 19-048 to a second reading.
3. Repeal Ordinance 1714, removing the interim zoning control.
4. Decline to enact Draft Ordinance 19-048. Under this alternative, the interim zoning control would remain in effect until September 14, 2019, at which time the interim zoning controls would expire.

Financial Impact

N/A

Recommendation (If the Department of Commerce has granted expedited review)
Administration recommends enactment of Draft Ordinance 19-048 as written.

Recommendation (If the Department of Commerce has not granted expedited review)
Administration recommends the continued imposition of Ordinance 1714 and that the Council pass Draft Ordinance 19-048 to a second reading on June 27, 2019 or as soon thereafter as the matter may be heard.

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CITY ATTORNEY'S FIRST DRAFT 05/02/2019**DRAFT ORDINANCE NO. 19-048**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050.

WHEREAS, the City of Des Moines has enacted a comprehensive land use plan codified at Title 18 DMMC, and

WHEREAS, Cities such as Des Moines that are required to plan under the State Growth Management Act, chapter 36.70A RCW, are required to adopt a process for identifying and siting of Essential Public Facilities ("EPF's"), and

WHEREAS, the City of Des Moines has adopted a policy for identifying and siting Essential Public Facilities in Ordinance no. 1697, codified at chapter 18.255 DMMC, and

WHEREAS, EPF's are public facilities that are typically difficult to site, including in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

WHEREAS, in 2014 the State of Washington began offering licenses to operate a new type of residential setting serving up to 16 individuals who have complex personal care and behavioral challenges known as Enhanced Services Facilities ("ESF's") under chapter 70.97 RCW, and

WHEREAS, a typical ESF resident will have moved from a State or local psychiatric hospital, and

WHEREAS, a person may only be admitted to an ESF if the person has a mental disorder, chemical dependency disorder, or both; an organic or traumatic brain injury; or a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services, and

WHEREAS, a person may only be admitted to an ESF if the person additionally requires daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or assistance with three or more activities of daily living, and

Ordinance No. _____
 Page 2 of 6

WHEREAS, a person may only be admitted to an ESF if, in addition to the previous two requirements, the person has two or more of the following: self-endangering behaviors that are frequent or difficult to manage; aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage; intrusive behaviors that put residents or staff at risk; complex medication needs and those needs include psychotropic medications; a history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs; a history of frequent or protracted mental health hospitalizations; a history of offenses against a person or felony offenses that created substantial damage to property, and

WHEREAS, an ESF is required to maintain sufficient numbers of staff with the appropriate credentials and training to provide residents with such services as mental health treatment, chemical dependency treatment, and security as needed, and

WHEREAS, the State licenses ESF's as an entity of a different character than nursing homes; assisted living facilities; adult family homes; group training homes; and residential treatment facilities, and

WHEREAS, ESF's are a land use that is not specifically provided for in the Des Moines Zoning Code, and

WHEREAS, it is appropriate to identify Enhanced Service Facilities as a specific use type within the City Zoning Code and to designate zones in which the use may be permitted, not permitted or allowed by conditional use permit or unclassified use permit, and

WHEREAS, services offered by an ESF and the special needs of the residents make these facilities difficult to site similar to in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

Ordinance No. ____
Page 3 of 6

WHEREAS, these characteristics make it appropriate for the City of Des Moines to identify Enhanced Services Facilities as Essential Public Facilities, and

WHEREAS, in accordance with RCW 35A.63.220, interim zoning controls may be effective for no longer than six months, but may be effective for up to a year if a work plan is developed for related studies providing for such a longer period, and

WHEREAS, the City Council enacted Ordinance No. 1714 as an interim zoning ordinance on March 14, 2019 in accordance with RCW 35A.63.200 to provide for appropriate land use regulation of ESF's, and

WHEREAS, the City Council in Ordinance No. 1714 set the date for a public hearing on the interim zoning ordinance for May 9, 2019, being less than sixty days after the adoption of the interim zoning ordinance, and

WHEREAS, notice of the public hearing was issued on April 24, 2019 in accordance with the DMMC, and

WHEREAS, the Community Development Director acting as the SEPA responsible official reviewed this proposed non-project action and determined that the proposed textual code amendments are within the scope of the existing environmental documents and fulfilled the SEPA requirements established by chapter 197-11 WAC and DMMC 16.05.04 pursuant to WAC 197-11-600 and DMMC 16.05.280, and

WHEREAS, the textual code amendments proposed in this Draft Ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, a public hearing was held on May 9, 2019 and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that confirming the amendments to the Des Moines Municipal Code enacted in Ordinance 1714 are appropriate and necessary for the preservation of the public health and welfare; now therefore,

Ordinance No. _____
 Page 4 of 6

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

Sec. 1. DMMC 18.52.010B and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance No. 1618-A as amended by section 2 of Ordinance No. 1644 as amended by section 1 of Ordinance No. 1645 as amended by section 8 of Ordinance No. 1655 as amended by section 4 of Ordinance No. 1656 as amended by section 2 of Ordinance No. 1661 as amended by section 2 of Ordinance No. 1669 as amended by section 1 of Ordinance No. 1672 as amended by section 3 of Ordinance No. 1697 is amended to add or revise uses as follows:

Use is:	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
P: Permitted									
P/L: Permitted, but with special limitations									
CUP: Conditional use review required									
UUP: Unclassified use review required									
...									
Enhanced Services Facilities							UUP /L[84, 85]		
...									
Essential public facilities not otherwise listed			UUP /L[84, 85]			UUP /L[84, 85]	UUP /L[84, 85]		
...									
Hospitals, Mental			UUP /L[84, 85]				UUP /L[84, 85]		
...									

Sec. 2. DMMC 18.01.050 and section 5 of Ordinance No. 1591 as amended by section 1 of Ordinance No. 1628 as amended by section 1 of Ordinance No. 1655 as amended by section 1 of Ordinance No. 1661 as amended by section 3 of Ordinance No. 1669 as amended by section 15 of Ordinance No. 1671 as amended by

Ordinance No. ____
Page 5 of 6

section 1 of Ordinance No. 1697 are amended to add or revise the following definitions:

"Enhanced services facility" means a facility licensed by the Washington State Department of Social and Health Services under chapter 70.97 RCW.

"Essential public facilities (EPF)" include those facilities that are typically difficult to site, as defined in RCW 36.70A.200 and WAC 365-196-560, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, enhanced services facilities, and secure community transition facilities as defined in RCW 71.09.020.

~~"Mental hospital" means an institution licensed by state agencies under the provisions of law to offer facilities, care and treatment for cases of mental and nervous disorders, and alcoholics. Establishments limiting services to juveniles below the age of five years, and establishments housing and caring for cases of cerebral palsy are not considered mental hospitals.~~

~~"Nursing home" means a facilities for patients who are recovering from an illness, or receiving care for chronic conditions, mental or physical disabilities, terminal illness, alcohol or drug inpatient treatment. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist facility licensed by the Washington State Department of Social and Health Services under chapter 18.51 RCW.~~

Ordinance No. _____
Page 6 of 6

Sec. 3. Severability - Construction.

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

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

Sec. 4. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage and approval in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

ORDINANCE NO. 1714

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning, enacting an interim zoning Ordinance relating to land use, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050, setting a public hearing, and declaring an emergency.

WHEREAS, the City of Des Moines has enacted a comprehensive land use plan codified at Title 18 DMMC, and

WHEREAS, Cities such as Des Moines that are required to plan under the State Growth Management Act, chapter 36.70A RCW, are required to adopt a process for identifying and siting of Essential Public Facilities ("EPF's"), and

WHEREAS, the City of Des Moines has adopted a policy for identifying and siting Essential Public Facilities in Ordinance no. 1697, codified at chapter 18.255 DMMC, and

WHEREAS, EPF's are public facilities that are typically difficult to site, including in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

WHEREAS, in 2014 the State of Washington began offering licenses to operate a new type of residential setting serving up to 16 individuals who have complex personal care and behavioral challenges known as Enhanced Services Facilities ("ESF's") under chapter 70.97 RCW, and

WHEREAS, a typical ESF resident will have moved from a State or local psychiatric hospital, and

WHEREAS, a person may only be admitted to an ESF if the person has a mental disorder, chemical dependency disorder, or both; an organic or traumatic brain injury; or a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services, and

WHEREAS, a person may only be admitted to an ESF if the person additionally requires daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or assistance with three or more activities of daily living, and

Ordinance No. 1714
Page 2 of 6

WHEREAS, a person may only be admitted to an ESF if, in addition to the previous two requirements, the person has two or more of the following: self-endangering behaviors that are frequent or difficult to manage; aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage; intrusive behaviors that put residents or staff at risk; complex medication needs and those needs include psychotropic medications; a history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs; a history of frequent or protracted mental health hospitalizations; a history of offenses against a person or felony offenses that created substantial damage to property, and

WHEREAS, an ESF is required to maintain sufficient numbers of staff with the appropriate credentials and training to provide residents with such services as mental health treatment, chemical dependency treatment, and security as needed, and

WHEREAS, the State licenses ESF's as an entity of a different character than nursing homes; assisted living facilities; adult family homes; group training homes; and residential treatment facilities, and

WHEREAS, ESF's are a land use that is not specifically provided for in the Des Moines Zoning Code, and

WHEREAS, it is appropriate to identify Enhanced Service Facilities as a specific use type within the City Zoning Code and to designate zones in which the use may be permitted, not permitted or allowed by conditional use permit or unclassified use permit, and

WHEREAS, services offered by an ESF and the special needs of the residents make these facilities difficult to site similar to in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

Ordinance No. 1714
Page 3 of 6

WHEREAS, these characteristics make it appropriate for the City of Des Moines to identify Enhanced Services Facilities as Essential Public Facilities, and

WHEREAS, in accordance with RCW 35A.63.220, interim zoning controls may be effective for no longer than six months, but may be effective for up to a year if a work plan is developed for related studies providing for such a longer period, and

WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the preservation of the public health and welfare, and to provide for the siting of Enhanced Services Facilities within the City, and

WHEREAS, the City Council further finds that passage of this Ordinance constitutes an emergency; now therefore,

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

Sec. 1. Findings. RCW 35A.63.220 and RCW 36.70A.390 authorize adoption of interim zoning measures with certain limitations. In compliance with the requirements of these statutes and applicable case law authority, the City Council adopts as findings the pronouncements contained in the above recital provisions.

Sec. 2. Interim regulation adopted. DMMC 18.52.010B and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance No. 1618-A as amended by section 2 of Ordinance No. 1644 as amended by section 1 of Ordinance No. 1645 as amended by section 8 of Ordinance No. 1655 as amended by section 4 of Ordinance No. 1656 as amended by section 2 of Ordinance No. 1661 as amended by section 2 of Ordinance No. 1669 as amended by section 1 of Ordinance No. 1672 as amended by section 3 of Ordinance No. 1697 is amended to add the following use as follows:

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Ordinance No. 1714
 Page 4 of 6

Use is: P: Permitted	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
P/L: Permitted, but with special limitations									
CUP: Conditional use review required									
UUP: Unclassified use review required									
...									
Enhanced Services Facilities							UUP /L[84, 85]		
...									
Essential public facilities not otherwise listed						UUP /L[84, 85]	UUP /L[84, 85]		
...									
Hospitals, Mental							UUP /L[84, 85]		
...									

Sec. 3. Interim definition added. DMMC 18.01.050 and section 5 of Ordinance No. 1591 as amended by section 1 of Ordinance No. 1628 as amended by section 1 of Ordinance No. 1655 as amended by section 1 of Ordinance No. 1661 as amended by section 3 of Ordinance No. 1669 as amended by section 15 of Ordinance No. 1671 as amended by section 1 of Ordinance No. 1697 are amended to add or revise the following definitions:

"Enhanced services facility" means a facility licensed by the Washington State Department of Social and Health Services under chapter 70.97 RCW.

"Essential public facilities (EPF)" include those facilities that are typically difficult to site, as defined in RCW 36.70A.200 and WAC 365-196-560, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as

Ordinance No. 1714
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defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, enhanced services facilities, and secure community transition facilities as defined in RCW 71.09.020.

~~"Mental hospital" means an institution licensed by state agencies under the provisions of law to offer facilities, care and treatment for cases of mental and nervous disorders, and alcoholics. Establishments limiting services to juveniles below the age of five years, and establishments housing and caring for cases of cerebral palsy are not considered mental hospitals.~~

"Nursing home" means a facility licensed by the Washington State Department of Social and Health Services under chapter 18.51 RCW.

Sec. 4. Public hearing on interim zoning control.

Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this interim control regulation within sixty (60) days of its adoption, or before May 13, 2019. The Council shall hold this hearing on May 9, 2019. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this interim control regulation and either justify its continued imposition or rescind the regulation.

Sec. 5. Declaration of emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediately effective interim zoning regulation, applicants for such projects or uses could become vested, leading to development that could be incompatible with the regulations adopted in this interim control and which may eventually be adopted by the City. Therefore, the interim regulation in this Ordinance must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights.

Ordinance No. 1714
Page 6 of 6

Sec. 6. Severability - Construction.

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

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

Sec. 7. Effective date. This Ordinance shall take effect and be in full force immediately upon adoption, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

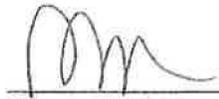
PASSED BY a majority plus one of the whole membership of the City Council of the City of Des Moines this March 14, 2019 and signed in authentication thereof this March 14, 2019.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: 3/21, 2019

Effective Date: Immediately Upon Adoption

Susan Cezar

Attachment #3

From: Bonnie Wilkins
Sent: Wednesday, May 1, 2019 2:07 PM
To: Susan Cezar
Subject: FW: Recent change to nursing home zoning
Attachments: ESF Description for Zoning.docx

Importance: High

From: Bonnie Wilkins
Sent: Friday, March 22, 2019 9:16 AM
To: 'zackw@noble-hc.com' <zackw@noble-hc.com>
Subject: FW: Recent change to nursing home zoning
Importance: High

Mr. Wester,

The Des Moines City Council has received your comments relative to the recent change to nursing home zoning.

This item is currently on the May 9th City Council Agenda and we invite you to come to that meeting to speak during the Public Hearing portion of the meeting.

If you have any questions please do not hesitate to contact me.

Thank you and have a wonderful weekend!
 Bonnie

Bonnie Wilkins, CMC | City Clerk-Communications Director
 City of Des Moines | 21630 11th Avenue S, Suite A | Des Moines WA 98198
 206.870.6519 | 206.870.6540 (fax)



CONFIDENTIALITY STATEMENT: The information contained in this electronic communication may be personal, privileged and/or confidential information intended only for the use of the individual(s) or entity(ies) to which it has been addressed. If you read this communication and are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication, other than delivery to the intended recipient is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail. Thank you.

From: Zachary Wester [<mailto:zackw@noble-hc.com>]
Sent: Wednesday, March 20, 2019 3:52 PM
Subject: Fwd: Recent change to nursing home zoning

Hello,

As the decision to declare an emergency and enact the recent interim regulations took place without any notification to or input from the interested parties, I wanted to make sure the information you're operating under is complete.

We approached the city planning team in January about siting an ESF in the D-C zone. Initially, after speaking with ESF licensing officials from DSHS and reviewing statute, the planning department informed us that they thought it was a permitted use, but then changed that opinion. They decided that, based on the type of clientele served, an ESF was an essential public facility, and so, not permitted. When presented with information to the contrary they told us to pursue an interpretation to code, something we now realize was a stalling tactic to allow interim rules to be put into place before our full application could be processed.

I'm attaching the information that the planning department was provided. Below is a summary:

These facilities are designed to take people that have completed treatment in a mental hospital, and give them the support they need to get back into the community. Not to be relegated to a facility in the industrial zone of the city. Yes, we picked a nice part of town. We picked it for the same reasons anyone would want to live there. Everyone looks at the admission criteria of these individuals (self-endangering behavior, history of failed placement, mental illness, etc.) and misses one key component: HISTORY OF. They have completed acute treatment, they have found a treatment plan that has allowed them to be safe and functional for some time, otherwise they CANNOT come to an ESF. The regulations are very clear that an ESF can only admit an individual that "*does not endanger the safety, of other residents and members of the community.*" An ESF is designed to help them maintain that function and be back in the community.

An ESF is NOT a mental health facility. No one can be civilly committed to an ESF. It is not an evaluation and treatment facility as other EPFs. Its a nursing home designed to meet residents' medical AND mental health needs.

The Downtown-Commercial Zoning code list(ed) "Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility) as a permitted primary use. The city code 18.01 DMMC defines 'Nursing Homes' as: "*Facilities for patients who are recovering from an illness, or receiving care for chronic conditions, mental or physical disabilities, terminal illness, alcohol or drug inpatient treatment. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist.*"

We feel like an ESF fits this definition and should be a permitted use for a number of reasons:

1. An ESF is a residential care facility
 1. It is licensed and regulated by DSHS Residential Care Services. RCS licenses all residential facilities (Nursing Homes, ALF, AFH, ESF, etc.)
 2. An ESF is funded by a mechanism (CMS 1915(c) waiver) that is specifically designed and limited to providing **in home or community based** long-term care services and supports, rather than in an institutional setting. ALF and AFH use this waiver to provide mental health care under contracts as well. The nursing home ECS program are funded through similar waivers as well.
 3. An ESF is subject to the same building code as a nursing home, assisted living facility, or adult family home depending on resident population level of independence WAC 388-107-0700. The proposed ESF will conform to the licensed nursing home building code.
2. An ESF's scope of services fit the definition offered in DMMC 18.01
 1. WAC 388-106-0336 describes the scope of care for ESF and ALF operating under a 1915c waiver. They are identical other than an ESF more specific staffing requirements.
 2. No service provided in an ESF, the licensing mechanism, or construction requirement for an ESF is beyond the scope of the DMMC definition of nursing home, or in disharmony with it.

It's worth noting that the DMMC zoning definitions do not include a stand alone definition of, or mention of, an assisted living facility or residential care facility. The intention seems to be for Nursing Home definition to apply across multiple residential care facility licensing types. This is further evidenced by the listing of residential care facility within parenthesis of the "Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility)" description of a permitted primary use. A stand-alone definition of an Adult-Family Home does exist in code. None exists for assisted living facility. So the interim rules effectively outlawed any assisted living in the city due to the RCW referenced in the new rule.

Also so you know, there are number of contracts, using the same funding as an ESF, that provide extra resources to any nursing home or assisted living facility to take in and care for the exact same population, with the same medical histories. Are they also not permitted to provide care to these individuals?

I'm presenting this information so you can hopefully make a more informed decision. If you would like to have a more extensive conversation please feel free to give me a call.

Thank you,

Zack Wester

--

Zack Wester

Noble Health Care

M: 702-854-0159

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Property Acquisition: 22106 28th Ave
S

ATTACHMENTS:

1. Purchase and Sale Agreement

FOR AGENDA OF: May 9, 2019

DEPT. OF ORIGIN: Legal

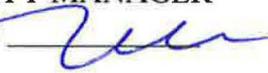
DATE SUBMITTED: May 2, 2019

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DJS

- Legal TG
 Finance BW
 Courts _____
 Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is for City Council to ratify and approve the agreements with Don Atwood as the personal representative for the estate of Andrew Jack Steen for the purposes of acquiring the property at 22106 28th Ave S in Des Moines.

Suggested Motion

Motion 1: "I move to ratify and approve the executed agreements for the purchase of the property at 22106 28th Ave S in Des Moines, for the purchase price of \$65,000.00 plus closing costs, and direct Administration to bring forward a budget amendment reflecting the cost for the purchase."

Background

Located at 22106 28th Ave S in Des Moines, this site abuts Midway Park and provides an opportunity for future expansion of the park. The property and the residence located upon it were vacant and neglected for many years and had become a nuisance property by 2015. City staff were able to eventually identify a responsible party for the property as part of an emphasis targeting the highest priority nuisance properties, which led to the property being fenced and the structure being demolished. Despite these actions, the property remains vacant and an attraction for illegal dumping.

Discussion

Midway Park is a small neighborhood park with play equipment, sports court, picnic tables, and walking paths. It is the only open space in the Pacific Ridge neighborhood, and has tremendous community support behind it. The park already enjoys support and partnership through the Des Moines Area Food Bank and its summer meals programming, as well as the community garden, which affords neighbors the opportunity to learn about growing healthy food. The health opportunities for physical activity are tremendous and providing more open space for this is critical to this neighborhood.

The Des Moines Parks and Recreation Master Plan cites priorities for land acquisition, with expansion of Midway Park being a land acquisition priority. Expanding Midway Park is a goal in the City of Des Moines 2035 Comprehensive Plan, Chapter 6 - The Parks, Recreation and Open Space Element. Chapter 11 is devoted to the Pacific Ridge neighborhood, and expanding open space in the area. Chapter 12 – Healthy Des Moines Element establishes goals aimed at improving access to physical activity and healthy foods, and facilitating the long-term implementation of the Healthy Des Moines Initiative.

Acquiring this parcel allows the City to begin the process of expanding this vital neighborhood park, which is a priority under the City’s Comprehensive Plan. The parties agreed to a purchase price of \$65,000.00, which represents an amount \$30,000.00 below the value assessed by King County.

Financial Impact

The purchase price of the property is \$65,000.00. The City has sought a King County Conservation Futures (KCCF) grant that could provide full funding for acquisition of this parcel as well as an adjoining property if approved as requested. While a 50/50 match is usually required for the grant, the City has applied for a match waiver with this application.

Depending on the recommendation that KCCF review committee will make on the application in June and subsequent approval of the King County budget, the impact of acquisition costs of this property to the City could be no impact, \$32,500.00, or \$65,000.00. If the grant is denied or granted with a 50/50 match required, staff will seek other possible funding. “Park in-lieu” fees which the City has already received from current and former development projects within the City to cover a portion of the purchase price may be an alternative source for these costs. These funds are limited by state law to specific uses including the acquisition of additional park capacity.

Recommendation

Administration recommends approval of the motion as presented.

Form 25
Vacant Land Purchase & Sale
Rev. 2/17
Page 1 of 5

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VACANT LAND PURCHASE AND SALE AGREEMENT
SPECIFIC TERMS

- 1. Date: March 11, 2019 MLS No.: N/A Offer Expiration Date: 03/15/2019 4/9/19
- 2. Buyer: City Of Des Moines
- 3. Seller: Heirs at law of Andrew Jack Steen Don Atwood
Buyer Buyer Status
Seller Seller
- 4. Property: Legal Description attached as Exhibit A. Tax Parcel No(s): 2156400364
22106 28th Ave S Des Moines King WA 98198
Address City County State Zip
- 5. Purchase Price: \$ 65,000.00 sixty five thousand dollars Dollars
- 6. Earnest Money: \$ 5,000 - Check; Note; Other _____ (held by Selling Firm; Closing Agent)
- 7. Default: (check only one) Forfeiture of Earnest Money; Seller's Election of Remedies
- 8. Title Insurance Company: CW Title
- 9. Closing Agent: TBD - CW
Company Individual (optional)
- 10. Closing Date: 04/11/19 or sooner 5/3/19; Possession Date: on Closing; Other _____
- 11. Services of Closing Agent for Payment of Utilities: Requested (attach NWMLS Form 22K); Waived
- 12. Charges/Assessments Levied Before but Due After Closing: assumed by Buyer; prepaid in full by Seller at Closing
- 13. Seller Citizenship (FIRPTA): Seller is; is not a foreign person for purposes of U.S. income taxation
- 14. Subdivision: The Property: must be subdivided before _____; is not required to be subdivided
- 15. Feasibility Contingency Expiration Date: 0 days after mutual acceptance; Other _____
- 16. Agency Disclosure: Selling Broker represents: Buyer; Seller; both parties; neither party
Listing Broker represents: Seller; both parties
- 17. Addenda: 22D(Optional Clauses) 22K(Utilities) 22T(Title Contingency) 35F(Feasibility)
41C(Selling Commission)

[Signature] 3.11.19
Buyer's Signature Date

Buyer's Signature Date
21630 11th Ave S, ste D
Buyer's Address
Des moines, WA 98198
City, State, Zip
(206) 870-6581
Phone No. Fax No.
mmathias@desmoineswa.gov
Buyer's E-mail Address
Windermere RE South Inc 1840
Selling Firm MLS Office No.
Janel Stoneback 93953
Selling Broker (Print) MLS LAG No.
(206) 244-5900 (206) 478-7773
Firm Phone No. Broker Phone No. Firm Fax No.
Burien@windermere.com
Selling Firm Document E-mail Address
Janel@windermere.com
Selling Broker's E-mail Address
111578 3953
Selling Broker DOL License No. Selling Firm DOL License No.

[Signature] 4/9/19
Seller's Signature Date

Seller's Signature Date
Seller's Address
Seattle, WA
City, State, Zip
206-935-2712
Phone No. Fax No.
ae.arch@hotmail.com
Seller's E-mail Address
Listing Firm MLS Office No.
Listing Broker (Print) MLS LAG No.
Firm Phone No. Broker Phone No. Firm Fax No.
Listing Firm Document E-mail Address
Listing Broker's E-mail Address
Listing Broker DOL License No. Listing Firm DOL License No.

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

a. **Purchase Price.** Buyer shall pay to Seller the Purchase Price, including the Earnest Money, in cash at Closing, unless otherwise specified in this Agreement. Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Agreement and is not relying on any contingent source of funds, including funds from loans, the sale of other property, gifts, retirement, or future earnings, except to the extent otherwise specified in this Agreement.

b. **Earnest Money.** Buyer shall deliver the Earnest Money within 2 days after mutual acceptance to Selling Broker or to Closing Agent. If Buyer delivers the Earnest Money to Selling Broker, Selling Broker will deposit any check to be held by Selling Firm, or deliver any Earnest Money to be held by Closing Agent, within 3 days of receipt or mutual acceptance, whichever occurs later. If the Earnest Money is held by Selling Firm and is over \$10,000.00 it shall be deposited into an interest bearing trust account in Selling Firm's name provided that Buyer completes an IRS Form W-9. Interest, if any, after deduction of bank charges and fees, will be paid to Buyer. Buyer shall reimburse Selling Firm for bank charges and fees in excess of the interest earned, if any. If the Earnest Money held by Selling Firm is over \$10,000.00 Buyer has the option to require Selling Firm to deposit the Earnest Money into the Housing Trust Fund Account, with the interest paid to the State Treasurer, if both Seller and Buyer so agree in writing. If the Buyer does not complete an IRS Form W-9 before Selling Firm must deposit the Earnest Money or the Earnest Money is \$10,000.00 or less, the Earnest Money shall be deposited into the Housing Trust Fund Account. Selling Firm may transfer the Earnest Money to Closing Agent at Closing. If all or part of the Earnest Money is to be refunded to Buyer and any such costs remain unpaid, the Selling Firm or Closing Agent may deduct and pay them therefrom. The parties instruct Closing Agent to provide written verification of receipt of the Earnest Money and notice of dishonor of any check to the parties and Brokers at the addresses and/or fax numbers provided herein.

Upon termination of this Agreement, a party or the Closing Agent may deliver a form authorizing the release of Earnest Money to the other party or the parties. The party(s) shall execute such form and deliver the same to the Closing Agent. If either party fails to execute the release form, a party may make a written demand to the Closing Agent for the Earnest Money. Pursuant to RCW 64.04, Closing Agent shall deliver notice of the demand to the other party within 15 days. If the other party does not object to the demand within 20 days of Closing Agent's notice, Closing Agent shall disburse the Earnest Money to the party making the demand within 10 days of the expiration of the 20 day period. If Closing Agent timely receives an objection or an inconsistent demand from the other party, Closing Agent shall commence an interpleader action within 60 days of such objection or inconsistent demand, unless the parties provide subsequent consistent instructions to Closing Agent to disburse the earnest money or refrain from commencing an interpleader action for a specified period of time. Pursuant to RCW 4.28.080, the parties consent to service of the summons and complaint for an interpleader action by first class mail, postage prepaid at the party's usual mailing address or the address identified in this Agreement. If the Closing Agent complies with the preceding process, each party shall be deemed to have released Closing Agent from any and all claims or liability related to the disbursement of the Earnest Money. If either party fails to authorize the release of the Earnest Money to the other party when required to do so under this Agreement, that party shall be in breach of this Agreement. For the purposes of this section, the term Closing Agent includes a Selling Firm holding the Earnest Money. The parties authorize the party commencing an interpleader action to deduct up to \$500.00 for the costs thereof.

c. **Condition of Title.** Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights. Monetary encumbrances or liens not assumed by Buyer, shall be paid or discharged by Seller on or before Closing. Title shall be conveyed by a Statutory Warranty Deed. If this Agreement is for conveyance of a buyer's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a buyer's assignment of the contract sufficient to convey after acquired title. If the Property has been short platted, the Short Plat number is in the Legal Description.

d. **Title Insurance.** Seller authorizes Buyer's lender or Closing Agent, at Seller's expense, to apply for the then-current ALTA form of standard form owner's policy of title insurance from the Title Insurance Company. If Seller previously received a preliminary commitment from a Title Insurance Company that Buyer declines to use, Buyer shall pay any cancellation fees owing to the original Title Insurance Company. Otherwise, the party applying for title insurance shall pay any title cancellation fee, in the event such a fee is assessed. The Title Insurance Company shall send a copy of the preliminary commitment to Seller, Listing Broker, Buyer and Selling Broker. The preliminary commitment, and the title policy to be issued, shall contain no exceptions other than the General Exclusions and Exceptions in said standard form and Special Exceptions consistent with the Condition of Title herein provided. If title cannot be made so insurable prior to the Closing Date, then as Buyer's sole and exclusive remedy, the Earnest Money shall, unless Buyer elects to waive such defects or encumbrances, be refunded to the Buyer, less any unpaid costs described in this Agreement, and this Agreement shall thereupon be terminated. Buyer shall have no right to specific performance or damages as a consequence of Seller's inability to provide insurable title.

e. **Closing and Possession.** This sale shall be closed by the Closing Agent on the Closing Date. "Closing" means the date on which all documents are recorded and the sale proceeds are available to Seller. If the Closing Date falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, the Closing Agent shall close the transaction on the next day that is not a Saturday, Sunday, legal holiday, or day when the

MM 3-11-19
Buyer's Initials Date

JEA 4/17/19
Seller's Initials Date

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

county recording office is closed. Buyer shall be entitled to possession at 9:00 p.m. on the Possession Date. Seller shall maintain the Property in its present condition, normal wear and tear excepted, until the Buyer is entitled to possession. Buyer reserves the right to walk through the Property within 5 days of Closing to verify that Seller has maintained the Property as required by this paragraph. Seller shall not enter into or modify existing leases or rental agreements, service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining Buyer's consent, which shall not be unreasonably withheld.

f. Section 1031 Like-Kind Exchange. If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys' fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding the Assignment paragraph of this Agreement, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

g. Closing Costs and Prorations and Charges and Assessments. Seller and Buyer shall each pay one-half of the escrow fee unless otherwise required by applicable FHA or VA regulations. Taxes for the current year, rent, interest, and lienable homeowner's association dues shall be prorated as of Closing. Buyer shall pay Buyer's loan costs, including credit report, appraisal charge and lender's title insurance, unless provided otherwise in this Agreement. If any payments are delinquent on encumbrances which will remain after Closing, Closing Agent is instructed to pay such delinquencies at Closing from money due, or to be paid by, Seller. Buyer shall pay for remaining fuel in the fuel tank if, prior to Closing, Seller obtains a written statement from the supplier as to the quantity and current price and provides such statement to the Closing Agent. Seller shall pay all utility charges, including unbilled charges. Unless waived in Specific Term No. 11, Seller and Buyer request the services of Closing Agent in disbursing funds necessary to satisfy unpaid utility charges in accordance with RCW 60.80 and Seller shall provide the names and addresses of all utilities providing service to the Property and having lien rights (attach NWMLS Form 22K Identification of Utilities or equivalent).

Buyer is advised to verify the existence and amount of any local improvement district, capacity or impact charges or other assessments that may be charged against the Property before or after Closing. Seller will pay such charges that are or become due on or before Closing. Charges levied before Closing, but becoming due after Closing shall be paid as agreed in Specific Term No.12.

h. Sale Information. Listing Broker and Selling Broker are authorized to report this Agreement (including price and all terms) to the Multiple Listing Service that published it and to its members, financing institutions, appraisers, and anyone else related to this sale. Buyer and Seller expressly authorize all Closing Agents, appraisers, title insurance companies, and others related to this Sale, to furnish the Listing Broker and/or Selling Broker, on request, any and all information and copies of documents concerning this sale.

i. Seller Citizenship and FIRPTA. Seller warrants that the identification of Seller's citizenship status for purposes of U.S. income taxation in Specific Term No. 13 is correct. Seller shall execute a certification (NWMLS Form 22E or equivalent) under the Foreign Investment In Real Property Tax Act ("FIRPTA") at Closing and provide the certification to the Closing Agent. If Seller is a foreign person for purposes of U.S. income taxation, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

j. Notices and Delivery of Documents. Any notice related to this Agreement (including revocations of offers or counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and shall be deemed delivered only when the notice is received by Seller, by Listing Broker, or at the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and shall be deemed delivered only when the notice is received by Buyer, by Selling Broker, or at the licensed office of Selling Broker. Documents related to this Agreement, such as NWMLS Form 17C, Information on Lead-Based Paint and Lead-Based Paint Hazards, Public Offering Statement or Resale Certificate, and all other documents shall be delivered pursuant to this paragraph. Buyer and Seller must keep Selling Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice.

Facsimile transmission of any notice or document shall constitute delivery. E-mail transmission of any notice or document (or a direct link to such notice or document) shall constitute delivery when: (i) the e-mail is sent to both Selling Broker and Selling Firm or both Listing Broker and Listing Firm at the e-mail addresses specified on page one of this Agreement; or (ii) Selling Broker or Listing Broker provide written acknowledgment of receipt of the e-mail (an automatic e-mail reply does not constitute written acknowledgment). At the request of either party, or the Closing Agent, the parties will confirm facsimile or e-mail transmitted signatures by signing an original document.

k. Computation of Time. Unless otherwise specified in this Agreement, any period of time measured in days and stated in this Agreement shall start on the day following the event commencing the period and shall expire at 9:00 p.m. of the last calendar day of the specified period of time. Except for the Possession Date, if the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of 5 days or less, except for any time period relating to the

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Buyer's Initials Date Buyer's Initials Date Seller's Initials Date Seller's Initials Date

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

Possession Date, shall not include Saturdays, Sundays or legal holidays. If the parties agree that an event will occur on a specific calendar date, the event shall occur on that date, except for the Closing Date, which, if it falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, shall occur on the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed. If the parties agree upon and attach a legal description after this Agreement is signed by the offeree and delivered to the offeror, then for the purposes of computing time, mutual acceptance shall be deemed to be on the date of delivery of an accepted offer or counteroffer to the offeror, rather than on the date the legal description is attached. Time is of the essence of this Agreement.

- i. Integration and Electronic Signatures.** This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No modification of this Agreement shall be effective unless agreed in writing and signed by Buyer and Seller. The parties acknowledge that a signature in electronic form has the same legal effect and validity as a handwritten signature.
- m. Assignment.** Buyer may not assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent unless the parties indicate that assignment is permitted by the addition of "and/or assigns" on the line identifying the Buyer on the first page of this Agreement.
- n. Default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then the following provision, as identified in Specific Term No. 7, shall apply:
 - i. Forfeiture of Earnest Money.** That portion of the Earnest Money that does not exceed five percent (5%) of the Purchase Price shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.
 - ii. Seller's Election of Remedies.** Seller may, at Seller's option, (a) keep the Earnest Money as liquidated damages as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.
- o. Professional Advice and Attorneys' Fees.** Buyer and Seller are advised to seek the counsel of an attorney and a certified public accountant to review the terms of this Agreement. Buyer and Seller shall pay their own fees incurred for such review. However, if Buyer or Seller institutes suit against the other concerning this Agreement the prevailing party is entitled to reasonable attorneys' fees and expenses.
- p. Offer.** Buyer shall purchase the Property under the terms and conditions of this Agreement. Seller shall have until 9:00 p.m. on the Offer Expiration Date to accept this offer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by Buyer, by Selling Broker or at the licensed office of Selling Broker. If this offer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.
- q. Counteroffer.** Any change in the terms presented in an offer or counteroffer, other than the insertion of or change to Seller's name and Seller's warranty of citizenship status, shall be considered a counteroffer. If a party makes a counteroffer, then the other party shall have until 9:00 p.m. on the counteroffer expiration date to accept that counteroffer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by the other party, the other party's broker, or at the licensed office of the other party's broker. If the counteroffer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.
- r. Offer and Counteroffer Expiration Date.** If no expiration date is specified for an offer/counteroffer, the offer/counteroffer shall expire 2 days after the offer/counteroffer is delivered by the party making the offer/counteroffer, unless sooner withdrawn.
- s. Agency Disclosure.** Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. If Selling Broker and Listing Broker are the same person representing both parties then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."
- t. Commission.** Seller and Buyer shall pay a commission in accordance with any listing or commission agreement to which they are a party. The Listing Firm's commission shall be apportioned between Listing Firm and Selling Firm as specified in the listing. Seller and Buyer hereby consent to Listing Firm or Selling Firm receiving compensation from more than one party. Seller and Buyer hereby assign to Listing Firm and Selling Firm, as applicable, a portion of their funds in escrow equal to such commission(s) and irrevocably instruct the Closing Agent to disburse the commission(s) directly to the Firm(s). In any action by Listing or Selling Firm to enforce this paragraph, the prevailing party is entitled to

MM 3.11.19

Buyer's Initials Date

DK 4/9/19

Buyer's Initials Date

Seller's Initials Date

Seller's Initials Date

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

court costs and reasonable attorneys' fees. Seller and Buyer agree that the Firms are intended third party beneficiaries under this Agreement. 174 175

u. Feasibility Contingency. It is the Buyer's responsibility to verify before the Feasibility Contingency Expiration Date identified in Specific Term No.15 whether or not the Property can be platted, developed and/or built on (now or in the future) and what it will cost to do this. Buyer should not rely on any oral statements concerning this made by the Seller, Listing Broker or Selling Broker. Buyer should inquire at the city or county, and water, sewer or other special districts in which the Property is located. Buyer's inquiry should include, but not be limited to: building or development moratoriums applicable to or being considered for the Property; any special building requirements, including setbacks, height limits or restrictions on where buildings may be constructed on the Property; whether the Property is affected by a flood zone, wetlands, shorelands or other environmentally sensitive area; road, school, fire and any other growth mitigation or impact fees that must be paid; the procedure and length of time necessary to obtain plat approval and/or a building permit; sufficient water, sewer and utility and any service connection charges; and all other charges that must be paid. Buyer and Buyer's agents, representatives, consultants, architects and engineers shall have the right, from time to time during and after the feasibility contingency, to enter onto the Property and to conduct any tests or studies that Buyer may need to ascertain the condition and suitability of the Property for Buyer's intended purpose. Buyer shall restore the Property and all improvements on the Property to the same condition they were in prior to the inspection. Buyer shall be responsible for all damages resulting from any inspection of the Property performed on Buyer's behalf. If the Buyer does not give notice to the contrary on or before the Feasibility Contingency Expiration Date identified in Specific Term No. 15, it shall be conclusively deemed that Buyer is satisfied as to development and/or construction feasibility and cost. If Buyer gives notice this Agreement shall terminate and the Earnest Money shall be refunded to Buyer, less any unpaid costs. 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194

Seller shall cooperate with Buyer in obtaining permits or other approvals Buyer may reasonably require for Buyer's intended use of the Property; provided that Seller shall not be required to incur any liability or expenses in doing so. 195 196

v. Subdivision. If the Property must be subdivided, Seller represents that there has been preliminary plat approval for the Property and this Agreement is conditioned on the recording of the final plat containing the Property on or before the date specified in Specific Term No. 14. If the final plat is not recorded by such date, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. 197 198 199 200

w. Information Verification Period. Buyer shall have 10 days after mutual acceptance to verify all information provided from Seller or Listing Firm related to the Property. This contingency shall be deemed satisfied unless Buyer gives notice identifying the materially inaccurate information within 10 days of mutual acceptance. If Buyer gives timely notice under this section, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. 201 202 203 204

x. Property Condition Disclaimer. Buyer and Seller agree, that except as provided in this Agreement, all representations and information regarding the Property and the transaction are solely from the Seller or Buyer, and not from any Broker. The parties acknowledge that the Brokers are not responsible for assuring that the parties perform their obligations under this Agreement and that none of the Brokers has agreed to independently investigate or confirm any matter related to this transaction except as stated in this Agreement, or in a separate writing signed by such Broker. In addition, Brokers do not guarantee the value, quality or condition of the Property and some properties may contain building materials, including siding, roofing, ceiling, insulation, electrical, and plumbing, that have been the subject of lawsuits and/or governmental inquiry because of possible defects or health hazards. Some properties may have other defects arising after construction, such as drainage, leakage, pest, rot and mold problems. Brokers do not have the expertise to identify or assess defective products, materials, or conditions. Buyer is urged to use due diligence to inspect the Property to Buyer's satisfaction and to retain inspectors qualified to identify the presence of defective materials and evaluate the condition of the Property as there may be defects that may only be revealed by careful inspection. Buyer is advised to investigate whether there is a sufficient water supply to meet Buyer's needs. Buyer is advised to investigate the cost of insurance for the Property, including, but not limited to homeowner's, flood, earthquake, landslide, and other available coverage. Brokers may assist the parties with locating and selecting third party service providers, such as inspectors or contractors, but Brokers cannot guarantee or be responsible for the services provided by those third parties. The parties shall exercise their own judgment and due diligence regarding third-party service providers. 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222

MM 3.11.19 _____
Buyer's Initials Date Buyer's Initials Date

DA 4/1/19 _____
Seller's Initials Date Seller's Initials Date

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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.

Zoning Regulations – Revisions Public Hearing

SUSAN CEZAR

CHIEF STRATEGIC OFFICER



Background

City adopted regulations for identifying and siting Essential Public Facilities (EPF) in 2018 - Chapter 18.255 DMMC

A recent new type of EPF called an Enhanced Services Facilities (ESF) is provided for under state licensing provisions

City received inquiries and request for code interpretation related to Enhanced Services Facilities

Appropriate to provide additional clarity regarding this use and where it is allowed

March 14, 2019 City Council adopted Ordinance 1714 - interim zoning controls

- Provided clarity to potential applicants
- Time for further evaluation of appropriate permanent regulations

Tonight

Required public hearing (within 60 days of adoption)

City Council will consider in Draft Ordinance 19-048:

- Whether to make the interim regulations permanent, with or without revisions
- Or, let the interim regulations lapse

Staff recommends passing Ordinance 19-048 to a second reading

Enhanced Services Facilities

2014

- Washington State Department of Social and Health Services (DSHS) enacted rules establishing Enhanced Services Facilities under Chapter 70.97 RCW
- What are Enhanced Services Facilities?
 - A new category of licensed residential care facility for individuals “whose complicated personal care and behavioral challenges” require complex behavioral, medical, chemical dependency and/or mental health attention on a daily basis.

2016

- The ESF initiative gained traction when the State awarded over \$14 million in grants to increase the number of psychiatric care beds, including ESFs

ESF Admission Criteria

- A person has a mental disorder, chemical dependency disorder, or both; an organic or traumatic brain injury; or a cognitive impairment that results in symptoms or behaviors requiring supervision and facility service, and
- Requires daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or assistance with three or more activities of daily living, and
- Two or more of the following:
 - Self-endangering behaviors that are frequent or difficult to manage;
 - Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;
 - Intrusive behaviors that put residents or staff at risk;
 - Complex medication needs and those needs include psychotropic medications;
 - A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs;
 - A history of frequent or protracted mental health hospitalizations; a history of offenses against a person or felony offenses that created substantial damage to property

Regulation Revisions

- Adds a definition for Enhanced Services Facility
- Clarifies that ESFs are Essential Public Facilities
- Clarifies where Enhanced Services Facilities are allowed
- Defines the appropriate permit process
- Additional provisions:
 - Revises definition of nursing homes (clarity)
 - Revises allowed zones for:
 - Essential Public Facilities not specifically listed in the use chart
 - Mental Hospitals
 - Eliminates duplicate definition for mental hospitals

Comments

Written public comments received:

- Code interpretation request - copy and information related to code interpretation
- Support for the proposed ordinance

(City Council has received full comments)

- One agency comment received:

Washington State Department of Social and Health Services (DSHS)

Ordinance may effectively prevent ESFs in the City

Council has received the full letter and the City's response

City Response to DSHS

DSHS assumptions in the comment letter are inaccurate

- Pacific Ridge Commercial is the largest commercial/mixed use zone in the city (140 acres)
 - Properties are available for lease and sale
 - 45% of the uses in the zone are residential
 - Excellent access to transportation, views, high intensity development
- Designation of ESF as Essential Public Facilities is consistent with DSHS letter and fact sheet
- City has offered to meet with DSHS staff, allowing for further discussion/review
- Although the State Department of Commerce has completed their review, and the Council could take final action tonight, staff recommends passing Draft Ordinance 19-048 to a second reading to allow for this discussion with DSHS.

Suggested Motion

“I move to pass Draft Ordinance No. 19-048 to a second reading on June 27, 2019 or as soon thereafter as the matter may be heard.”



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, WA 98504-5600

May 2, 2019

Mayor Matt Pina and the Des Moines City Council
City of Des Moines
21630 11th Ave. S.
Des Moines, WA 98198

Dear Mayor Pina & City Council Members,

It has come to my attention that on May 9, 2019, the City of Des Moines will consider Draft Ordinance 19-048 that may result in effectively precluding the siting of Enhanced Services Facilities (ESFs) within the city. I am writing to provide information about ESFs to assist the City in making an informed decision regarding enacting development regulations.

An ESF is a small, community-based residential setting for up to 16 individuals who have complex personal care and behavioral health needs. These individuals require additional support and services from trained caregivers and professional staff, but do not require admission into an institutional setting or mental health treatment facility. The footprint and neighborhood impact of an ESF is similar to an Adult Family Home, a Group Home, an Assisted Living Facility, or a small Nursing Home, yet the City's zoning regulations do not limit these facilities to only one commercial zone.

There are four ESFs currently licensed and operating within the state, each of which is in a residential or mixed-use area of its respective community:

- Upriver Place ESF is an 8-bed facility in the Spokane Valley
- Orchards Highlands ESF is a 12-bed facility in Vancouver
- Unified Residential ESF is a 16-bed facility in the Spokane Valley
- Everett ESF is a 16-bed facility in Everett

ESFs are not an institutional, mental health, or a treatment facility. Nor are they a secured setting and, in fact, ESFs must be integrated into the community. The federal Centers for Medicare and Medicaid Services (CMS) have approved ESFs as a community-based residential setting as part of Washington's home and community-based long-term care system. To receive federal funding, they cannot have the characteristics of an institutional setting.

If the City adopts a permanent ordinance that prohibits ESFs except in one small commercial zone within the city and only with an unclassified use review permit, it may make the siting and operation of an ESF in Des Moines impossible.

Des Moines City Council - ESF
May 2, 2019
Page 2

The Growth Management Act prohibits cities from precluding essential public facilities and from discriminating against people based on their disabilities. A number of laws, including the Washington Housing Policy Act, the Washington Law Against Discrimination, and the Fair Housing Amendments Act likewise protect the rights of individuals with disabilities to live in their communities of choice, free of discrimination. Overly restrictive zoning ordinances may violate federal and state law.

The siting of ESFs is a priority for the state and efforts to prevent their lawful development is a matter that the Department takes seriously. We are committed to working with our community partners to accomplish our mutual goals of a robust long-term care system which provides supports to the elderly and people with disabilities in safe and healthy settings. ESFs are an important component of this system. If you have any questions, require additional information, or would like to discuss ESFs in more detail please do not hesitate to contact me.

Sincerely,



Bill Moss
Assistant Secretary

DSHS: *Transforming Lives*

Enclosure

Enhanced Services Facilities (ESFs): A New Residential Setting Type

What is an ESF?

An Enhanced Services Facility (ESF) is a small, community-based residential setting for up to 16 individuals who have complex personal care and behavioral health needs. These individuals require additional support and services from trained caregivers and professional staff, but do not require the level of care found in an institutional setting or mental health treatment facility. Additionally, ESFs receive funding through the federal Centers for Medicare and Medicaid Services (CMS) as a community-based residential setting, with state compliance monitoring and oversight.

Is an ESF an Institution, Mental Health Facility, or Treatment Center?

ESFs are not an institution, mental health or a treatment facility. ESFs are not secured and do not have any of the characteristics of an institutional setting. ESFs provide behavior support services, but do not provide any type of mental health or substance abuse treatment. If an individual needs this type of treatment or service, it is available in the community and can be accessed through the individual's medical coverage.

ESFs are part of an array of setting types available to individuals who receive assistance with personal care services through the Aging and Long-Term Support Administration (AL TSA). Personal care services include assistance with daily living tasks such as bathing, mobility, personal hygiene, eating and medication assistance. Within Washington state, individuals can receive care in a variety of settings, including:

- An individual's own home
- An Assisted Living Facility with and without intermittent nursing services
- An Adult Family Home
- An Enhanced Services Facility
- A Skilled Nursing Facility

An individual in an ESF typically receives more intensive services than what are available in an Adult Family Home or Assisted Living Facility as the staffing levels are higher. However, an individual in an ESF does not receive the intensity of medical services provided in a Skilled Nursing Facility. All individuals served by AL TSA have a choice of setting type and we honor their choices, goals and preferences for how they choose to live and interact with their community.



What are the characteristics of an ESF client?

Individuals who reside at an ESF are typically moving to an ESF from either a state hospital or a local psychiatric hospital, and their behavior support needs are such that they require more monitoring and oversight. Once the hospital determines the individual is stable and ready to transition back to the community, AL TSA begins working with the individual, the hospital, and the local behavioral health or managed care organization to develop a transition plan and assist the individual with the types of settings and providers they may select from.

Where are ESFs located?

ESFs are a type of residential setting and, as such, are located within residential communities and neighborhoods. There are four ESFs currently licensed and operating within the state, each of which is in a residential community:

- Upriver Place ESF is an 8-bed facility in the Spokane Valley
- Orchards Highlands ESF is a 12-bed facility in Vancouver
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What are some of the Building Code requirements for an ESF?

WAC 388-107-0070 provides some of the basic building code requirements, while noting the similarities to other residential setting types:

- (1) The department of health construction review services will review the following: general, code, program submittal and minimum requirements to ensure that the facility is in compliance with enhanced services facility physical plant basic requirements.
- (2) The enhanced service facility building occupancy type will be consistent with resident admission practices and state adopted building codes for licensed (1) nursing homes, (2) assisted living facilities or (3) adult family homes. This determination will be based on the following categories:
 - (a) Enhanced service facility category 1: Admit resident(s) physically or cognitively incapable of self-preservation (enhanced services facility-nursing home type);
 - (b) Enhanced service facility category 2: Admit resident(s) capable of self-preservation with physical assistance from another person (enhanced services facility-assisted living type); or
 - (c) Enhanced service facility category 3: Admit no more than six resident(s) capable of evacuating the facility within five minutes (enhanced services facility-adult family home type).

Bonnie Wilkins

From: Rhodes, Stacey A (DSHS/AL TSA) <rhodesa@dshs.wa.gov> on behalf of Moss, Bill (DSHS) <MossBD@dshs.wa.gov>
Sent: Friday, May 3, 2019 1:08 PM
To: Matt Pina; _CityCouncil; Traci Buxton; Vic Pennington; Robert Back; Matt Mahoney; Luisa Bangs; Jeremy Nutting
Cc: Moss, Bill (DSHS); Knudsen, Kristi (DSHS/AL TSA); Rhodes, Stacey A (DSHS/AL TSA)
Subject: DSHS Aging and Long-Term Support Administration letter- Draft Ordinance 19-048
Attachments: DSHS AL TSA Letter Ordinance 19-048. 5.2.2019.pdf; AL TSA ESF Fact Sheet 4-30-19.pdf

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

Sent on behalf of Bill Moss, Assistant Secretary, Aging and Long-Term Support Administration, Department of Social & Health Services.

Sent via email to expedite deliver and signed letter sent via US Postal Service.

Dear Mayor Pina & City Council Members,

It has come to my attention that on May 9, 2019, the City of Des Moines will consider Draft Ordinance 19-048 that may result in effectively precluding the siting of Enhanced Services Facilities (ESFs) within the city. I am writing to provide information about ESFs to assist the City in making an informed decision regarding enacting development regulations.

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If the City adopts a permanent ordinance that prohibits ESFs except in one small commercial zone within the city and only with an unclassified use review permit, it may make the siting and operation of an ESF in Des Moines impossible.

The Growth Management Act prohibits cities from precluding essential public facilities and from discriminating against people based on their disabilities. A number of laws, including the Washington Housing Policy Act, the Washington Law Against Discrimination, and the Fair Housing Amendments Act likewise protect the rights of individuals with disabilities

Bonnie Wilkins

From: Doreen Harper <woodmontcac1@yahoo.com>
Sent: Wednesday, May 8, 2019 12:19 PM
To: _CityCouncil
Subject: EPF & ESF Hearing

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

Dear Des Moines City Council,

I am writing with regard to the siting of Enhanced Services Facilities (ESF's) for purposes of public record for the hearing to be held on May 9, 2019.

Although these services are in dire need, this is solely about location. As a community, we have visited this topic in depth and to great length when we were facing the Woodmont Recovery mega-facility being sited near an elementary school. The community let their voices be heard about where to site these services in order to limit the impacts on the residents and members of the city.

The downtown business core of Des Moines is not a healthy location for people who are self-endangering, aggressive, threatening or have assaultive behaviors. If they are a risk to property, other residents and staff, then they are a risk to the community at large. Wise placement and well-thought out amenities for their treatment and support cannot be found in the downtown business district.

As a resident of Des Moines, I support the City Council's decision to amend the zoning to address the siting of these facilities. I also want to mention that the City of Des Moines has performed its duty as a host to multiple Essential Public Facilities including but not limited to being a direct neighbor to SeaTac Airport and a large regional correctional facility. Siting a high-risk nursing home and aggressive population care facility in a residential community with children, parks, small businesses, and including a high percentage of elderly citizens would be a catastrophic decision. The risks are too high and safety of the citizens should be the paramount concern over the drive to accommodate a high-risk facility with dangerous impacts and unforeseen outcomes.

The PR-C zone is more suited to address the needs of this facility where there are multiple modes of transportation and accessibility to health related services to address their needs and care.

Sincerely,
Doreen Harper
Des Moines Resident

Bonnie Wilkins

From: Matt Mahoney
Sent: Wednesday, May 8, 2019 9:28 PM
To: Bonnie Wilkins
Subject: Fwd: Public Hearing to consider Draft Ordinance No 19-048 - Please decline or move to a 2nd reading on June 27

Not sure if all Council received same but forwarding

Matt

Sent from my iPad

Begin forwarded message:

From: sally moncrieff <spaaso@yahoo.com>
Date: May 8, 2019 at 8:40:52 PM PDT
To: "mmahoney@desmoineswa.gov" <mmahoney@desmoineswa.gov>
Subject: Public Hearing to consider Draft Ordinance No 19-048 - Please decline or move to a 2nd reading on June 27

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

Councilor Mahoney,

I respectfully request that you DO NOT vote to amend the DMMC tonight. I am writing to request that you either decline to enact draft ordinance 19-048 or move to pass the draft ordinance to a 2nd reading on June 27, 2019.

I am alarmed that draft ordinance No. 19-048 would amend the DMMC use table to allow a private for-profit EPF to be sited downtown - a zone in which the existing DMMC does not allow such a facility to be located. Allowing EPF facilities in the downtown commercial district would create a non-conforming use. The Noble Health Care EPF does not share the characteristics of a traditional nursing facility which is why Burien fought to prevent Noble Health Care from moving into that city.

I attempted to find information on Noble Health Care and Zack Wester and found a Noble Health Care Center in Cashmere, WA that has a below average rating with 10 Substantiated Complaints, 1 Fine and 1 Penalty. I couldn't find any information on Mr Wester on line which is worrisome. Hopefully the Council has received substantiated references on both Noble Health Care and on Mr. Wester.

The DMMC Land Use Goal 1 is to actively guide and manage growth in a way that:

-Preserves and enhances the quality of life and the diverse residential neighborhoods of the community **and serves them with vibrant business districts.**

-Promotes economic development.

The DMMC meets all State Growth Requirements and does not need amending without a much more transparent public discussion.

Please decline Draft Ordinance No. 19-048. If you cannot agree with declining, then please move to pass the draft to a second reading on June 27, 2019 so that your constituents have the opportunity to comment on amending their official policy guide.

Thank you for your service to our beautiful city.



MIDWAY PARK PROPERTY ACQUISITION

Midway Park Property Location



Midway Park



Parks and Recreation Master Plan

Des Moines 2035 Comprehensive Plan

- Parks & Rec Master Plan cites priorities for land acquisition, with expansion of Midway Park being a priority.
- City's Comprehensive Plan - Chapter 11 devoted to the Pacific Ridge Neighborhood, and expanding open space in the area. It is additionally a goal in Chapter 6, the Parks, Recreation and Open Space Element.
- Protecting our region's greenspace and ensuring that open space continues to be available is crucial to our community.

22106 28th Ave S

Des Moines, WA 98198

- The Parcel #2156400364 adjacent to Midway Park has an acreage of 8400 SF (0.2 acres). Currently Midway Park is about an acre and a half.
- The King County Department of Assessments lists the “Appraised Land Value” for this lot in 2018 at \$93,000.
- Working with Janel Stoneback at Windermere Real Estate, we were able to negotiate the price of the lot to \$65,000.

Looking forward

- Parks Master Plan long term goal involves acquiring additional parcels to add to Midway Park.
- There is tremendous community support for this effort, from the neighborhood, Reach Out Des Moines, the Des Moines Area Food Bank, and the community garden.
- The City has applied for a Conservation Futures Tax (CFT) grant, for a total of \$675,900 – which would fund the vacant parcel just purchased, as well as additional land if available.
- Neighborhood input for the use of the additional open space.

Suggested Motion

“I move to ratify and approve the executed agreements for the purchase of the property at 22106 28th Ave S in Des Moines, for the purchase price of \$65,000 plus closing costs, and direct Administration to bring forward a budget amendment reflecting the cost for the purchase.”