AGENDA

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

June 27, 2019 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

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

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS – 30 minutes

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

Item 1: SENIOR SERVICES UPDATE

Item 2: PROBATION OFFICER OF THE YEAR

CONSENT CALENDAR

Page 5 Item 1: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers through June 20, 2019 included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#157831-157946	$ 562,921.22
Electronic Wire Transfers	# 1259-1266	$ 725,948.71
Payroll Checks	# 19197-19204	$ 3,399.62
Payroll Direct Deposit Void	#180163-180163	$ (2,080.79)
Payroll Direct Deposit	#250001-250173	$ 408,566.89
Total Checks and Wires for A/P and Payroll:		$1,698,755.65

Page 7 Item 2: LODGING TAX ADVISORY COMMITTEE SPENDING RECOMMENDATIONS

Motion is to approve the recommendations as submitted by the Lodging Tax Advisory Committee for the expenditure of 2019 Lodging Tax funds.

Page 45	Item 3:	INTERLOCAL AGREEMENT (ILA) BETWEEN THE CITIES OF BURIEN, DES MOINES, NORMANDY PARK AND SEATAC AND KING COUNTY FOR STORMFEST Motion is to approve the Interlocal Agreement between City of Des Moines and the Cities of Burien, Normandy Park, and SeaTac and King County for Highline StormFest, and authorize the City Manager to sign said Agreement substantially in the form as submitted.
Page 55	Item 4:	MARINA FACILITIES LEASE EXTENSION, CSR MARINE SOUTH Motion is to approve Addendum 3 to the June 9, 2009 Marina Facilities Lease with CSR Marine South, Inc., extending the lease for a 5 year option period and updating the lease amount and associated costs to reflect current market rate, and authorize the City Manager to sign the addendum substantially in the form as attached.
Page 87	Item 5:	6TH AVE S AND S 239TH ST PIPE PROJECT TASK ASSIGNMENT AMENDMENT Motion is to approve the amended Task Order Assignment with Parametrix for additional design services associated with the 6th Ave S and S 239th St Pipe Project in the amount of $20,991.68, plus a $2,000.00 contingency, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted.
Page 95	Item 6:	AMENDMENT 1 TO THE PROFESSIONAL MANAGEMENT SERVICES CONTRACT WITH WESLEY Motion is to approve the Amendment 1 to the Management Services Agreement with Wesley, to provide additional services and personnel at the Senior Activity Center, and authorize the City Manager to sign the Amendment substantially in the form as submitted.
Page 117	Item 7:	HIGHLINE COLLEGE URBAN AGRICULTURE USE AGREEMENT FOR MARY GAY PARK Motion is to approve the Urban Agriculture Use Agreement between the City of Des Moines and Highline College, and authorize the City Manager to sign the Amendment substantially in the form as attached.
Page 127	Item 8:	INTERLOCAL AGREEMENT WITH HIGHLINE SCHOOL DISTRICT FOR A SCHOOL RESOURCE OFFICER AT THE OLYMPIC SITE Motion is to approve the ILA with Highline School District to provide for a School Resource Officer for the upcoming school year at the temporary Highline High School at the Olympic Site, located at 615 S 200th S, and authorize the City Manager to sign the agreement substantially in the form as attached.

Page 137 Item 9: DRAFT RESOLUTION NO. 19-073, AUTHORIZING STAFF TO APPLY FOR AND ACCEPT A WASHINGTON STATE BOATING FACILITIES PROGRAM GRANT FOR THE DES MOINES MARINA GUEST MOORAGE ELECTRICAL UPGRADES PROJECT

Motion to adopt Draft Resolution 19-073, authorizing administration to apply for a Boating Infrastructure Grant in the amount of approximately $90,000 for improvements in the Marina's guest moorage area, and authorize the City Manager to sign the State's Project Agreement for the grant, if the grant application is successful.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Page 187 Item 1: SECOND READING AND CONTINUED 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

Motion is to 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.

EXECUTIVE SESSION

NEXT MEETING DATE

July 11, 2019 City Council Regular Meeting

ADJOURNMENT

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Consent Calendar Item #1

CITY OF DES MOINES
Voucher Certification Approval
June 27, 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 June 27, 2019 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through June 20, 2019 and payroll transfers through June 20, 2019 included in the attached list and further described as follows:

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

Beth Anne Wroe, Finance Director

	# From		# To	Amounts
Claims Vouchers:				
Total A/P Checks/Vouchers	157831	-	157946	562,921.22
Void Checks from Previous Check Runs				0.00
Electronic Wire Transfers	1259		1266	725,948.71
Total claims paid				**1,288,869.93**
Payroll Vouchers				
Payroll Checks	19197		19204	3,399.62
Direct Deposit Void	180163		180163	(2,080.79)
Direct Deposit	250001		250173	408,566.89
Total Paychecks/Direct Deposits paid				**409,885.72**
Total checks and wires for A/P & Payroll				**1,698,755.65**

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Consent Calendar Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Lodging Tax Advisory Committee Spending Recommendations

ATTACHMENTS:
1. Applications for Des Moines Lodging Tax Funds

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: June 11, 2019

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

CHIEF OPERATIONS OFFICER: _____

[X] Legal GG
[X] Finance BAW
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider and approve the Lodging Tax Advisory Committee's (LTAC) recommendations for expenditures of the 2019 Lodging Tax collected by the City.

Suggested Motion

Motion 1: "I move to approve the recommendations as submitted by the Lodging Tax Advisory Committee for the expenditure of 2019 Lodging Tax funds."

Background

Every year, the Des Moines Lodging Tax Advisory Committee is responsible for making recommendations to the City Council regarding the distribution of lodging taxes that the City collects from hotels and motels in the City. Lodging taxes are only eligible to be used for limited purposes pursuant to state law. Revised Code of Washington (RCW) 67.28.1815 limits the use of lodging tax funds as follows:

> [A]ll revenue from taxes imposed under this chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities.

The estimated annual amount of lodging tax collected for 2019 is approximately $110,000. In previous years, the Committee has recommended that 100% of the funds collected be distributed to Seattle Southside Regional Tourism Authority (SSRTA) for the purposes of tourism promotion.

For 2019, the Committee met and unanimously approved the following recommendations:

Seattle Southside Regional Tourism Authority	=$55,000 (50% of total tax received)
City staff administrative costs, LTAC support	=$5,000
City support/sponsorships of tourism related events	=$5,000
Capital Improvement/Maintenance of tourism related facilities	=$35,000
Other/Unspent funds	=$10,000
Total	=$110,000

Discussion

City staff has met a number of times with representatives of SSRTA prior to the Committee's formal recommendation. As a result of these meetings, the SSRTA has made a commitment to continue to fully fund marketing and promotional opportunities for the City and Des Moines businesses, as well as a commitment to continue funding grants specific to Des Moines that encourage tourism. In addition to receiving these services, the City will now have the opportunity to decide where the other 50% of Lodging Taxes that are raised are spent. The recommendations for 2019 were approved by the Lodging Tax Committee at their meeting in May.

The applications for lodging tax funds are attached as required by state law.

Alternatives

The City Council could elect to spend the Lodging Taxes in a different manner. If the funds are not spent in the manner that is recommended by the Lodging Tax Advisory Committee, there are specific conditions that must be met prior to expenditure.

Financial Impact

By reducing the total percentage of taxes sent to the SSRTA from 100% to 50%, the Lodging Tax Advisory Committee has made recommendations that allows the City greater local control of how to spend the funds. There is no negative financial impact from these recommendations.

Recommendation

Approve the motion as written.

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Attachment #1

Application for Des Moines Lodging Tax Funds

Amount of Lodging Tax Requested: 50% of Lodging Tax Collections

Organization/Agency Name: Seattle Southside Regional Tourism Authority			
Federal Tax ID Number: 47-3031480			
Event or Activity Name (if applicable): Seattle Southside Regional Tourism Authority(RTA) is the official regional destination marketing organization (DMO) for the cities of SeaTac, Tukwila and Des Moines. The RTA promotes the combined communities as a destination branded "Seattle Southside", to create increased economic impact through marketing the destination's numerous travel and tourism businesses. Seattle Southside RTA is highly regarded as an effective organization and valued within our communities, region and State. Vision Statement: To position Seattle Southside as a destination of choice for practical travelers to Seattle while enhancing the image and economic strength of the region. Mission Statement: As a brand-driven and entrepreneurial destination marketing organization, Seattle southside RTA provides advocacy and innovative services to competitively market the destination. This function helps create jobs, grow tax revenues, and improve the quality of life for our businesses and residents.			
Contact Name and Title: Katherine Kertzman, CEO			
Mailing Address: 3100 S. 176th Street, Ste. 200	City: Seattle	State: WA	Zip: 98188
Phone: 206-575-0547	Email Address: Katherine@SeattleSouthside.com		
☐ Non-Profit ☐ For-Profit ■ Public Agency			

CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I understand that:

- I am proposing a tourism-related service. If awarded, my organization intends to enter into a Municipal Services Contract with the City.

- The City of Des Moines will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City, including copies of invoices and payment documentation.
- Funds must be expended within the calendar year.
- Reporting requirements meeting state guidelines outlined in this application must be submitted with final request for reimbursement.

Signature: Katherine Kupper	Date: May 22, 2019

Application Overview

Provide us with an overview of your request:

Attach:

1. **Description and itemized budget showing how you intend to use the amount requested from the City of Des Moines (income and expenses).** Budget attached, please refer to the notebook furnished to the City of Des Moines on September 12, 2018 for additional detail requested.
2. **If your agency is a non-profit a copy of your agency's current non-profit corporate registration with the Washington Secretary of State.** N/A- Public Development Authority RCW 35.21
3. **A copy of your organization's business plan (please limit to not more than two pages) and annual budget.** Full business plan attached
4. **Brochures or other information about your event/activity/facility, in particular items showing recent tourism promotion efforts. (Optional)** *Please refer to the notebook furnished to the City of Des Moines on September 12, 2018.

This proposal and all documents filed with the City are public records. The City may choose to post on its website copies of the proposals and attached documents.

Tell us who you expect to attract: The RTA's primary focus is attracting overnight tourists who stay in paid accommodations, eat in local restaurants, shop within area retailers, visit nearby attractions, etc. as these travelers have the highest visitor spend per trip, generating the greatest economic impact and return on investment.

The State of Washington requires an estimate for the following questions below: These number reflect data collected for the 3 cities of the RTA including Des Moines, SeaTac and Tukwila. Des Moines represents 3% of the total rooms in our regional designation.

As a direct result of your proposed tourism-related service, provide an estimate of:		**What method was used to determine attendance in previous years?**
a. **Overall Attendance** Enter the total number of people predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 541,462	■ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate

b. **Attendance, 50+ Miles** Enter the number of people who traveled greater than 50 miles predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 514,389	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ■ Structured Estimate
c. **Attendance, Out of State, Out of Country** Enter the number of people from outside the state and country predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 257,194	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ■ Structured Estimate
d. **Attendance, Paid for Overnight Lodging** Enter the number of predicted to attend this activity and pay for overnight lodging, and select the method used to determine the attendance. (Based on 567,025 actual RTA generated room nights x 2.3 party size from Dean Runyan x 3% of SS hotel room supply located in Des Moines)	Predicted: 39,125	■ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate
e. **Attendance, Did Not Pay for Overnight Lodging** Enter the number of predicted to attend this activity without paying for overnight lodging, and select the method used to determine the attendance.	Predicted: N/A	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate

Methods

Direct Count: Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.

Indirect Count: Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.

Representative Survey: Information collected directly from individual visitors/participants. A representative survey is a highly structured data collection tool, based on a defined random sample of participants, and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.

Informal Survey: Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.

Structured Estimate: Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).

Actual data will be required with your final reimbursement.

Application Submittal

Submit a PDF or one original signed copy to:

City of Des Moines Lodging Tax Advisory Committee
c/o Bonnie Wilkins
21630 11th Ave S.,
Des Moines, WA 98198
Email: BWilkins@desmoineswa.gov

You must complete and sign the cover sheet with this packet

- ⇨ **You may use the Supplemental Form or type the questions and answers on separate sheets of paper.**
- ⇨ **Please number each page in your packet, except for the optional brochures/information.**

General Information

City of Des Moines Lodging Tax Fund Overview

The City's Lodging Tax Fund is the primary source of City funding for activities, operations, and expenditures designed to increase tourism. In any given year, the City may maintain a reserve in the Fund, and will assess on an annual basis how much of the fund to appropriate in a given year.

The Des Moines City Council has created a Lodging Tax Advisory Committee to conduct an annual process to solicit and recommend Lodging Tax funded services for City Council consideration.

HIGH PRIORITY will be given to tourism activities that:

- Have a demonstrated potential or high potential from the Committee's perspective to result in overnight stays by tourists in lodging establishments within the City of Des Moines.
- Promote Des Moines and/or events, activities, and places in the City to potential tourists from outside King County.
- Have demonstrated or high potential from the Committee's perspective to result in documented economic benefit to Des Moines.
- Have a demonstrated history or success in Des Moines, or are proposed by a group with a demonstrated history or high potential of success with similar activities.

- Minimize duplication of services where appropriate and encourage cooperative marketing and/or includes an element of cooperation or partnership.

- Provide, maintain, operate or enhance City-owned tourism facilities or infrastructure.

State Law Excerpts

RCW 67.28.1816 – Use of Lodging Tax Fund.
Lodging tax revenue under this chapter may be used, directly by any municipality or indirectly through a convention and visitors bureau or destination marketing organization for:

a. Tourism marketing;
b. The marketing and operations of special events and festivals designed to attract tourists;
c. Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or
d. Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec. 501(c)(6) or the internal revenue code of 1986, as amended.

RCW 67.28.080 – Definitions.

- "Municipality" means any county, city or town of the state of Washington.
- "Operation" includes, but is not limited to, operation, management, and marketing.
- "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.
- "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
- "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.
- "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.
- "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

Seattle Southside Regional Tourism Authority (RTA) Proposed Budget
For the Fiscal Year Ending December 31, 2019
Updated 8/22/2018

		2019 Budget
Revenues:		
345-60-00	TPA Special Assessments	$ 3,674,825
337-00-01	LTC-Tukwila	202,500
337-00-02	LTC-SeaTac	830,000
337-00-03	LTC-Des Moines	111,000
361-11-00	Investment Earnings	45,000
361-40-00	Other Interest on TPA SA	3,500
369-91-01	Misc Prior Year Adj	-
369-XX-XX	Misc Other Revenue	2,500
369-91-05	Advertising	75,000
Total Revenues:		**$ 4,944,325**
Expenses:		
Salaries (10) & Benefits (20)		$ 1,622,209
Supplies (30)		31,000
Small Equipment (35)		20,000
Professional Services/Ads/Promotions (41)		2,200,000
Communications/Postage (42)		81,000
Travel (43)		115,000
Operating Leases (45)		120,000
Insurance (46)		12,000
Maintenance (48)		6,000
Miscellaneous/Printing (49)		900,000
Subtotal Operating Expenses		**$ 5,107,209**
Cap Equip/Furn, Images & Trademarks (64)		100,000
Subtotal Operating Expenses & Capital Expenses		**5,207,209**
Economic Downturn/Recession Reserve (11% of SA)		404,231
Total Expense Budget		**5,611,440**
Change in Net Position		(667,115)
Budgeted Beginning Net Position		**$ 2,153,571**
Add: Changes in Financial Statement Non-Spendable and Committed Balances from 2016		N/A
Budgeted Ending Net Position		**$ 1,486,456**
Contingency Reserve (2 months)		$ 868,042
Capital Asset Replacement Reserve		$ 110,000
Unrestricted Balance		$ 508,414

(a) The general promotion of tourism within the Seattle Southside TPA as specified in the business plan of the SSRTA;

(b) The marketing of convention and trade shows that benefit local tourism and the Lodging Businesses in the Seattle Southside TPA;

(c) The marketing of the Seattle Southside TPA region to the travel industry in order to benefit local tourism and the lodging businesses in the Seattle Southside TPA;

(d) The marketing of the Seattle Southside TPA region to recruit sporting events in order to promote local tourism and to benefit the Lodging Businesses and tourism industry within the Seattle Southside TPA; and

(e) Direct administration, operation, formation, and start-up costs associated with the Seattle Southside TPA and the ongoing management and maintenance of the Seattle Southside TPA program, including but not limited to staff costs, public notice advertising, legal costs, accounting and auditing (including audits of the Parties and the SSRTA as they relate to this Agreement), as approved by the SSRTA Board of Directors, provided no funds will be used for costs not directly related to the operation of the Seattle Southside TPA, this Agreement, or the SSRTA.

Sunrise Garden Suites Tukwila/SeaTac Airport*	Tukwila, WA	98168	88
Days Inn Seattle South Tukwila	Tukwila, WA	98168	119
Econo Lodge SeaTac Airport North	Seattle, WA	98168	47
Ramada SeaTac Airport North	Tukwila, WA	98168	38
Cedarbrook Lodge	SeaTac, WA	98188	167
Clarion Hotel Seattle Airport	Seatac, WA	98188	214
Coast Gateway Hotel	Seattle, WA	98188	143
Comfort Inn & Suites SeaTac Airport	SeaTac, WA	98188	119
Comfort Suites Airport Tukwila	Tukwila, WA	98188	138
Country Inn & Suites SeattleTacoma International Airport	Seattle, WA	98188	120
Courtyard Seattle SeaTac Area	Tukwila, WA	98188	211
Courtyard Seattle South Center	Tukwila, WA	98188	149
Crowne Plaza Seattle Airport	Seattle, WA	98188	260
Days Inn Seattle SeaTac Airport	Seattle, WA	98188	85
Doubletree Seattle Airport	Seattle, WA	98188	850
DoubleTree Suites Hotel Seattle Airport Southcenter	Seattle, WA	98188	219
Embassy Suites Seattle Tacoma International Airport	Seattle, WA	98188	242
Extended Stay America Seattle Southcenter	Tukwila, WA	98188	94
Extended Stay America Seattle Tukwila	Tukwila, WA	98188	96
Fairfield Inn Seattle SeaTac Airport	Seattle, WA	98188	146
Hampton Inn & Suites Seattle Airport 28th Avenue	SeaTac , WA	98188	218
Hampton Inn Seattle Airport	Seattle, WA	98188	130
Hampton Inn Seattle Southcenter	Tukwila, WA	98188	152
Hilton Seattle Airport & Conference Center	Seattle, WA	98188	396
Holiday Inn Express & Suites Seattle SeaTac	SeaTac, WA	98188	171
Home2 Suites Seattle Airport	Tukwila, WA	98188	139
Homewood Suites Seattle Tacoma Airport Tukwila	Tukwila, WA	98188	106
La Quinta Inns & Suites Seattle SeaTac Airport	Seatac, WA	98188	143
Marriott Seattle Airport	Seatac, WA	98188	462
Motel 6 Seattle Airport	Seattle, WA	98188	109
Motel 6 Seattle SeaTac Airport South	Seattle, WA	98188	144
Quality Inn SeaTac Airport Seattle	Seattle, WA	98188	102
Radisson Hotel Seattle Airport	Seattle, WA	98188	204
Ramada SeaTac Airport	Seattle, WA	98188	155
Ramada Tukwila SeaTac Airport	Tukwila, WA	98188	146
Red Lion Hotel Seattle Airport	Seattle, WA	98188	144
Red Roof Inn Seattle Airport Seatac	Seattle, WA	98188	152
Residence Inn Seattle South Tukwila	Tukwila, WA	98188	144
Rodeway Inn SeaTac	SeaTac, WA	98188	59
SeaTac Crest Inn	SeaTac, WA	98188	51
SeaTac Inn	SeaTac, WA	98188	39
Sutton Suites & Extended Stay	SeaTac, WA	98188	71
Best Western Seattle Airport Hotel	Seattle, WA	98198	143
Four Points by Sheraton Seattle Airport South	Des Moines, WA	98198	225
Garden Suites	Des Moines, WA	98198	50
Motel 6 Seattle South	Seattle, WA	98198	124
Skyway Inn	Seattle, WA	98198	58
Sleep Inn SeaTac Airport	Seatac, WA	98198	105
The Marina Inn	Des Moines, WA	98198	42
Travel Inn	Des Moines, WA	98198	36
Value Inn Sea Tac	Des Moines, WA	98198	45
Aloft	SeaTac	98188	144
Americas Best Value Inn International Blvd	SeaTac	98188	80
Hilton Garden Inn (not open yet)	SeaTac	98188	152
Holiday Inn Express & Suites, Seattle South-Tukwila	Tukwila, WA	98188	92
Hotel Interurban	Tukwila, WA	98188	189
Residence Inn Seattle SeaTac Airport	SeaTac	98188	170
Travelodge SeaTac Airport North	Tukwila, WA	98168	72
Woodspring Suites Seattle Tukwila	Tukwila, WA	98188	126
		Total Properties:	8835

SEATTLE SOUTHSIDE
Regional Tourism Authority

2019
Business Plan

EXECUTIVE DIVISION

President and CEO

Strategy (2) Leadership Excellence
Objective 1: Apply for Destination International accreditation; accreditation achieved by year-end 2019.
Budget: $2,500 and Staff Time
Tactics:

- Prepare and assemble application components as outlined in DMAP.
- Review completed draft application with executive staff.
- Send draft application for outside proofing/minor editing (if necessary).
- Submit application by D.I. - announced 2018 deadline.

Strategy (2) Leadership Excellence
Objective 2: Advance RTA's interests through increased participation in regional partnerships.
Budget: Staff Time
Tactics:

- Investigate additional regional partnership opportunities, e.g., Burien, Port of Seattle, etc., and make recommendations to the Board.
- Work with TPA cities on how the RTA 2019 Work Plan complements each city's strategic plan.
- Ensure attendance at all partner city lodging tax advisory committee meetings and that vital information is shared with the executive team.
- Pursue continued collaboration opportunities with the Seattle Southside Chamber of Commerce, Soundside Alliance, and partner cities.

Strategy (2) Leadership Excellence
Objective 3: Monitor and ensure third-year execution of the RTA's Strategic Plan 2016-2021.
Budget: Staff Time
Tactics:

- Provide staff with quarterly performance reporting opportunities to assess implementation of Executive, MarCom, and Sales & Services Division 2019 workplans.
- Working with the executive team, make periodic modifications to workplans as deemed necessary to achieve organizational goals.
- Encourage staff to generate and develop new ideas in order to create a culture of innovation.
- Gain a more in-depth perspective of how departments within the RTA are managed to accomplish the annual business plan.

Strategy (2) Leadership Excellence
Objective 4: Work with MarCom & Sales divisions to monitor and enhance TPA ratepayer communication plan throughout the year and keep board, ratepayers, partner cites, and business associates informed and engaged in RTA activities.
Budget: Staff Time
Tactics:

- Monitor frequency and methods as to how TPA ratepayers are communicated with.
- Choose the right tools. This may mean multiple tools, depending on the mixture of owners and general managers we have in the Seattle Southside area.
- Listen intently and solicit feedback.
- Work in partnership with executive staff to write a multi-layered and two-way communication plan and ensure that TPA ratepayers and informed and engaged in RTA activities.

- Present draft communication plan to Board at March 9th, 2018 Board meeting.
- Select and incorporate periodic evaluation techniques within the plan to determine effectiveness and modify as needed.
- Encourage staff to generate and develop ideas in order to create a culture of innovation.

Strategy (2) Leadership Excellence
Objective 4: Demonstrate the RTA's commitment to professional development activities intended to increase staff's knowledge or skill set; develop action plan by March 1st and implement by year-end.
Budget: $40,000
Tactics:

- Provide quality, cost-effective training designed to increase individual and organizational productivity and enrichment.
- Provide development opportunities that enhance knowledge, develop skills, and enrich the organization, including professional certification through Destination International.
- Create, promote, and foster an organizational environment that values development, diversity, and growth opportunities for all employees.
- Provide individuals and the organization with the tools to respond effectively to customer needs as well as current and future demands for service.
- Provide ongoing leadership and support to the organization's succession efforts.
- Promote, support, and leverage technology resources and tools to improve and enhance workflow efficiency and improve customer service.

Comptroller

Strategy (2) Leadership Excellence
Objective 1: In collaboration with executive team, monitor, evaluate, and make recommended changes to the RTA's procurement practices to ensure proper fulfillment and documentation of RTA contracts and vendor agreements by the end of 2019.
Budget: Staff Time
Tactics:

- Recommend procurement policies and procedures amendments to CEO and draft as necessary.
- Develop internal process for monitoring and tracking completion of RTA contracts and vendor agreements.
- Conduct internal audit periodically and provide feedback regarding any discrepancies to the Executive Committee at least bi-annually prior to the annual SOA audit.

Strategy (2) Leadership Excellence
Objective 2: Supplement base of knowledge regarding destination marketing and sales through a variety of methods such as meeting attendance and training opportunities by the end of 2019.
Budget: $6,000
Tactics:

- Attend a variety of RTA business meetings and/or DMO training opportunities during the year.
    - Audit at least 2 quarterly RTA Partner meetings.
    - Attend at least one Destination International Summit.
    - Attend at least 1 RTA Destination Development Committee meeting.

Strategy (2) Leadership Excellence
Objective 3: Update monthly Budget to Actual Department Reports within seven (7) days after the end of each calendar month.
Budget: Staff time

Tactics:

- Create detailed department line item reports monthly.
- Notify each division leader of completion of monthly report through email with a link to the file.

Strategy (2) Leadership Excellence
Objective 4: Help build a culture of innovation in the Finance Department.
Budget: Staff time

Tactics:

- Explore and support business practice innovations that are governmental accounting-compliant that may make life easier for team members, e.g. electronic signatures, mobile payment systems, electronic receipting, etc.
- Contribute to executive team discussions with insight and analysis to support decision-making, ensuring business decisions are grounded in sound financial criteria.
- Lead key fiscal initiatives within the executive team that support overall strategic goals.

Operations Administrator

Strategy (2) Leadership Excellence
Objective 1: Support President/CEO in achieving DMAP accreditation by end of year.
Budget: Staff time
Tactics:

- Follow up with President/CEO, CFO and department Vice Presidents to ensure receipt of all required documents.
- Continue to place DMAP on executive staff meeting agenda and regularly report progress and missing documents.
- Schedule weekly meetings with President/CEO for compilation of DMAP documents.
- Submit application to Destination International when the application is complete.
- Assemble needed modifications and resubmit in the fall if necessary.

Strategy (2) Leadership Excellence
Objective 2. Identify a list of actions to be performed to increase level of support to executive staff and Board by March 14th in preparation for next Board meeting.
Budget: Staff time
Tactics:

- Discuss Board agenda at weekly executive staff meetings, at least once prior to document due date.
- Organize staff Board meeting practice session prior to Friday packet distribution date.

Strategy (2) Leadership Excellence
Objective 3: Receive continuing education in human resources management throughout the year.
Budget: Staff time
Tactics:

- Complete four-week WCIA supervisory training course and seek new continuing educational opportunities through WCIA and MRSC.
- Research training opportunities, webinars, and certification programs offered by HRCI and SHRM.
- Implement action items throughout the year.

Community Relations Director

Strategy: (3) Build Destination Experiences
Objective 1: In partnership with Chamber of Commerce, create a regional Restaurant Week to launch in 2020
Budget: $50,000
Tactics:

- Meet with Seattle Southside Chamber of Commerce to create a detailed plan for timing, length of event, and identification of responsibilities between the RTA and Chamber.
- Develop and implement an outreach and marketing plan with RTA Marketing to reach the local market and traveler community.
- Approach area dining establishments to participate in event.
- Market Restaurant Week to the local market and traveler community per plan.
- Create a post-event satisfaction survey to evaluate the success of the event.

Strategy: (3) Build Destination Experiences
Objective 2: Continue to expand and enhance the Do More Save More program by achieving greater use of the program through groups, FIT travelers and locals throughout the Greater Seattle region, especially within the RTA
Budget: Staff Time
Tactics:

- Meet with four or more partners or potential partners each month, and continue to work with Bandwango and RTA staff to add new vendors to the DMSM program.
- Create and implement a plan to establish better marketing outreach to RTA hotel partners to encourage their promotion of the use of DMSM to their guests.
- Create a procedural program for participant businesses to use to train their employees regarding the use of DMSM in order to make the fulfillment experience more streamlined and consistent for their customers.
- Encourage partners to create more compelling discounts/offers from participants to improve activation numbers.
- Find additional ways to engage new users and increase use of DMSM by working with Marketing Department to create and implement a specific DMSM marketing plan.
- Revisit effort with the Port of Seattle to find ways of promoting DMSM to cruise passengers.

Strategy: (3) Build Destination Experiences
Objective 3: Work with city partners to create a regional shoulder season event in 2020 with coinciding activities taking place in all partner cities over a specific period of time.
Budget: $10,000
Tactics:

- Research other events held around the U.S. that may provide ideas for the development of regional event.
- Strategize with all RTA city partners to determine timing for new event, how to make it impactful on a regional basis, and the scope of such an event.
- Create a budget for event.
- Involve community partners in the planning of the event through the creation of a steering committee.
- Hire a company to run logistics for said event.

Strategy: (3) Build Destination Experiences
Objective 4: Find ways to distribute Seattle Southside TV more extensively
Budget: $25,000
Tactics:

- Continue to source solutions for getting SSTV into more hotel rooms.
- Set up meeting with Comcast to see if there is some way to show program through their hotel system.

- Determine if SSTV can be programmed into local television broadcasts for low dollars (advertorial style).
- Place video on SeattleSouthside.com, YouTube, etc., and find other potential partners who will play the video regularly to maximize its viewing.

Strategy: (2) Drive Value and Results Through Leadership Excellence
Objective 5: Sell advertising in whatever capacity the RTA deems desirable, based on feedback from Destination Development Committee and RTA Board of Directors to meet or exceed budgeted revenue.
Budget: $30,000
Tactics:

- Call a meeting of the Destination Development Committee to determine the frequency of printed collateral and types of advertisers that should be allowed to participate.
- Present Destination Development Committee recommendations to RTA Board for final direction of sales effort.
- Develop a media kit and schedule for advertising program.
- Launch sales effort by email marketing and in-person sales calls to achieve sales goals.

MARKETING & COMMUNICATIONS DIVISION

VP, MarCom

Strategy (1) Own the Region
Objective 1: Research, develop, and launch a group media travel familiarization tour by end of Q2 to increase brand awareness.
Budget: $10,000; 620-41 PR Services/Professional Services
Tactics:

- Determine feasibility, theme, and timing of the event.
- Coordinate with PR firm to identify key writers and bloggers to fit the target audience.
- Work with partners to secure services.

Strategy (1) Own the Region
Objective 2: Increase brand awareness and likeliness to refer and return year over year.
Budget: $1,016,000; 620-41 Media Buy/Professional Services
Tactics:

- Utilize research collected from digital media conversion study to shape future marketing plans.
- Develop a guerilla media blitz to target 1-2 DMAs.
- Work with Business Development team to develop cruise partner outreach materials.

Strategy (1) Own the Region
Objective 3: Enhance the marketing automation program (ActOn through SimpleView) to increase high-value website and newsletter engagement year over year.
Budget: $20,000; 620-49 Website Licenses/Miscellaneous
Tactics:

- Utilize tools that follow users through the travel planning process to encourage conversions.
- Create new content, revamp existing content, and encourage consumption for each stage of the planning process, i.e. online articles, collateral pieces, and video.

Strategy (1) Own the Region
Objective 4: Increase partner referrals year over year through in-room messaging and other strategies.
Budget: $110,000; 620-49 Printing/Miscellaneous
Tactics:

- Develop additional video footage and photography to enhance in-room television programs.
- Enhance in-room travel planner collateral and increase distribution.
- Recruit more partners to participate in DMSM campaign and encourage current participants to enhance offers.
- Encourage hotel partners to use SeattleSouthside.com as Wi-Fi landing page.

Strategy (1) Own the Region
Objective 5: Increase brand awareness and intent to refer with local residents year over year.
Budget: $150,000; 620-41 Sponsorship/Professional Services
Tactics:

- Develop a mobile visitor center campaign at community events.
- Create a quarterly mailing program to residents, highlighting visiting friends and relatives, events, and things to do.
- Enhance Seawolves sponsorship to increase visibility at matches and on TV.

Communications Manager

Strategy (1) Own the Region
Objective 1: Increase overall engagement across all social media and web platforms year over year.

Budget: $50,000; 620-10, 620-20 Staff Time
Tactics:

- Work with partners to identify promoted/boosted posts.
- Identify new trends in the social media and tourism worlds.
- Build relationships with social media influencers and evangelists and invite to destination.
- Post native video content on social channels weekly.
- Experiment with live video, panoramic photography, and other cutting-edge social media concepts.
- Support media FAM trips through promotion and day-of assistance.

Strategy (1) Own the Region
Objective 2: Create and edit 12 short videos showcasing the destination by end of year.
Budget: $10,000; 620-10, 620-20 Staff Time
Tactics:

- Practice and learn new video editing skills in Adobe Premiere Pro.
- Capture new content throughout the destination and add material to video library.
- Work frequently with partners to exchange material and plan shoots.
- Post videos to social media platforms, website, and YouTube.

Strategy (1) Own the Region (2) Drive Results Through Leadership Excellence
Objective 3: Rank Seattle Southside blog on page 1 of Google keyword searches at least once per quarter.
Budget: $10,000; 620-10, 620-20 Staff Time
Tactics:

- Insert destination-oriented SEO keywords into blog meta title and description on a weekly basis.
- Improve quality of blog with new publication title, video content, and unique stories.
- Recruit guest authors in and out of the organization (reach out to partners for guest writers).
- Update old blog posts to refresh content.
- Keyword examples: "things to do near me," "restaurants near me," "attractions near me," etc.

Strategy (1) Own the Region
Objective 4: Utilize ActOn to increase the click-through and conversion rate of the newsletter program year over year.
Budget: $20,000; 620-10, 620-20 Staff Time
Tactics:

- Implement interest groups to receive unique monthly mailer.
- Work with MarCom team to develop goals, objectives, and tactics for each email campaign.
- A/B test articles and designs to segmented audiences and personalize content.

Strategy (1) Own the Region (2) Drive Results Through Leadership Excellence
Objective 5: Update Media section of Seattle Southside website to ensure content is relevant to members of the media by Q2 and update regularly through Q4.
Budget: $5,000; 620-10, 620-20 Staff Time
Tactics:

- Format the "Media" page to be more user-friendly.
- Add latest Seattle Southside stories and media-related articles.
- Updates media resources and landing pages.

Creative Services Manager

Strategy (2) Drive Value and Results Through Leadership Excellence
Objective 1: Create branded corporate identity materials and make available at an online resource center for internal

and external use by end of Q1.

Budget: $5,000; 620-49 Licenses/Miscellaneous, 620-10, 620-20 Staff Time

Tactics:

- Research other DMOs to see how they execute their resources page, e.g., range of products offered, photo sizes, file formats, quantities, etc.
- Develop a library of photos and videos, logos, copy, HTML email templates and signatures, ad templates, save-the-date postcards, presentations, etc., for meeting or event planners and staff for easy access.
- Develop a flow chart of internal approval of assets used to ensure compliance with RTA brand standards.

Strategy (2) Drive Value and Results Through Leadership Excellence

Objective 2: Create a priority action list of major projects in SmartSheet to meet organizational goals and deadlines. The list of known projects will be compiled before the start of Q1.

Budget: $5,000; 620-49 Licenses/Miscellaneous, 620-10, 620-20 Staff Time

Tactics:

- Determine upcoming needs of the different departments (MarCom, Sales & Service, Admin) for 2019.
- Use SmartSheet to track progress and reprioritize projects.

Strategy (4) Encourage Easy Connections

Objective 3: Develop a more cost-effective map to show the Seattle Southside area to be completed by yearend.

Budget: $50,000; 620-49 Printing/Licenses/Miscellaneous, 620-10, 620-20 Staff time

Tactics:

- Research other DMOs to see how they handle their area maps.
- Incorporate feedback from the Destination Advisory Committee.

Strategy (2) Drive Value and Results Through Leadership Excellence

Objective 4: Develop 1-3 commercials per quarter for use in the Visitor Center and online, promoting our services.

Budget: $10,000; 620-49 Licenses/Miscellaneous, 620-10, 620-20 Staff Time

Tactics:

- Create promotions for Do More – Save More Passport, Light Rail Tickets, itineraries, social media.
- Meet with Visitor Center Staff to determine the greatest need from their perspective.
- Review the Editorial Calendar to establish commercial possibilities and schedule.
- Explore uses for videos in social media and on the website.

MarCom Coordinator

Strategy (1) Own the Region (3) Build Destination Experiences

Objective 1: Develop a plan for the mobile Visitor Center by end of Q1.

Budget: $10,000; 620-10, 620-20 Staff Time

Tactics:

- Work with Outreach Coordinator to create an Outlook calendar and research plan.
- Work with Visitor Center staff to create schedule and staff events.
- Work with executive team to review submitted requests for appearances.

Strategy (2) Drive Value and Results Through Leadership Excellence

Objective 2: Become familiar with Visitor Center procedures by end of Q2.

Budget: $15,000; 620-10, 620-20 Staff Time

Tactics:

- Meet with Visitor Center staff and complete training.

Strategy (2) Drive Value and Results Through Leadership Excellence

Objective 3: Review Visitor Center policies and procedure manual and update and revise by year-end.

Budget: $5,000; 620-10, 620-20 Staff Time

Tactics:

- Work with Visitor Center staff to review policies.
- Review procedures from other DMOs to develop best practices.

Strategy (1) Own the Region

Objective 4: Become familiar with the CRM and CMS programs by year-end.

Budget: $30,000; 620-49 Licenses/Miscellaneous, 620-10, 620-20 Staff Time

Tactics:

- Utilize training videos and webinars provided by Simpleview.
- Assist MarCom and Business Development teams to input data and update information.
- Complete regular maintenance reports to correct errors.

SALES & SERVICES DIVISION

VP, Sales and Services

Strategy (2) Drive Value and Results Through Leadership Excellence
Objective 1: Meet with partners with routinely to verify contact and listing data, increase brand awareness, explore additional partner services, and encourage use of Sales Support Program with the goal of 100 Partner 1:1 Meetings by year-end 2019.
Budget: Staff Time
Tactics:

- Seek out appointments with partners with a focus on sales staff at TPA hotels or event venues.
- Engage with partners to identify needs.
- Work across RTA divisions to further develop partner services.
- Continue to revise Partner 1:1 packet to reflect current offerings.

Strategy (3) Build Destination Experiences
Objective 2: Continue implementation of Planner Communication Plan (Social Selling Plan) with the goal of publishing 8 testimonials, 12 blogs, obtaining 200 sales newsletter sign-ups, and increasing engagement through LinkedIn and microsites. Benchmark LinkedIn engagement and unique web visitors to MeetInSeattleSouthside.com and SeattleSouthsideToolkit.com by yearend.
Budget: Staff Time
Tactics:

- Monitor Business Development Managers' goal to increase LinkedIn followers and sales newsletter sign-ups.
- Work with Outreach Coordinator in LinkedIn strategy and blog production.
- Work with MarCom and GreenRubino for PR and LinkedIn ads that align with plan.
- Continue to produce editable design elements for Meeting Planner Toolkit.
- Continue to revise website to make tools easily accessible to planners and partners.
- Implement Sales Newsletter:
    - Email current clients and encourage sign-up
    - Develop quarterly newsletter from Travel Update content

Strategy (3) Build Destination Experiences
Objective 3: Increase awareness and engagement with local meeting planners and RTA partners through regional FAMs and events. Launch one partner and one planner event by midyear.
Budget: 610.41 (sponsorships)
Tactics:

- Work with partners to hold familiarization tours and awareness events:
    - Association workshop in Olympia
    - Military reunion familiarization tour
    - Local Planners workshop or familiarization tour
- Work with Outreach Coordinator to develop Seattle Southside Regional Expert Program.

Outreach Coordinator

Strategy (2) Drive Value and Results Through Leadership Excellence
Objective 1: Create and launch "Regional Expert Program" for Seattle Southside by end of Q2. Accredit 8 people per class.
Budget: Staff Time
Tactics:

- Complete curriculum, program materials, and FAM itinerary.
- Present first class by end of Q2 and hold one class per quarter thereafter.

- Develop outreach plan to recruit partners, city officials, and others who affect the outcome of tourism in the area.

Strategy (2) Drive Value and Results Through Leadership Excellence
Objective 2: Increase brand awareness and encourage use of the RTA's Sale Support Program by meeting with 100 partners by year-end.
Budget: Staff Time
Tactics:

- Seek out appointments with partners with a focus on sales staff at TPA hotels or event venues.
- Engage with partners to identify needs.
- Work across RTA divisions to further develop partner services.
- Report monthly on progress.

Strategy (3) Build Destination Experiences
Objective 3: Continue implementation of Planner Communication Plan (Social Selling Plan) with the goal of producing 12 Vlogs by year-end and establishing LinkedIn engagement benchmark.
Budget: Staff Time
Tactics:

- Report Vlog production progress & LinkedIn engagement weekly.
- Share Vlog calendar and Vlogs with partners through meetings, LinkedIn, and e-blasts and encourage feedback.
- Work with Marcom on video editing and sharing to social media platforms.
- Work with GreenRubino on promoted LinkedIn ads.

Strategy (2) Own the Region
Objective 4: Participate in local and community events to enhance outreach and increase brand awareness.
Budget: Staff Time
Tactics:

- Work with staff committee to support efforts of Mobile Visitors Center at community outreach events.
- Research and actively seek outreach opportunities in the region.
- Participate in Seattle Southside Chamber of Commerce events and committees to engage with partners and potential partners.

Business Development Managers

Strategy (1) Own the Region
Objective 1: Increase group business to the region through regional brand awareness with planners and strategic partnerships with third party planners and booking agencies.
Budget: 610.41 (sponsorships) & 610.49 (registration)
Tactics:

- Meet one-on-one with planners to present the benefits of holding their events in Seattle Southside with the goal of 400 meetings (as a division).
- Nurture relationships with past clients to keep Seattle Southside front-of-mind when planning their next meeting.
- Attend at least 50 networking events (as a division) relevant to the meetings and events industry
- Volunteer and support industry events and meetings.
- Develop relationships with cruise industry business development managers (BDMs) to expand regional opportunities.
- Continue involvement with industry associations including Meeting Professionals International (MPI), Professional Convention Managers Association (PCMA), Washington Society of Association Executives (WSAE), and others.
- Produce regional FAM tours or events to educate local planners on the advantages of Seattle Southside.

Strategy (3) Build Destination Experiences

Objective 2: Continue implementation of Planner Communication Plan (aka. Social Selling Plan) with the goal of connecting with planners through the sales e-newsletter and LinkedIn (benchmark established by year-end) and securing one planner testimonial per quarter for publication on MeetInSeattleSouthside.com.

Budget: Staff Time

Tactics:

- Promote MeetInSeattleSouthside.com in planner communication and correspondence.
- Increase utilization of Meeting Planner Toolkit and contribute to the development of the microsite through acquisitioning planner testimonials and contributing toward planner-focused blogs.
- Follow up with planners after meetings through strategy laid out in the Planner Communication Plan.
- Engage with planners through LinkedIn groups, posts, and comments.

Strategy (2) Drive Value and Results Through Leadership Excellence

Objective 3: Increase brand awareness and encourage use of the RTA's Sale Support Program by meeting with 25 partners by year-end.

Budget: Staff Time

Tactics:

- Seek out appointments with partners with a focus on sales staff at TPA hotels or event venues.
- Engage with partners to identify needs.
- Work across RTA divisions to further develop partner services.
- Report monthly on progress.

Strategy (5) Create a Participatory Sports Focus

Objective 4: Recruit regional sporting events and increase regional tournament participation year over year.

Budget: Staff Time

Tactics:

- Maintain strong relationship with Starfire and meet at least twice a year to explore ways to enhance partnership.
- Work with VP of Sales & Services to develop a Parks and Recreation engagement plan.
- Continue educating hotel partners in tournament housing RFP process (MeetingMax), including competitive rates and policies.

Application for Des Moines Lodging Tax Funds

Amount of Lodging Tax Requested: $5,000

Organization/Agency Name: City of Des Moines			
Federal Tax ID Number: 91-6016496			
Event or Activity Name (if applicable): Lodging Tax Advisory Committee Staff Support			
Contact Name and Title: Nicole Nordholm, Management Analyst			
Mailing Address: 21630 11th Ave. S, Suite A,	City: Des Moines	State: WA	Zip: 98198
Phone: (206) 870-6546	Email Address: NNordholm@desmoineswa.gov		
☐ Non-Profit ☐ For-Profit X Public Agency			

CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I understand that:

- I am proposing a tourism-related service. If awarded, my organization intends to enter into a Municipal Services Contract with the City.
- The City of Des Moines will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City, including copies of invoices and payment documentation.
- Funds must be expended within the calendar year.
- Reporting requirements meeting state guidelines outlined in this application must be submitted with final request for reimbursement.

Signature:	Date: 6/10/19

Application Overview

Provide us with an overview of your request:

Attach:

1. Description and itemized budget showing how you intend to use the amount requested from the City of Des Moines (income and expenses).
2. If your agency is a non-profit a copy of your agency's current non-profit corporate registration with the Washington Secretary of State.
3. A copy of your organization's business plan (please limit to not more than two pages) and annual budget.
4. Brochures or other information about your event/activity/facility, in particular items showing recent tourism promotion efforts. (Optional)

This proposal and all documents filed with the City are public records. The City may choose to post on its website copies of the proposals and attached documents.

Tell us who you expect to attract:

The State of Washington requires an estimate for the following questions below:

As a direct result of your proposed tourism-related service, provide an estimate of:		What method was used to determine attendance in previous years?
a. **Overall Attendance** Enter the total number of people predicted to attend this activity, and select the method used to determine the attendance.	Predicted: N/A	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate
b. **Attendance, 50+ Miles** Enter the number of people who traveled greater than 50 miles predicted to attend this activity, and select the method used to determine the attendance.	Predicted: N/A	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate
c. **Attendance, Out of State, Out of Country** Enter the number of people from outside the state and country predicted to attend this activity, and select the method used to determine the attendance.	Predicted: N/A	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate
d. **Attendance, Paid for Overnight Lodging** Enter the number of predicted to attend this activity and pay for overnight lodging, and select the method used to determine the attendance.	Predicted: N/A	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate
e. **Attendance, Did Not Pay for Overnight Lodging** Enter the number of predicted to attend this activity without paying for overnight lodging, and select the method used to determine the attendance.	Predicted: N/A	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey ☐ Structured Estimate

Methods

Direct Count: Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.

Indirect Count: Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.

Representative Survey: Information collected directly from individual visitors/participants. A representative survey is a highly structured data collection tool, based on a defined random sample of participants, and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.

Informal Survey: Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.

Structured Estimate: Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).

Actual data will be required with your final reimbursement.

Application Submittal

Submit a PDF or one original signed copy to:

City of Des Moines Lodging Tax Advisory Committee
c/o Bonnie Wilkins
21630 11th Ave S.,
Des Moines, WA 98198
Email: BWilkins@desmoineswa.gov

You must complete and sign the cover sheet with this packet

- ⇨ **You may use the Supplemental Form or type the questions and answers on separate sheets of paper.**
- ⇨ **Please number each page in your packet, except for the optional brochures/information.**

General Information

City of Des Moines Lodging Tax Fund Overview

The City's Lodging Tax Fund is the primary source of City funding for activities, operations, and expenditures designed to increase tourism. In any given year, the City may maintain a reserve in the Fund, and will assess on an annual basis how much of the fund to appropriate in a given year.

The Des Moines City Council has created a Lodging Tax Advisory Committee to conduct an annual process to solicit and recommend Lodging Tax funded services for City Council consideration.

HIGH PRIORITY will be given to tourism activities that:

- Have a demonstrated potential or high potential from the Committee's perspective to result in overnight stays by tourists in lodging establishments within the City of Des Moines.
- Promote Des Moines and/or events, activities, and places in the City to potential tourists from outside King County.
- Have demonstrated or high potential from the Committee's perspective to result in documented economic benefit to Des Moines.
- Have a demonstrated history or success in Des Moines, or are proposed by a group with a demonstrated history or high potential of success with similar activities.
- Minimize duplication of services where appropriate and encourage cooperative marketing and/or includes an element of cooperation or partnership.
- Provide, maintain, operate or enhance City-owned tourism facilities or infrastructure.

State Law Excerpts

RCW 67.28.1816 – Use of Lodging Tax Fund.
Lodging tax revenue under this chapter may be used, directly by any municipality or indirectly through a convention and visitors bureau or destination marketing organization for:

a. Tourism marketing;
b. The marketing and operations of special events and festivals designed to attract tourists;
c. Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or
d. Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec. 501(c)(6) or the internal revenue code of 1986, as amended.

RCW 67.28.080 – Definitions.

- "Municipality" means any county, city or town of the state of Washington.

- "Operation" includes, but is not limited to, operation, management, and marketing.
- "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.
- "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
- "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.
- "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.
- "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

Application for Des Moines Lodging Tax Funds

Amount of Lodging Tax Requested: $35,000

Organization/Agency Name: City of Des Moines			
Federal Tax ID Number: 91-6016496			
Event or Activity Name (if applicable): Maintenance and Improvement of Tourism Facility – City of Des Moines Marina and Beach Park			
Contact Name and Title: Nicole Nordholm, Management Analyst			
Mailing Address: 21630 11th Ave. S, Suite A,	City: Des Moines	State: WA	Zip: 98198
Phone: (206) 870-6546	Email Address: NNordholm@desmoineswa.gov		
☐ Non-Profit ☐ For-Profit X Public Agency			

CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I understand that:

- I am proposing a tourism-related service. If awarded, my organization intends to enter into a Municipal Services Contract with the City.
- The City of Des Moines will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City, including copies of invoices and payment documentation.
- Funds must be expended within the calendar year.
- Reporting requirements meeting state guidelines outlined in this application must be submitted with final request for reimbursement.

Signature:	Date: 6/10/19

Application Overview

Provide us with an overview of your request:

Attach:

1. Description and itemized budget showing how you intend to use the amount requested from the City of Des Moines (income and expenses).
2. If your agency is a non-profit a copy of your agency's current non-profit corporate registration with the Washington Secretary of State.
3. A copy of your organization's business plan (please limit to not more than two pages) and annual budget.
4. Brochures or other information about your event/activity/facility, in particular items showing recent tourism promotion efforts. (Optional)

This proposal and all documents filed with the City are public records. The City may choose to post on its website copies of the proposals and attached documents.

Tell us who you expect to attract:

The State of Washington requires an estimate for the following questions below:

As a direct result of your proposed tourism-related service, provide an estimate of:		What method was used to determine attendance in previous years?
a. **Overall Attendance** Enter the total number of people predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 400,000	☐ Direct Count ☐ Indirect Count X Representative Survey ☐ Informal Survey ☐ Structured Estimate
b. **Attendance, 50+ Miles** Enter the number of people who traveled greater than 50 miles predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 40,000-48,000	☐ Direct Count ☐ Indirect Count X Representative Survey ☐ Informal Survey ☐ Structured Estimate
c. **Attendance, Out of State, Out of Country** Enter the number of people from outside the state and country predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 5,000	☐ Direct Count ☐ Indirect Count X Representative Survey ☐ Informal Survey ☐ Structured Estimate
d. **Attendance, Paid for Overnight Lodging** Enter the number of predicted to attend this activity and pay for overnight lodging, and select the method used to determine the attendance.	Predicted: 2,000	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey X Structured Estimate
e. **Attendance, Did Not Pay for Overnight Lodging** Enter the number of predicted to attend this activity without paying for overnight lodging, and select the method used to determine the attendance.	Predicted: 398,000	☐ Direct Count ☐ Indirect Count ☐ Representative Survey ☐ Informal Survey X Structured Estimate

Methods

Direct Count: Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.

Indirect Count: Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.

Representative Survey: Information collected directly from individual visitors/participants. A representative survey is a highly structured data collection tool, based on a defined random sample of participants, and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.

Informal Survey: Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.

Structured Estimate: Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).

Actual data will be required with your final reimbursement.

Application Submittal

Submit a PDF or one original signed copy to:

City of Des Moines Lodging Tax Advisory Committee
c/o Bonnie Wilkins
21630 11th Ave S.,
Des Moines, WA 98198
Email: BWilkins@desmoineswa.gov

You must complete and sign the cover sheet with this packet

- ⇨ **You may use the Supplemental Form or type the questions and answers on separate sheets of paper.**
- ⇨ **Please number each page in your packet, except for the optional brochures/information.**

General Information

City of Des Moines Lodging Tax Fund Overview

The City's Lodging Tax Fund is the primary source of City funding for activities, operations, and expenditures designed to increase tourism. In any given year, the City may maintain a reserve in the Fund, and will assess on an annual basis how much of the fund to appropriate in a given year.

The Des Moines City Council has created a Lodging Tax Advisory Committee to conduct an annual process to solicit and recommend Lodging Tax funded services for City Council consideration.

HIGH PRIORITY will be given to tourism activities that:

- Have a demonstrated potential or high potential from the Committee's perspective to result in overnight stays by tourists in lodging establishments within the City of Des Moines.
- Promote Des Moines and/or events, activities, and places in the City to potential tourists from outside King County.
- Have demonstrated or high potential from the Committee's perspective to result in documented economic benefit to Des Moines.
- Have a demonstrated history or success in Des Moines, or are proposed by a group with a demonstrated history or high potential of success with similar activities.
- Minimize duplication of services where appropriate and encourage cooperative marketing and/or includes an element of cooperation or partnership.
- Provide, maintain, operate or enhance City-owned tourism facilities or infrastructure.

State Law Excerpts

RCW 67.28.1816 – Use of Lodging Tax Fund.
Lodging tax revenue under this chapter may be used, directly by any municipality or indirectly through a convention and visitors bureau or destination marketing organization for:

a. Tourism marketing;
b. The marketing and operations of special events and festivals designed to attract tourists;
c. Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or
d. Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec. 501(c)(6) or the internal revenue code of 1986, as amended.

RCW 67.28.080 – Definitions.

- "Municipality" means any county, city or town of the state of Washington.

- "Operation" includes, but is not limited to, operation, management, and marketing.
- "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.
- "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
- "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.
- "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.
- "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

Application for 2019 Des Moines Lodging Tax Funds

Amount Requested: $35,000

Project: Maintenance and Improvement of Tourism Facility, City of Des Moines Marina and Beach Park

References:

1. 2019 City of Des Moines Budget
2. 2016 City of Des Moines Parks, Recreation and Senior Services Master Plan
3. Marina Parking Lot License Plate Study
4. 2019 Beach Park Event Guide

Narrative

Des Moines is a waterfront community that offers an excellent blend of natural beauty and business opportunity located midway between Seattle and Tacoma with easy access to and from Interstate 5 (2.5 miles), Pacific Highway South/International Boulevard (SR 99), and Sea-Tac Airport. The nearby airport and two deepwater seaports provide direct transportation connections for visitors. The proximity of Sea-Tac Airport brings 32 million air passengers per year to this local gateway. The City's six miles of shoreline include public beaches, natural areas, waterfront parks, a 900-slip marina, fine dining, and a popular boardwalk.

This beautiful coastal city is located just 20 minutes south of Seattle, WA. The City sits at the edge of the blue waters of Puget Sound, and is surrounded by the snowy peaks of the Olympic Mountains and majestic Mt. Rainier. The dazzling Des Moines Marina is home to large sailing yachts, as well as small fishing boats for family fun. A delicious variety of fresh seafood restaurants, and boutique shopping, make up the downtown Marina district.

The Marina guest moorage area provides 1,500 feet of dock space and vessels up to 100 feet in length are welcome making this location unique in that visitors are attracted by land and sea.

The Marina is connected to Des Moines Beach Park which is identified as a Special Use Park. Special-Use Parks provide recreation opportunities to local and area populations. Des Moines Beach provides public access to Puget Sound tidal flats and Des Moines Creek. The park is located at the north end of Cliff Drive and the Marina and contains historic recreation buildings such as the Auditorium, Dining Hall, Sun Home Lodge, Picnic Shelter, Restrooms building, and three Cabins.

The Beach Park is also the trail head of the Des Moines Creek Trail which provides commuter linkages that join neighborhoods and cities, local and regional parks, open space areas and civic and business centers into a cohesive recreational and transportation system.

The rare combination of a marina, historic beach park and regional trail provides a major destination site for tourists and visitors from across the state, the country and the world.

The annual existing Maintenance Cost for these public facilities exceeds $200,000. Additional information is contained in the City's operating budget.

The City conducted a license plate study which showed that 10-12% of the visitors that parked in the Des Moines Marina/Beach Park were from locations over 50 miles away. The Marina/Beach Park averages approximately 400,000 vehicles per year. Based on these numbers, it is estimated that 40,000-48,000 visitors to the Marina/Beach Park travel over 50 miles to visit this site. The Beach Park and Marina also host numerous annual and one time events that bring in visitors and tourists alike (see 2019 Beach Event Guide). Accordingly, improvements and proper maintenance is necessary to continue to receive these visitors as well as to attract even more.

Des Moines Beach
2019 EVENT GUIDE

TO THE BEACH →

tothebeachwa.com

Year-Round • Saturdays, 9am-10:30am
Parkrun
Every Saturday enjoy a 5k run or walk on the Des Moines Creek Trail.

Friday • March 1, 5pm-10pm
Saturday • March 2, 1pm-8pm
Poverty Bay Wine Festival
A great lively atmosphere with entertainers, strolling musicians and education from some of the best wine makers around.

Friday • March 22
South Pacific Rainbow Bingo
Join us at the Des Moines Activity Center for a night of food, fun, booze and prizes!

Saturday • April 20, 9am-10am
Eggstravaganza
Leisurely Egg Hunt, crafts, prizes and Easter Bunny photos at the Des Moines Beach Park. $5 per child.

Saturday • April 20, 9am-12pm
Earth Day Clean Up
Des Moines Parks assists with coordinated clean up activities, in parks, the Puget Sound and beaches.

May & October, Dates TBD
Waterland Art & Wine Walks
Participants enjoy wine tasting at most Des Moines businesses while viewing art.

Saturday • May 11
South Sound Opening Day
Enjoy activities on the Des Moines waterfront, at the Des Moines Yacht Club for the South Sound's Opening Day.

Saturdays • June-September, 10am-2pm
Wednesdays • July-August, 4pm-7pm
Des Moines Farmer's Market
Showcases local fresh farm produce, artisans, and foods at the Des Moines Marina.

Wednesdays • July 10-August 21, 7pm-8:30pm
Beach Park Summer Concerts
Great entertainment on the Waterfront. Beer and wine garden.

Thursday • July 4
Fireworks over Des Moines
A tradition within our community for many years! Come celebrate the 4th of July on waters edge with us!

Wednesday • July 10, 5pm-7pm
Community BBQ
Community BBQ, Beer and Wine Garden, Root-beer Floats & Music at the Beach Park. Tickets required.

Friday-Sunday • July 19-21
Seafair Waterland Festival & Parade
Family events, a parade, Car/motorcycle/wooden boat show, and arts show and sale on the Marina Floor.

Fridays • August
Movies in a Park
Watch movies at dusk in Parks around the City.

Sunday • August 4, 5pm
Shakespeare in the Park
Des Moines Arts Commission presents Seattle Shakespeare at Des Moines Beach Park each summer.

Saturday • August 24, 12pm-8pm
Poverty Bay Blues & Brews
Blues music and Craft Breweries at the Beach Park. Tickets required.

Thursday • October 31, 3pm-6pm & 5pm-8pm
Trick or Treat Path & Carnival
Treats At local businesses & Carnival at the Des Moines Field House. $5 Per child.

Saturday • November 2, 10am-4pm
Des Moines Holiday Market
The Des Moines Waterfront Farmers Market will host its 2nd Holiday Market at the Des Moines Beach Park.

Saturday • November 9, 4pm-7pm
Squid A Rama
Squid event at Highline College's MaST Center at Redondo.

Friday • December 6, 6pm
Holiday Tree Lighting
Community event with cookies, hot cocoa, caroling & photos with Santa at Big Catch Plaza.

Saturday • December 7, 9:15am & 10:45am
Breakfast with Santa
Enjoy breakfast with Santa in one of two seating's at the Activity Center.

Thursday • December 12, 7pm-9:20pm
Argosy Christmas Ships
The Argosy Christmas ship sails to different Puget Soun Waterfront communities with a singing choir on board.

City of Des Moines

City of Des Moines Marina

BEACH PARK EVENT CENTER

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Consent Calendar Item #3

AGENDA ITEM

SUBJECT: Interlocal Agreement (ILA) between the Cities of Burien, Des Moines, Normandy Park and Seatac and King County for StormFest

ATTACHMENTS:

1. Interlocal Agreement (ILA) between the Cities of Burien, Des Moines, Normandy Park and Seatac and King County for StormFest

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: June 19, 2019

CLEARANCES:
[ ] Community Development ____
[X] Public Works LDR
[ ] Marina N/A
[ ] Parks, Recreation & Senior Services N/A

CHIEF OPERATIONS OFFICER: _____

[X] Legal TG
[X] Finance BAW
[ ] Police N/A
[ ] Courts N/A

APPROVED BY CITY MANAGER FOR SUBMITTAL: _____

Purpose and Recommendation:
The purpose of this item is to seek Council authorization to enter into an Interlocal Agreement (ILA) (Attachment 1) between the City of Des Moines and the Cities of Burien, Normandy Park, and Seatac and King County for Highline StormFest. The purpose of this ILA is to secure funding from each of the partners for the annual continuation of the Highline StormFest event through 2024.

Suggested Motion:

Motion: "I move to approve the Interlocal Agreement between City of Des Moines and the Cities of Burien, Normandy Park, and Seatac and King County for Highline StormFest, and authorize the City Manager to sign said Agreement substantially in the form as submitted."

Background:
StormFest is a coordinated effort between the municipalities in the Highline School District, including the City of Burien, City of Des Moines, City of Normandy Park, City of SeaTac, and King County. StormFest is a two-day experiential, interactive, stormwater festival, which was designed to teach Highline 6th graders about stormwater and watershed science as a fun, inquiry driven learning experience.

To date, two StormFest events have been held at the Des Moines Beach Park. The first in June of 2018 served over 1,100 Highline 6th grade students and the second was hosted in October of 2018 and served the next class of over 1,000 6th grade students. For the City of Des Moines, StormFest helps meet our Washington State NPDES permit requirements for public education and outreach. StormFest was honored as the recipient of the 2019 Livable Communities Award in the category of Local Government Excellence.

Discussion:
The first two years of StormFest were supported through grant funding (Department of Ecology – GROSS Grant and Port of Seattle – ACE Grant). To fund future StormFest events an Interlocal Agreement has been proposed that would provide funding for the annual continuation of this event through 2024. A separate Interlocal Agreement between the Highline School District and the City of Burien will be made in order to ensure School District event participation and support with pre and post surveys for the students.

Annual continuation of Stormfest will benefit the City Des Moines through meeting ongoing regulatory requirements as well as benefiting our community by providing Des Moines 6th grade students with free stormwater education with a hands on curriculum. Ultimately it is expected that stewardship of our streams and the Puget Sound can be enhanced through promoting education and best management practices.

Alternatives:
None suggested.

Financial Impact:
The project costs are allocated based on percent of Highline Public Schools 6th graders in each jurisdiction, calculated from Highline Public Schools data. The City of Des Moines' annual cost share is 20%. Each year the project team shall agree to and sign the Project Cost Allocation Document for the upcoming year's StormFest event. For the 2020 the estimated maximum cost share for the City of Des Moines is $19,014.19, see Table 1. For the years 2021-2024 the estimated cost share for Des Moines will change according to the percentage of Des Moines' students within Highline. The Project team will look for future funding opportunities including grants to reduce the total costs.

Costs include but will not necessarily be limited to the following: costs for educators, translators, consultant costs, interpreters, supplies, parking costs at the Des Moines Marina and Beach Park, and materials for the event, and any other costs not explicitly excepted in this agreement. The total project cost also includes the City of Des Moines staff time for supporting the use of the Des Moines Beach Park Facility during the event. No other City staff charges shall be included in the total project cost.

Table 1. 2020 Maximum Costs/Cost Shares

Jurisdiction	Annual Cost Share	Estimated Cost Shares *
Burien	28%	up to $26,619.86
King County	27%	up to $25,669.15
SeaTac	22%	up to $20,915.61
Des Moines	20%	up to $19,014.19
Normandy Park	3%	up to $2,852.13
Total	100.00%	**up to $95,070.94**

*Total costs for all tasks will not exceed $95,070.94. Each jurisdiction's maximum cost share is as shown in Table 1. King County's cost share percentage represents students in unincorporated King County.

Recommendation/Conclusion:
Public Works, Finance and Legal recommend authorization of the Interlocal Agreement.

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Attachment #1

INTERLOCAL AGREEMENT BETWEEN THE CITIES OF BURIEN, DES MOINES, NORMANDY PARK AND SEATAC AND KING COUNTY FOR STORMFEST

Pursuant to RCW 39.34, the Interlocal Cooperation Act, this agreement (hereafter "Agreement") is entered into between the City of Burien, a municipal corporation, hereinafter referred to as "Burien," the City of Des Moines, a municipal corporation hereinafter referred to as "Des Moines," the City of Normandy Park, a municipal corporation hereinafter referred to as "Normandy Park," the City of SeaTac, a municipal corporation hereinafter referred to as "SeaTac," and King County, a municipal corporation hereinafter referred to as "King County," and all five collectively referred to as the "Parties" for the purpose of implementing an annual 6th grade, hands-on, interactive, stormwater education program for Highline Public Schools that meets the Parties' NPDES Permit criteria.

1. Definitions:

A. "Project Cost Allocation" shall mean the percentage of the total cost of StormFest assigned to each Party; the percentage assigned to each Party shall be equivalent to each Party's percentage-share of student enrollment provided by Highline School District for the prior year (i.e. the percentages for the 2020 StormFest event are based on the 2018-2019 school year enrollment numbers). By way of example, if 42% of all Highline School District students reside in Des Moines, then Des Moines' Project Cost Allocation shall be 42% of the total cost of StormFest.

B. "Project Cost Allocation Document" shall mean the document containing each Party's Project Cost Allocation for the calendar year. Once signed by the Party, the Project Cost Allocation Document represents that Party's financial obligation in support of the upcoming year's StormFest.

C. "Project Management Team" and "Team" shall mean the group comprised of a representative of each Party and whose function is to develop, implement, manage, and evaluate StormFest.

D. "StormFest" shall mean an annual education program for 6th graders in the Highline School District developed by the Parties and which assists the Parties in meeting the following NPDES Phase II permit requirements: S5.C.2.a.i (a) and (c), S5.C.2.a.ii (a), (b), (c), (d), (e), and (f), and S5.C.2.a.ii. The first annual StormFest event governed by this agreement will be held in 2020.

2. **Purpose.** The purpose of this Agreement is to set forth the tasks to be accomplished by each Party and to identify the tasks to be accomplished by the Project Management Team in support of StormFest.

3. **Joint Roles and Responsibilities.** Each Party shall be responsible for the following:

   A. One representative to the Team shall be appointed by each Party and each Party shall have only one vote regardless of the number of representatives representing each Party. Participation of additional staff from any of the Parties in support of the Team is encouraged.
   B. The Team will reach its decisions by consensus. Issues that cannot be resolved by consensus will be referred to Burien for resolution.
   C. Each year the Team shall agree to and sign the Project Cost Allocation Document for the upcoming year's StormFest event. The 2019 Project Cost Allocation Document for the 2020 StormFest event is attached to this agreement as an example.
   D. Burien shall serve as the administrator of this Agreement; Burien's administrative tasks include leading in the organization of StormFest events; providing day-to-day project management; scheduling and facilitating Team meetings, hiring consultants; processing monthly consultant invoices and payments; invoicing other Parties to the Agreement; and providing periodic fiscal reports to the Parties.
   E. The City of Des Moines shall host each StormFest event at Des Moines Beach Park.
   F. The total project cost to be included in the Project Cost Allocation shall include but not necessarily be limited to the following: costs for educators, translators, consultant costs, interpreters, supplies, parking costs at the Des Moines Marina and Beach Park, and materials for the event, and any other costs not explicitly excepted in this agreement. The total project cost also includes the City of Des Moines staff time and rental fees for supporting the use of the Des Moines Beach Park Facility during the event. No other City staff charges shall be included in the total project cost. The total project cost shall not include Burien's costs associated with administering agreement, nor shall it include any Party's costs of participation on the Team.
   G. Burien shall invoice the Parties for their share of the Project Cost Allocation approximately once each quarter. The Parties shall submit payment within 60 days of receiving the invoice.

4. **Duration.** This Agreement shall be effective upon execution by each party and shall remain in full force and effect until December 31st, 2024. This Agreement may be extended upon mutual agreement of all Parties.

5. **Termination.** Any party may withdraw from this Agreement, upon thirty (30) days' written notice to the other Parties; PROVIDED, however, that the terminating party shall be responsible for payment of the terminating party's financial responsibility appearing on any signed and executed Project Cost Allocation Document.

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

7. **Separate Legal Entity.** No separate legal entity or administrative entity is created by this Agreement.

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

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

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

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

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

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Any modifications or amendments to this Agreement shall be in writing and shall be signed by each party.

DATED this_____day of_____2019.

CITY OF BURIEN

_____
Brian J. Wilson, City Manager

APPROVED AS TO FORM:

_____
Lisa Marshall
City Attorney

CITY OF DES MOINES

_____
Michael Matthias, City Manager

APPROVED AS TO FORM:

_____
Tim George
City Attorney

CITY OF NORMANDY PARK

_____
Mark E. Hoppen, City Manager

APPROVED AS TO FORM:

_____
Jim Haney
City Attorney

CITY OF SEATAC

_____
Carl Cole, City Manager

APPROVED AS TO FORM:

_____
Mary Mirante Bartolo
City Attorney

KING COUNTY

_____

Dow Constantine, Executive

APPROVED AS TO FORM:

_____

XXXXX

Civil Deputy Attorney

Project Cost Allocation Document
StormFest
July 1, 2019- December 31, 2020

The Project costs are allocated based on percent of Highline Public Schools 6th graders in each jurisdiction, calculated from Highline Public Schools data.

Table 1. Costs/Cost Shares

Jurisdiction	Annual Cost Share	Estimated Cost Shares *
Burien	28%	up to $26,619.86
King County	27%	up to $25,669.15
SeaTac	22%	up to $20,915.61
Des Moines	20%	up to $19,014.19
Normandy Park	3%	up to $2,852.13
Total	100.00%	**up to $95,070.94**

*Total costs for all tasks will not exceed $95,070.94. Each jurisdiction's maximum cost share is as shown in Table 1.

Accepted by:

City of Burien

City of Des Moines

City of Normandy Park

City of SeaTac

King County

Consent Calendar Item #4

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Marina Facilities Lease Extension, CSR Marine South

ATTACHMENTS:
1. Addendum No. 3 to the Marina Facilities Lease.
2. Rate sheet
3. Option Exercise Letter
4. June 9, 2009 Lease.

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: June 18, 2019

CLEARANCES:
[ ] Community Development ____
[X] Marina
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

CHIEF OPERATIONS OFFICER: DSB

[X] Legal TG
[X] Finance BAW
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this agenda item is for the City Council to review Addendum No. 3 to the existing Marina Facilities Lease Agreement with CSR Marine South, Inc. This Addendum memorializes the exercise of the 5 year lease extension option by CSR Marine South and updates the rental amount and costs associated with the lease to reflect current market value.

Suggested Motion

Motion 1: "I move to approve Addendum 3 to the June 9, 2009 Marina Facilities Lease with CSR Marine South, Inc., extending the lease for a 5 year option period and updating the lease amount and associated costs to reflect current market rate, and authorize the City Manager to sign the Addendum substantially in the form as attached."

In 2002, the owners of CSR Marine South, Inc. purchased the business known as the Block & Tackle Boatyard. The purchase included the assignment of the lease the owners of the Block & Tackle Boatyard had with the City at that time. That Lease expired in 2007 and the City negotiated a new Lease with the owners of CSR that was signed in its current form in early 2009. The Lease term is five years with two tenant options to extend for additional five year terms through 2023.

When the North Marina Combined Project was completed in 2010 and the new travel lift and travel lift pier went into operation, CSR was able to haul and service significantly larger vessels. Since that time the Lease has been amended to add additional square footage into the lease area.

Discussion

CSR has exercised their right to a five year extension through 2023 with a mutual agreed upon option for an additional five years. For over the past 10 years CSR, the City, and the Marina have built a strong and positive relationship. CSR provides strong family wage jobs, a good tax base for the City, a positive income for the Marina. CSR also has established a loyal customer base throughout Puget Sound. This amendment will continue the vision of the City Council and City administration of having a working boatyard at the Des Moines Marina.

The new amendment includes increases to the rental rates for use of the premises and for use of the Travel Lift, as well as increases to maintenance fees for both. These increases will bring the rates to current market rates. The amendment also provides for additional payments to recoup CPI-based rent adjustments that were due under the Agreement but had not been paid. Rent shall be increased annually by application of the CPI.

Alternatives

The Council may:

1. Approve the proposed Addendum to the 2009 Marina Facilities Lease and authorize the City Manager to sign the Addendum in substantially the form as presented, or
2. Decline to approve the proposed Addendum and provide staff with further direction.

Financial Impact

CSR's base monthly rent will increase from $10,458.95 to $11,617.74, a monthly increase of $1,158.45. In 2019, the base equipment and space rental due under this Addendum will total $ 139,412.88.

Recommendation

Staff recommends that the Council approve the Addendum as presented.

Attachment #1

ADDENDUM 3
TO THE MARINA FACILITIES LEASE
BETWEEN THE CITY OF DES MOINES
AND CSR MARINE SOUTH, INC.

This is **ADDENDUM 3** to the **MARINA FACILITIES LEASE BETWEEN THE CITY OF DES MOINES AND CSR MARINE SOUTH, INC.**, dated June 9, 2009.

Whereas, CSR Marine South, Inc. has exercised their option to extend the lease agreement for an additional five (5) years, the existing lease is extended with the following amendments; now therefore,

Effective January 1, 2019, Section 2.2 of the June 9, 2009 Marina Facilities Lease and subsequent Addendums are amended to read as follows:

2.2 Option to extend. This term of this Agreement may be extended an additional five (5) year term subject to the approval of both parties. Either party may provide written notice of an extension request prior to the expiration of this Agreement. If an extension is approved by both parties, all terms and conditions of the Lease shall apply during the period and rent shall be adjusted pursuant to the terms of the Lease.

Effective January 1, 2019, Section 4.2(A) of the June 9, 2009 Marina Facilities Lease and subsequent Addendums are amended to read as follows:

A. Tenant shall pay a Travel Lift rental fee of $740.86 per month, plus an equipment maintenance fee of $400.00 per month.

Effective January 1, 2019, Section 5(1) of the June 9, 2009 Marina Facilities Lease and subsequent Addendums are amended to read as follows:

5.1 Rent. Beginning on January 1, 2019 and continuing throughout the remainder of this Lease Agreement, Tenant agrees to pay Landlord eight thousand seven hundred forty-eight dollars per month, ($8,748.00). In addition, Tenant shall reimburse Landlord for Landlord' costs of premises insurance and premises maintenance. It is agreed between the parties that, in addition to and above specified rent, Tenant shall pay Landlord the monthly sum of five hundred dollars and 00/100 ($500.00) as the agreed on amount of Landlord's cost to maintain and insure the leasehold premises and facilities.

All amounts due under this paragraph shall be paid by Tenant to Landlord in advance, on a monthly basis, on or before the first day of each month of this lease

On January 1st of each succeeding year, the rent shall be established by application of the Consumer Price Index, All Urban Consumers, Seattle – Tacoma

– Bremerton, Washington Area, for the 12-month period ending August 31st of the preceding year, published by the U.S. Department of Labor, Bureau of Labor Statistics, (hereinafter, "CPI"). The rental rate for the succeeding year will be established by multiplying the baseline rate in this paragraph by the CPI and then adding that amount to the baseline rate. The result shall be the rental rate for the succeeding year and the baseline rate for calculating the rental rate for the year after the succeeding year.

Effective upon signature, the following term is added to the Agreement:

Back Payments: Tenant agrees to pay landlord an additional $500 per month for the next 35 months plus an additional 347.82 in the 36th month. This payment will total $17,847.82 and is intended to compensate the Landlord for annual rental increases that were not previously billed or paid during the prior term of this Agreement. Tenant may elect to prepay any of this payment at any time.

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, ADDENDUM 3 to the Marina Facilities Lease between the City of Des Moines and CSR Marina South, Inc., dated June 9, 2009 has been executed by the parties this ____ day of _____, 2019.

CITY OF DES MOINES, LANDLORD

By:_____
Michael Matthias
Its City Manager
21630 11th Ave. So., Suite A
Des Moines, WA 98198
As directed by the Des Moines City Council in Open Public Meeting of June 27, 2019.

DATED this ____ day of _____, 2019.

APPROVED AS TO FORM:

_____
City Attorney

CSR MARINE SOUTH, INC., TENANT

By:_____
Scott Anderson
Its President

_____
Address

_____
City, State, Zip

DATED this ____ day of _____, 2019.

Attachment #2

CSR

Base charges:

Rent	$8748.00
Leasehold tax	$1,119.74
Build Maint.	$500.00
Travel lift Rent	$740.86
Travel lift Leasehold	$109.14
Travel lift Maint.	$400.00
Total	**$11,617.74**

Back rent for uncollected CPI and uncollected difference in rent for the first 5 months in 2019 = **$17,847.82**

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Attachment #3

Michael Matthias, City Manager
City of Des Moines
21630- 11th Ave S., Suite A
Des Moines, WA 98198-6398

Re: Extension of Marina Facilities Lease Between the City of Des Moines and CSR Marine South, Inc. dated June 9, 2009.

Dear Michael Matthias:

By this letter, CSR Marine South, Inc. wishes to confirm its wish to exercise its option to extend the above referenced Marina Facilities Lease (the "Lease"), as amended, for an additional five (5) year term, as provided under Section 2.2 of the Lease. Your prompt confirmation that the Lease terms will be so extended, and any proposed change in the rent for the extended term of the Lease will be appreciated.

CSR Marine South, Inc. would also like to enter into a further amendment of the Lease to modify section 2.2 of the Lease to provide CSR Marine South, Inc. with two additional options to further extend the Lease for two additional periods of five (5) years each, with all other terms of the lease, as amended, to remain unchanged. Please also let us know soonest if the City would be amenable to such a modification of the Lease.

Sincerely,

CSR Marine South, Inc.

By: Scott Anderson, President.

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Attachment #4

MARINA FACILITIES LEASE BETWEEN THE CITY OF DES MOINES AND CSR MARINE SOUTH, INC.

This COMMERCIAL LEASE (the "Lease"), is made by and between the **CITY OF DES MOINES,** a municipal corporation of the State of Washington ("**Landlord**"), and **CSR MARINE SOUTH, INC.,** a Washington corporation, located and doing business at CSR Marine South, Inc., 22501 Dock Avenue South, Des Moines, WA, ("**Tenant**").

1. PREMISES

1.1. Premises. Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions set forth in this Lease, the exclusive right to use and occupy certain improved real property located at the Des Moines Marina and as described on **Exhibit A,** attached hereto and incorporated herein by this reference. Such property shall be hereinafter referred to as "**Premises**". The Premises shall generally consist of a shop and store building with a three (3) ton hoist, a painting and lay-up building, fenced repair yard, and three (3) mooring slips on M Dock, specifically slips M-01 M-03 and M-12.

1.2. Reserved to Landlord. Landlord reserves all air rights over the Premises, the use of the roof of the Building and the right to use the land below the Premises in any manner not materially interfering with Tenant's use of the Premises, all together with reasonable access thereto.

1.3. Use of Other Marina Facilities. Marina facilities, other than leased facilities, will be available to the Tenant at the regular posted rates thereof, with the exception that Tenant shall, without additional charge, have the right to use the travel-lift pier at reasonable times for reasonable durations and be entitled to operate its travel-lift and other equipment in the areas of the Marina surrounding the Premises for the purpose of hauling, launching and movement of boats in and out of the Premises.

2. TERM

2.1. Lease Term. The Initial Term of this Lease is five (5) years, commencing on January 1, 2009 (the "Commencement Date") and ending at midnight on the day preceding the fifth (5th) anniversary of the Commencement Date, unless sooner terminated as provided elsewhere in this Lease. As used herein, "Term" refers to the Initial Term and any Option Periods then exercised.

2.2. Option to Extend. Tenant shall have two (2) separate options to extend the Initial Term for periods of five (5) years each (the "Option Periods") on the following terms and conditions: (i) Tenant shall provide Landlord with written notice of its intent to exercise the option not earlier than three hundred sixty (360) calendar days nor later than one hundred eighty (180) calendar days before the expiration of the Initial Term or end

of the first option term, as the case maybe; and (ii) Tenant shall not be in default under the terms of this Lease either at the time Tenant exercises its option to extend or at the time the Option Period commences. All terms and conditions of the Lease shall apply during an Option Period except that Rent shall be adjusted in accordance with the terms of Section 5.2.

3. POSSESSION

Tenant will be entitled to possession of the Premises on the Commencement Date.

4. USE

4.1. Use. Tenant covenants that, at all times during the Lease Term and such further time as Tenant occupies the Premises, Tenant shall use the Premises for the following enumerated permitted uses and for no other use without Landlord's express written consent, which consent will not be unreasonably withheld:

A. Repair and maintenance facilities for boats and vessels and service facilities for Marine-related items.

B. Haul-out for the purpose of repair and maintenance of boats and vessels, and other activities related to Tenant's business.

C. The stocking and selling of repair parts, supplies, accessories, and repair and maintenance services.

D. The sale of new and used boats and vessels.

E. Such other uses incidental to the foregoing.

4.2. Marine Travel Lift and Travel Lift Pier. The Landlord shall provide Tenant a 25 ton Marine Travel Lift, (model # 25-BFM), and a pier that will accommodate the operation of the Travel Lift to its rated capacity for Tenant's use for the purpose of hauling, moving and launching vessels in the normal course of Tennant's business. Tenant's use of the Travel lift will be subject to the following terms and conditions:

A. Tenant shall pay a rental fee of $670.00 per month, plus an equipment maintenance fee of $200.00 per month. This fee shall not become owing until the new Des Moines Marina travel lift pier is built and operational.

B. Tenant shall indemnify and hold harmless Landlord as described in sections 10 and 11, herein.

C. Tenant shall have priority for the use of the Travel Lift but shall provide the Marina staff reasonable access to the Travel Lift for the purpose of launching and retrieving boats stored in the Marina's dry storage lot and for launching and retrieving docks and equipment associated with the operation of the Marina and the Redondo Boat Launch

Facility. Tenant shall maintain a daily schedule for the use of the Travel Lift to insure reasonable access by the Marina staff.

D. The Landlord shall, provided adequate funding and council approval, construct and make available for Tenant's use a new Travel Lift pier within a reasonable distance of the Premises. The new Travel Lift pier shall be designed and constructed for use with the Travel Lift provided hereunder to its rated capacity (25 long tons), and capable of hauling and launching vessels up to, up to 18 feet in beam. Construction of the new Travel Lift pier, funding permitting, is scheduled to be completed and available for Tenant's use by January 1, 2010.

4.3. Use of Facilities by Boat Owners and Other Third Parties. Tenant shall provide a working space within the fenced area where private, non-commercial, pleasure boat owners may perform maintenance work on their boats; provided, Tenant, in its sole discretion, may decline to permit any boat owner access or use to any portion of the Premises, if Tenant believes such boat owner may fail to adhere to Best Shipyard Management Practices, to lack sufficient financial responsibility and adequate insurance to respond to potential liabilities arising, or to be disruptive of Tenant's business activities. Tenant shall have the right to charge boat owners reasonable fees for such "lay-up" facilities, and to require boat owners' agreement to such terms and conditions as Tenant may require to fully protect Tenant's interests, which fees and terms and conditions shall be established in writing and current copies provided to Landlord. Nothing contained in this paragraph shall prevent Tenant from allowing third party vendors use of the Premises for the purposes described in Paragraph 4.1, herein.

4.4. Restriction on Hours of Tenant Operations. The Landlord shall have the right to restrict certain types of operations during the hours of 10 P.M. to 6 A.M. to the extent such operations create a nuisance or have a detrimental effect upon adjacent residents and other Marina tenants.

4.5. Building Codes and Zoning. Tenant has investigated all applicable building and zoning codes, regulations and ordinances to determine whether Tenant's continued use of the Premises is permitted. The Landlord warrants the Premises and all structures thereon are constructed and maintained in compliance with all known building and zoning codes, regulations and ordinances, and that Tenant's current use of the Premises is in compliance with all such codes, regulations and ordinances promulgated by Landlord. Based upon this investigation and the Landlord's foregoing warranty of compliance, Tenant accepts the Premises "as is" and subject to future changes in all applicable statutes, ordinances, rules and regulations governing Tenant's use of the Premises. Any and all expenses required to comply with all future changes in applicable statutes, ordinances, rules, regulations and requirements in effect during the term or any part of the term of this Lease regulating Tenant's use of the Premises shall be borne exclusively by Tenant. Tenant further agrees to comply with all such statutes, ordinances, rules and regulations pertaining to the Premises or its operations thereon throughout the Term.

4.6. Restrictions on Sale of Gas or Diesel Fuel. The sale of gas, diesel fuel and propane gas is prohibited, except when used by Tenant to test work performed and the excess is conveyed to customer.

5. RENT

5.1. Initial Term Rent. Beginning on the Commencement Date and continuing throughout the Initial Term, Tenant agrees to pay Landlord Five Thousand Nine Hundred Seventy Four and No/100 Dollars per month, ($5,974.00). In addition, Tenant shall reimburse Landlord for Landlord' costs of premises insurance and premises maintenance. It is agreed between the parties that, in addition to and above the specified rent, Tenant shall pay Landlord the monthly sum of Three Hundred and 00/100 ($300.00) as the agreed on amount of Landlord's cost to maintain and insure the leasehold premises and facilities.

All amounts due under this paragraph shall be paid by Tenant to Landlord in advance, on a monthly basis, on or before the first day of each month of this lease.

On January first of each succeeding year of the lease up to the first option period, the rent shall be established by application of the Consumer Price Index, All Urban Consumers, Seattle – Tacoma – Bremerton, Washington Area, for the 12 – month period ending August 31st of the preceding year, published by the U.S. Department of Labor, Bureau of Labor Statistics, (herinafter, "CPI"). The rental rate for the succeeding year will be established by multiplying the baseline rate in this paragraph by the CPI and then adding that amount to the baseline rate. The result shall be the rental rate for the succeeding year and the baseline rate for calculating the rental rate for the year after the succeeding year, until the arrival of the first option period.

5.2 Option Period Rent. Monthly rent for each of the two option periods, if exercised by the Tennant, shall be subject to negotiation between the parties. If rent cannot be agreed upon between the parties then the rental value shall be appraised by a Member of Appraisal Institute (MAI), at the cost of Landlord. If Tenant disagrees with the appraised rental value of Premises for the option period in question, then Tennant shall obtain its own MAI appraisal of the rental value for the option period at Tenant's sole cost and expense. If the Tenant's appraisal of the rental value for the option period is less the Landlord's initial MAI appraisal and the Landlord will not accept the Tennant's appraised value then the two appraisers shall select a third MAI appraiser to determine which of the two appraisals best reflects the appropriate rental value of the Premises for the option period in question and the value selected by the 3rd MAI appraiser shall be the rent for the option term. The parties shall share equally the cost of the third appraiser.

5.3 Payment. Rent for a partial month shall be prorated. All rents shall be paid in advance on the first day of each calendar month without set-off or demand, and without any abatement or deduction to Landlord at the address specified in this Lease, unless and until Tenant is otherwise notified in writing. Time is of the essence in the payment of all sums due under this Lease. All rent is exclusive of any sales, franchise, business and occupation or other tax based on rents, and should any such taxes apply during the Term of

this Lease, Rent shall be increased by such amount. All other sums due from Tenant under this Lease are hereafter referred to collectively as "Additional Rent" and shall be paid in the manner and at the time set forth in this Lease. As used herein the term "Rent" refers to Rent and Additional Rent. Nothing herein shall prejudice Tenant's right to make payment of Rent under protest and to make claim for return of Rent, or a portion thereof.

6. DEPOSIT.

Tenant has paid this day to Landlord the sum of $5,529.16 as a security deposit (the "Deposit") for Tenant's performance of all of the terms and conditions of this Lease. If Tenant is in default, Landlord may use all or any portion of the Deposit to cure the default or to compensate Landlord for damages sustained by Landlord resulting from Tenant's default, including but not limited to the payment of Rent and the cost of cleaning and/or repairing the Premises. Any payment to Landlord from the Deposit shall not be considered a payment of liquidated damages. Within ten (10) days after Landlord's written demand, Tenant shall deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount stated above, and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Deposit separate from its general accounts. If Tenant is not in default at the expiration of the term of this Lease and after Tenant has vacated the Premises, the Deposit will be refunded. No trust relationship is created between Landlord and Tenant with respect to the Deposit. The deposit amount shall be adjusted to the rental amount payable during any option period if exercised by Tenant.

7. TENANT EXPENSES.

7.1. Net Lease. The purposes of this Section 7 is to insure and Tenant hereby agrees that, in addition to Rent, Tenant shall pay Tenant's Share of all expenses relating to the use, maintenance, ownership, repair and insurance of the Premises, as specifically provided for in Section 5.1, above, and of all utilities, insurance and personal property taxes and Leasehold Excise Taxes, as identified in Sections 7.2 through 7.5 below. .

7.2. Utilities. Tenant agrees to pay prior to delinquency throughout the Term all charges for utilities supplied to the Premises, including, without limitation, water, electricity, gas, heating, lighting, sewer, waste disposal, security, air conditioning and ventilating. Landlord shall not be liable for the failure of any of these services for any reason whatsoever.

7.3. Personal Property Taxes. Tenant shall pay, before delinquency, any and all taxes levied or assessed and payable during the Term upon all Tenant's equipment, furniture, fixtures and any other personal property located on the Premises. If any of the same are assessed or taxed with the Premises, Tenant shall pay Landlord the amount of such taxes within ten (10) days after receipt of a written statement setting forth the amount of such taxes that Landlord has reasonably determined are applicable to Tenant's property.

7.4. Leasehold Excise Tax. Tenant shall also pay the Leasehold Excise Tax imposed on Tenant under RCW §82.29A.030. Said amount will be paid by Tenant to Landlord and Landlord will pay the same to the State of Washington. Landlord hereby

indemnifies and agrees to defend and hold Tenant harmless from and against any costs, including legal fees, that proximately result from Landlord's breach of the covenant to pay the Leasehold Excise Tax once received from Tenant.

8. MAINTENANCE, REPAIRS AND ALTERATIONS.

8.1. "As-Is" Condition of Premises. Tenant acknowledges that it has occupied the Premises since 2001 and it completely and unconditionally accepts the same in their present, AS-IS condition.

8.2. Landlord's Obligations. Subject to the reimbursement provisions of Section 7.4 above, Landlord shall:

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. Maintain the roofs, floors, walls, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

D. 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;

E. Maintain all electrical, plumbing, heating, and other facilities in reasonably good working order;

F. Maintain the leased Premises in reasonably weather tight conditions;

G. Maintain the Travel Lift pier(s) in good working order and in compliance with all applicable codes, statutes, ordinances, or regulations pertaining to the leased Premises

H. No duty shall devolve upon the Landlord to repair a defective condition where the defective condition complained of was caused by the conduct of Tenant or where Tenant unreasonably fails to allow Landlord access to the property for purposes of repair.

Except as provided by Section 12 regarding reconstruction, there shall be no abatement of rent and no liability of Landlord due to any injury to or interference with Tenant's business arising from Landlord's performance of any maintenance or repair which it is required or permitted to perform. Tenant waives any right that it may have under any current or future law or ordinance to make repairs at Landlord's expense.

8.3. Tenant's Obligations. Tenant, at its sole cost and expense, shall keep in good condition and repair all portions of the Premises not being maintained by Landlord under Section 8.2, including, without limitation, the maintenance, repair and replacement of any storefront, all interior walls or partitions and interior portions of exterior walls, doors, exterior and interior glass and window casements, roof covering (but not roof structure) and all utility systems within the Premises, including heating, ventilation, refrigeration and air conditioning systems. Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in good and clean condition, ordinary wear excepted. Any damage to adjacent Premises caused by Tenant's use of the Premises shall be repaired at Tenant's sole cost and expense. If Tenant fails to perform the maintenance, repair or replacement required by this Section 8.3 or to surrender the Premises in the condition required by this section, Landlord shall have the right to perform the necessary work at Tenant's sole cost and expense, and Tenant agrees to reimburse all costs incurred by Landlord. Landlord shall have the right to contract for such services as HVAC maintenance and bill Tenant for the cost of such service which shall be reimbursable within ten (10) days of Tenant's receipt of each billing therefore.

In addition, Tenant shall:

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 and appliances supplied by Lessor;

E. Not intentionally nor negligently destroy, deface, damage, impair, or remove any part of the structure of the demised Premises;

F. Not permit a nuisance or common law waste;

G. Not allow junk or debris to accumulate on the demised Premises;

H. Conduct all business within the Premises described in this lease, and shall not store or work on any vessels or equipment outside of such Premises; provided, however, Tenant may perform work on vessels on Marina property at other locations when the nature of the vessel or the work to be performed is such that it is impractical for Tenant to perform the work within the Premises and such work complies with all current state and federal laws.

I. 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.

8.4. Municipal Obligations to the Public. The parties acknowledge that the Landlord, being a municipal corporation, is obligated to see that businesses operated on land leased from the Landlord are operated in a manner that benefits the Des Moines Marina, its other tenants and the public in general. To this end, Tenant agrees and covenants to abide by the Landlord's reasonable operational requirements as set forth herein, or as may be specified in writing in the future, which are intended solely to fulfill the Landlord's municipal duties to its citizenry. In order to provide facilities and services for repair of vessels of customers of the Des Moines Marina, it is vital that the facilities and services be available on a regular basis throughout the year. Landlord therefore requires Tenant to maintain minimum hours of operation, as follows: Tenant shall operate the boat yard and haul-out facilities a minimum of eight (8) hours per day, five (5) days per week during the term of this Lease. .

8.5. Alterations and Additions. Tenant shall not make or permit any alteration, addition or improvement to the Premises without obtaining and complying with appropriate building permits and without Landlord's written consent, which consent will not be unreasonably withheld. Any alteration, addition or improvement shall be made in a good and workmanlike manner by a contractor at Tenant's sole cost and expense and shall comply with all applicable laws, codes, ordinances, rules and regulations and in a manner (a) consistent with the plans and specifications submitted to and approved by Landlord and any conditions imposed by Landlord, (b) which includes acceptable insurance/bond coverage for Landlord's benefit and (c) which does not affect the structural integrity of the Building or disrupt the business or operations of other Marina tenants. All alterations, additions or improvements (including but not limited to light fixtures; heating, ventilation and air conditioning units; floor, wall and window coverings, paneling and built-in cabinet work, but excluding movable furniture, trade fixtures and equipment not affixed to the Premises) shall at once become a part of the Premises belonging to Landlord and shall be surrendered with the Premises at the expiration of this Lease, unless Landlord demands their removal as set forth below. Prior to expiration or sooner termination of the Lease, Tenant shall, at Tenant's sole cost and expense and with all due diligence, remove any alterations, additions or improvements made by Tenant and designated by Landlord to be removed at the time it gave its consent thereto.. At its sole cost and expense, Tenant shall repair any damage to the Premises caused by such removal.

8.6. Marina Master Plan. Tenant acknowledges that it is Landlord's intent to redesign and improve the Des Moines Marina in accordance with a master plan currently being developed. Redesign and improvement of the Marina may necessitate relocation of the leased Premises. In the event relocation is necessary, Landlord hereby agrees to reconstruct the improvements leased to Tenant in a manner comparable with the leasehold improvements that exist at the outset of this lease and to relocate Tenant into the new facilities at no cost to Tenant, except the potential of minimal business interruptions for which Landlord will have no liability, but Tenant shall be entitled to abatement of rent pursuant to the principles and terms of section 12.3. The new facilities will be leased to Tenant pursuant to the same terms and conditions as specified in this lease. In redesigning the leasehold improvement, Landlord

hereby agrees to consult with Tenant as to its specific needs and requirements. Landlord will attempt to accommodate Tenant's desires into the redesign depending on the costs associated therewith.

9. LIENS

Tenant shall keep the Premises, Real Property and Building free from any liens arising out of any work performed, materials furnished or obligations incurred by or at the direction of Tenant. Landlord may require, at Landlord's sole option, that Tenant provide at Tenant's sole cost and expense a materialmen's labor and performance bond acceptable to Landlord in an amount equal to one and one-half (1½) times the estimated cost of any improvements, additions or alterations to the Premises which Tenant desires to make, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.

10. INDEMNIFICATION / HOLD HARMLESS

Tenant shall defend, indemnify, and hold harmless Landlord (the City), its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Tenant's use of Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Landlord. Tenant further agrees to indemnify, defend and hold Landlord and its employees, contractors, lenders and agents harmless from all costs (including but not limited to attorneys' fees) incurred by Landlord in connection with its defense against any claim made against Landlord as to which Tenant must indemnify Landlord pursuant to this section. Tenant shall give prompt notice to Landlord of any casualty or accident in the Premises. Tenant further assumes all risk of, waives and releases all claims against Landlord for and agrees to indemnify and hold Landlord and its agents harmless from and against any damages or injury to person or property sustained by Tenant or any person claiming through Tenant, which damage results from any accident or occurrence in or on the Premises from any cause whatsoever, except and then only to the extent caused by the sole negligence of Landlord, its representatives and/or agents. Tenant agrees that the foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 10 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

11. INSURANCE

Tenant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the Tenant's operation and use of the leased Premises, including, but not limited to the use of the Travel Lift and Travel Lift Pier.

No Limitation. Tenant's maintenance of insurance as required by this Lease shall not be construed to limit the liability of Tenant to the coverage provided by its insurance, or otherwise limit Landlord's recourse to any remedy available at law or equity.

11.1. Tenant shall obtain insurance of the types described below:

A. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. Landlord shall be named as an insured on Tenant's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

B. Property insurance shall be written on an all risk basis.

11.2. Minimum Amounts of Insurance. Tenant shall maintain the following insurance limits:

A. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $3,000,000 general aggregate, which policy shall include product liability and blanket contractual liability coverage insuring performance of Tenant's indemnity obligations under this Lease, excluding insurance for the payment of rent and triple net. Landlord may increase the required limit as it deems necessary after thirty (30) days written notice based upon periodic insurance reviews. The insurance required by this section shall be on an occurrence basis only. This insurance shall be written as a primary policy not contributing with and not in excess of coverage that Landlord may carry.

B Property Insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions

C Business Interruption and Plate Glass Insurance. Business interruption insurance in an amount sufficient to protect Tenant against any additional costs and lost income associated with a move to temporary space due to a business interruption for at least twelve (12) months (which coverage is not intended to, and will not, cover loss of income due to business interruption associated with interruption of Tennant's business due to relocation of Tennant's business by the Landlord for reasons other than accidental loss or damage to the Premises), and plate glass insurance in an amount sufficient to replace windows in the Premises in the event of breakage.

11.3. General Requirements. All insurance required to be provided by Tenant under this Lease: (a) shall be issued by insurance companies authorized to do business in the State of Washington and with a current A.M. Best rating of not less than A:VII; (b) shall be issued as a primary policy and contain cross-liability endorsements; (c) contain deductibles of no more than $10,000 per occurrence; and (d) shall contain an endorsement requiring at least thirty (30) days' prior written notice of cancellation to Landlord and Landlord's lender before cancellation or change in coverage, scope or amount of any policy. Tenant shall deliver a certificate or copy of such policy evidenced to reflect Landlord's additional insured status, together with evidence of payment of all current premiums, to Landlord within three (3) days of execution of this Lease. Tenant's failure to provide evidence of such coverage to Landlord may, in Landlord's sole discretion, constitute a material default under this Lease, giving Landlord the right to immediately procure such coverage, the cost of which shall be reimbursable by Tenant upon demand.

11. 4. Waiver of Subrogation.

Tenant and Landlord hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. The release shall apply only to the extent that such claim, loss or liability is covered by insurance.

12. RECONSTRUCTION

12.1. Effect of Loss. Except as provided below, if the Premises or Travel Lift pier are damaged by fire or other cause, Landlord agrees to repair the same and this Lease shall remain in full force and effect.

12.2. Landlord's Options. Landlord shall have the option either to repair the Premises or to terminate this Lease if the Premises or any portion of the Building if: (a) the damage results from any cause not covered by Landlord's insurance: or (b) insurance proceeds are insufficient to fully pay for repair and restoration: or (c) the cost to repair exceeds twenty-five percent (25%) of the then complete replacement cost of the Premises and the Building of which the Premises are a part: or (d) the repair or restoration, in Landlord's opinion, cannot be completed within six (6) months of the damage: or (e) the damage occurs during the last twelve (12) months of the Lease Term. Landlord shall exercise its option to terminate this Lease by giving to Tenant, at any time within sixty (60) days after the damage, written notice of its election to terminate this Lease as of the date specified in the notice. The termination date shall not be less than thirty (30) nor more than sixty (60) days after the date of the notice. If Landlord fails to give notice within the sixty (60) days, it shall be deemed to have elected to repair or restore the damage. If Landlord terminates this Lease as provided above. this Lease shall automatically terminate on the date specified in Landlord's notice, and neither party shall have further liability to the other except for obligations which were accrued and unpaid as of the date of the damage and except that Landlord shall return any unused balance of the Deposit to Tenant.

12.3. Rent Abatement. This Lease shall remain in full force and effect if Landlord elects to repair the damage or until the termination date specified in the notice of

termination, as applicable, except that Rent shall be proportionately abated from the date of damage until the repairs are completed or until the specified termination date. Such proportionate abatement shall be based upon the extent to which the damage materially interferes with the business carried on by Tenant in the Premises.

12.4. Tenant's Repair Obligations. Landlord shall have no liability to Tenant for, and not be required to repair or replace any Leasehold improvements, fixtures or other personal property of Tenant, all of which shall be repaired or replaced promptly by Tenant at Tenant's sole cost and expense.

13. EMINENT DOMAIN

Intentionally omitted.

14. ASSIGNMENT AND SUBLETTING

14.1. Restriction. Tenant shall not sublet the whole or any part of the Premises, nor shall Tenant assign, transfer or encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord. Each assignment to which there has been consent shall be by an instrument in writing in form satisfactory to Landlord, an executed copy of which shall be delivered to Landlord. As a material inducement to Landlord to execute and deliver this Lease, Tenant agrees it shall be reasonable under this Lease and under applicable law for Landlord to withhold consent to any proposed assignment, encumbrance or sublease if Landlord determines that any one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (a) Landlord is not reasonably assured that the proposed transferee will fully, completely and promptly perform all obligations of Tenant under this Lease, (b) either the net current assets or the tangible net worth of the proposed transferee, determined in accordance with general accepted accounting principles, consistently applied by Tenant's and the proposed transferee's respective independent certified public accountants, is less than the net current assets or tangible net worth of Tenant and any guarantor as of the date of this Lease or the date of the proposed transfer, whichever is greater, (c) the transferee proposes to use the Premises for any purpose other than the permitted uses under this Lease, (d) the proposed transfer would cause Landlord to be in violation of any other lease or agreement to which Landlord is a party, (e) the proposed transferee fails to deliver to Landlord its written assumption of all of the obligations to be performed by Tenant under the Lease in connection with the portion of the Premises which is the subject of the proposed transferee, (f) if Tenant will not continue to remain liable on this lease or (g) the proposed transferee's operating experience or reputation are less than Tenant's on the date of this Lease. No assignment or sublease shall release Tenant from primary liability on this Lease. In lieu of consenting to an assignment or sublease, Landlord may elect to terminate this Lease. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's option, be void.

14.2. Costs. Tenant shall reimburse Landlord for all reasonable attorneys' fees and other costs incurred by Landlord in connection with the review and preparation of documents incident to any request by Tenant for Landlord's consent. Each request for

Landlord's consent shall be accompanied by payment of a fee in the amount of $750 to be applied to such fee. Landlord shall return to Tenant any unused balance of such fee.

14.3. Included Transfers. If Tenant is a corporation, any transfer of this Lease by merger, consolidation, reorganization or dissolution shall constitute a transfer for the purposes of this section. If Tenant is a corporation, any change in the ownership of, or power to vote, a majority of Tenant's then outstanding stock or any transfer of all or substantially all the assets of Tenant, shall constitute a transfer for the purposes of this section. If Tenant is a partnership or limited liability company, any transfer by a general partner or member of all or part of its partnership interest shall constitute a transfer for the purposes of this Section.

14.4. Judicially-Imposed Assignment. If the non-assignment provisions of this section are deemed to be unenforceable in any bankruptcy proceeding, Landlord and Tenant agree that a showing of adequate assurance of future performance by a prospective assignee of this Lease must include, without limitation, clear and convincing evidence that: (1) Landlord will receive the full benefit of its bargain of each and every term in this Lease except for the nonassignment and related termination clauses; (2) the Premises will continue to be used solely for the use permitted by this Lease: (3) a judicially imposed assignment will not cause an acceleration or increase in the interest rate or fees payable in connection with any indebtedness of Landlord secured by Landlord's interest in the Real Property or this Lease; and (4) the prospective assignee has the means, expertise and experience to operate the business to be conducted upon the Premises in a first-class manner.

14.5. Assignment by Landlord. If Landlord assigns its interest under this Lease or transfers its interest in the Premises, Landlord shall be relieved of any obligation under this Lease arising after such assignment or transfer, if such transferee assumes the obligations of Landlord under this Lease which arise thereafter.

15. DEFAULT

15.1. Defaults. Time is of the essence of this Lease. Tenant shall be deemed in material default hereunder if Tenant fails to comply with any covenant, term or condition of this Lease, or if Tenant vacates or abandons the Premises or if Tenant files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, and if such failure continues for or is not remedied within three (3) days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure; provided, however, if a non-monetary default is not reasonably capable of being cured, then the twenty (20) day period shall be extended, but not for more than twenty (20) days, if Tenant immediately commences such cure and diligently and continuously prosecute such cure throughout the period.

15.2. Landlord's Remedies. If Tenant is in default hereunder, then Landlord may:

A. Declare the term hereof ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or

B. Without declaring this Lease terminated, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or

C. Even though it may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

If Landlord reenters the Premises under option (b) above, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary to the time of or at any time subsequent to the serving of such notices and such election is evidenced by written notice to Tenant) be deemed to be a termination of this Lease. If Landlord enters or takes possession of the Premises, Landlord shall have the right, but not the obligation, to remove all or any the personal property located therein and place the same in storage at a public warehouse at the expense and risk of Tenant.

If Landlord elects to terminate this Lease pursuant to the provisions of options a. or c. above, Landlord may recover from Tenant as damages, the following:

(i) The worth at the time of award of any unpaid rental which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited, any costs or expenses incurred by Landlord in (a) retaking possession of the Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Premises after such default, (c) preparing the Premises for reletting to a new tenant, including

reasonable repairs or alterations to the Premises for such reletting, (d) leasing commissions, and (e) any other costs necessary or appropriate to relet the Premises; plus

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington.

As used in items (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the interest rate specified in Section 15.3 hereof. As used in item (iii) above, the "worth at the time of award" is computed by using a discount rate of five percent (5%).

For purposes of this Section 15.2 only, the terms "rent" and "rental" shall be deemed to be the Rent and all additional rent and other sums required to be paid by Tenant pursuant to the terms of this Lease. All such sums, other than Rent shall, for the purpose of calculating any amount due under the provisions of item (iii) above, be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twelve (12) month period, except that if it becomes necessary to compute such rental before such a twelve (12) month period has occurred then such rental shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon at the rate stated in Section 15.2 from date incurred until paid. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

15.3. Late Charges. Tenant acknowledges that the late payment to Landlord of rent and any other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. These costs include but are not limited to processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage, deed of trust or other security agreement covering the Premises. Accordingly, if any installment of rent or other sums due from Tenant shall not be received by Landlord or Landlord's agent within five (5) days after the amount shall be due, then, without any requirement of notice to Tenant, Tenant shall pay to Landlord a late charge equal to one percent (1%) of the amount past due for each month until the default is cured. The parties agree that this late charge plus interest represents a fair and reasonable estimate of the costs Landlord will incur because of Tenant's late payment. Landlord's acceptance of such late charge in no event shall constitute a waiver

of Tenant's default with respect to the overdue amount nor prevent Landlord from exercising any of the other rights or remedies granted to Landlord under this Lease.

15.4. Landlord's Default. Landlord shall be in default under this Lease only if Tenant serves upon Landlord (and all persons or entities who have an interest in all or part of the Premises as secured parties provided Tenant has received written notice of the names and addresses of such persons or entities) a written notice specifying the alleged default and Landlord (or any secured party) does not remedy the failure within twenty (20) days following receipt of such notice or, in the case of a failure which takes more than twenty (20) days to cure, if Landlord (or any secured party) has not commenced to remedy the same within such twenty (20) day period. Tenant shall not exercise any remedies available to it until the grace period provided for in this Section has elapsed, or during any period that a secured party is proceeding to cure Landlord's default or is diligently taking steps to obtain the right to enter the Premises and cure the default. In no event shall Tenant have the right to terminate this Lease because of Landlord's default; Tenant's remedies shall be limited to any other remedy available at law or in equity. Nothing in this Lease shall be interpreted to excuse Tenant from paying rent due under this Lease because of any default by Landlord.

16. RULES AND REGULATIONS. Tenant agrees to comply with the City of Des Moines Marina Rules & Regulations, as published from time to time by Landlord.

17. HOLDING OVER

If Tenant remains in possession of all or any part of the Premises after the expiration of the Lease Term with the express written consent of Landlord (which consent may be granted, withheld or conditioned in Landlord's sole discretion), such occupancy shall be a tenancy from month to month at Rent equal to one and one-half (1½) times the last monthly Rent, plus all Additional Rent and other charges payable under this Lease, and upon all the terms of this Lease applicable to a month-to-month tenancy. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord at three (3) times the last monthly Rent, and Tenant shall liable all damages suffered by Landlord as a consequence of such holding over.

18. ENTRY BY LANDLORD

Landlord reserves the right to enter the Premises during regular business hours to inspect the same, to show the Premises to prospective purchasers, lenders or tenants, to perform any alterations, improvements, repairs or maintenance, to provide any services that Landlord may deem necessary or desirable and to do any other act permitted under this Lease. In the event Landlord determines that an emergency exists and entry is necessary, Landlord may forcibly enter the Premises without any liability to Tenant. No entry by Landlord as provided in this Section 18.1 shall be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an eviction of Tenant from all or any portion of the Premises.

19. ESTOPPEL CERTIFICATE

Intentionally omitted.

20. SIGNS

Tenant shall not erect, place or maintain, or permit to be erected or placed, any new signs on the exterior walls or windows of the Building or elsewhere on the Premises, except as permitted by the City of des Moines Municipal Code. Tenant, at its sole cost and expense, shall maintain all of its signs in good condition and repair and shall remove the same upon termination of the Lease Term and repair all damage caused by the removal. If Tenant fails to remove any sign and/or repair any damage caused by its removal, Landlord may have the same removed and/or repaired at Tenant's sole cost and expense.

21. PARKING.

Intentionally omitted.

22. GENERAL PROVISIONS

22.1. Exhibits and Addenda. Any exhibits attached to this Lease are a part of and are fully incorporated in this Lease by this reference.

22.2. Non-Waiver of Default. Landlord's waiver of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent default under the same or any other term, covenant or condition. Landlord's acceptance of any sum shall not be deemed to be a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular sum so accepted, regardless of Landlord's knowledge of such preceding default at the time it accepts the sum.

22.3. Joint and Several Obligations

Intentionally omitted.

22.4. Section Titles. The section titles of this Lease are not a part of this Lease and shall have no effect upon its construction or interpretation.

22.5. Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor, including but not limited to Tenant's execution of estoppel certificates and subordination agreements and Tenant's reimbursements to Landlord.

22.6. Successors and Assigns. Subject to the provisions of Section 14 above, the covenants and conditions of this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of both parties to this Lease.

22.7. Recordation. Neither Landlord nor Tenant shall record this Lease, but a short-form Memorandum of Lease may be recorded at the request of either party.

22.8. Quiet Possession. Provided Tenant pays all sums due under this Lease and observes and performs all of the other covenants, conditions and provisions to be observed and performed by Tenant, Tenant shall have quiet possession of the Premises for the entire Lease Term against any adverse claim of Landlord or any party claiming under Landlord, subject to all the provisions of this Lease.

22.9. Prior Agreements. This Lease contains the full agreement of the parties with respect to any matter covered or mentioned in this Lease. No prior agreements or understandings pertaining to any such matters shall be effective for any purpose. This Lease may be amended or supplemented only by an agreement in writing signed by the parties or their respective successors in interest.

22.10. Inability to Perform. Except as provided in Section 12, this Lease and the parties' obligations under this Lease, including Tenant's obligation to make any payments, shall not be affected or impaired because a party is unable to fulfill any if its obligations, or is delayed in doing so, if such inability or delay is caused by reason of weather, strike, labor troubles, acts of God or any other cause beyond that party's reasonable control.

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

22.12. Cumulative Remedies. No remedy or election under this Lease shall be deemed to be exclusive but shall, whenever possible, be cumulative with all other remedies available at law or in equity.

22.13. Choice of Law. This Lease shall be governed by the laws of the State of Washington.

22.14. Attorneys' Fees. In the event any action or proceeding is brought by either party against the other arising out of or in connection with this Lease, the prevailing party shall be entitled to recover its costs, including, but not limited to reasonable attorneys' and accountants' fees, incurred in such action or proceeding, including any appeal.

22.15. Notices. All notices or demands which are required or permitted to be given by either party to the other under this Lease shall be in writing. All notices and demands shall be either personally delivered, sent by courier or fax or sent by United States Mail, registered or certified, postage prepaid, addressed to the address set forth below, or to such other place as a party from time to time may designate by written notice. Any notice sent by United States Mail as provided above shall be deemed to have been received three (3) business days after deposit into the mail, unless sooner received or rejected:

TO LANDLORD AT: c/o City Manager
City of Des Moines
21630 – 11th Ave S., Suite A
Des Moines, WA 98198-6398
Fax No. (206) 870-6540

TO TENANT AT: CSR Marine South, Inc.
22501 Dock Street So.
Des Moines, WA 98198

With copy to: Jess G. Webster
Mikkelborg, Broz, Wells & Fryer, PLLC
1001 Fourth Avenue, Suite 3600
Seattle, WA 98154

22.16. Subordination. Intentionally omitted.

22.17. Attornment. Intentionally omitted.

22.18. Compliance with Environmental Laws. The parties acknowledge that there are certain federal, state and local laws, regulations and guidelines now in effect and that additional laws, regulations and guidelines may hereafter be enacted relating to or affecting the Premises, the Building and the Real Property concerning the impact on the environment of activities related to construction, land use, the maintenance and operation of structures and the conduct of business. To comply with current regulations as of the date of this Lease, Tenant shall obtain and maintain a Washington State Department of Ecology Boatyard General Permit, a National Pollutant Discharge Elimination System Permit, and a State Waste Discharge General Permit for Boatyards in Washington State. Such permits shall become part of the Lease by reference and all duties and responsibilities incurred by the Tenant under the permits shall be included by reference in Paragraph 8.3, "Tenant's Obligations", of this Lease. Tenant shall also be required to obtain and maintain any other permits that may be required by additional laws, regulations and guidelines that may hereafter be enacted. Tenant shall not cause or permit to be caused any act or practice, by negligence, omission or otherwise, that would adversely affect the environment or do anything or permit anything to be done that would violate any of such laws, regulations or guidelines. Any violation of this covenant shall be an event of material default under this Lease. Tenant shall indemnify and hold Landlord harmless from any and all costs, expenses, claims, losses, damages, fines and penalties, including reasonable attorneys' fees that may in any manner arise out of or be imposed because of Tenant's failure to comply with this covenant. The foregoing shall cover all requirements whether or not foreseeable at the present time and regardless of expense.

22.19. Intentionally omitted.

22.20. Redelivery. Tenant shall redeliver the Premises to Landlord at the end of the Term or upon the earlier termination of this Lease in the same condition in which received (or, if altered, then the Premises shall be returned in such altered condition, unless otherwise directed by Landlord under terms of Section 8.4), reasonable wear and tear and damage by casualty excepted. Tenant shall remove all trade fixtures and appliances and equipment which do not become a part of the Premises, but not including any heating, ventilation and air conditioning systems, however installed, and shall restore the Premises to the condition they were in prior to the installation of said items. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease. Landlord may place and maintain signs in conspicuous places on the Premises for one hundred twenty (120)

days prior to the expiration or earlier termination of this Lease advertising the Premises' availability.

22.21. Intentionally omitted.

22.22. Intentionally omitted.

22.23. Intentionally omitted.

23. BROKERS

23.1. Brokers. Tenant warrants that Tenant has had no dealing with any real estate broker or agent in connection with the negotiation of this Lease.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day set forth below.

LANDLORD

CITY OF DES MOINES,
A Municipal Corporation

By_____
Anthony A. Piasecki, City Manager
Date: 6/9/09
By Direction of the Des Moines City Council
In Open Public Meeting on May 28, 2009.
Approved as to Form, JMahoney
Asst City Attorney

TENANT

CSR MARINE SOUTH, INC.,
A Washington Corporation

By_____
Scott Anderson, President

Date: 6/4/09

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 9th day of MAY, 2009, before the undersigned, a Notary Public in and for the State of Washington personally appeared before me **Anthony A. Piasecki,** to me known to be the **City Manager** of the **City of Des Moines**, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

In Witness whereof I have set my hand and official seal the day and year first written above.

VICKI C. SHECKLER
COMMISSION EXPIRES
NOTARY
PUBLIC
4-29-12
STATE OF WASHINGTON

Vicki C. Sheckler
Printed name: Vicki C. Sheckler
Notary Public in and for the State
of Washington, residing at Des Moines
County: King
My Commission expires: 4-29-2012

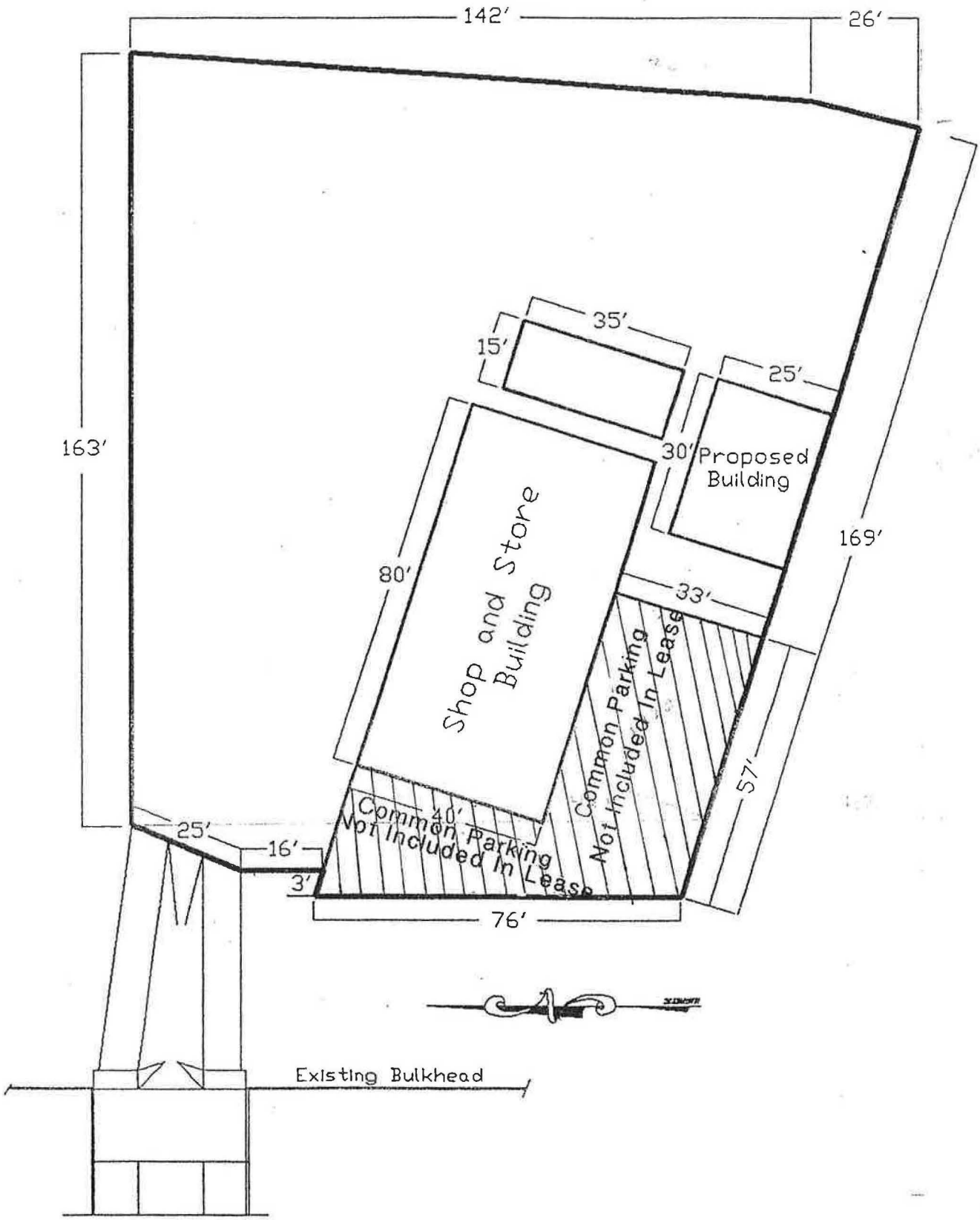
STATE OF WASHINGTON
) ss.
COUNTY OF KING)

On this 4th day of June, 2009, before the undersigned, a Notary Public in and for the State of Washington personally appeared before me **Scott Anderson,** to me known to be the **President** of **CSR Marine South, Inc.**, a Washington corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

In Witness whereof I have set my hand and official seal the day and year first written above.

Katherine L. Watts
Printed name: Katherine L. Watts
Notary Public in and for the State
of Washington, residing at 2401 N. Northlake Way
County: King Seattle, WA
My Commission expires: 2/1/2010

EXHIBIT "A"



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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 6th Ave S and S 239th St Pipe Project Task Assignment Amendment

ATTACHMENTS:
1. Parametrix Task Assignment 2018-07.01

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: June 21, 2019

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[X] Public Works LDR

CHIEF OPERATIONS OFFICER: DSB

[X] Legal VG
[X] Finance BAW
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: ____

Purpose and Recommendation

The purpose of this agenda item is to request Council approval of an amended Task Order Assignment with Parametrix (Attachment 1). This amendment will provide additional design services for the 6th Ave S and S 239th St Pipe Project for the purpose of designing a replacement to the staircase on S 239th St down to the viewing platform. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion: "I move to approve the amended Task Order Assignment with Parametrix for additional design services associated with the 6th Ave S and S 239th St Pipe Project in the amount of $20,991.68, plus a $2,000.00 contingency, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted."

Background

The 6th Ave S and S 239th St Pipe Project under the original scope will replace an existing 8-inch PVC drainage system along the west side of 6th Ave S with approximately 210 feet of new storm pipe, 4 catch basins, and 1 storm drain manholes. The new storm drain system will connect to the storm system at S 239th St. The project will also include the replacement of approximately 190 feet of existing 12-inch pipe to new 18-inch storm pipe along S 239th St to the outfall location to the Puget Sound. This project will mitigate flooding impacts from the current undersized drainage system and establish a permanent outfall at this location.

The design of the project was initiated on March 18th, 2019 under the original Task Assignment with Parametrix. The maximum amount payable per the original design scope is $76,518.07.

Discussion

Currently the project design scope does not include a design services for a staircase replacement. The public stairs that descend to a viewing platform off of S 239th St have been closed to the public due to safety concerns. The existing stairs have exceeded their expected lifespan and are due to be replaced.

The original design scope was limited to the surface water elements relating to the pipe improvements and stair removal and that additional design for the stairway would be included once the layout for the pipe was determined. After the design was initiated, it was discovered that the new outfall pipe anchoring could also help serve as a foundation for the staircase.

Given this new information, an amendment is proposed to the project for Parametrix to design a staircase replacement in conjunction with the stormwater improvements. It is projected that the new staircase will mimic the original stair design and layout with the addition of improved foundations. Wood along with other material alternatives will be considered for the new staircase design.

Financial Impact

With the amendment to the Task Assignment the new maximum amount payable is $97,509.75.

Original Task Assignment	$76,518.07
Amendment 1	$20,991.68
Total Design	$97,509.75
Total Design Contingency (~10%)	$10,000.00

A CIP budget amendment is not requested at this time since the project's construction schedule has been moved to 2020. However, the overall project budget will need to be increased for next year's CIP budget to account for the added design costs.

Alternatives

Not approving the motion and delay the staircase design to be completed as a stand-alone project. This alternative is not recommended as there is current opportunity to reduce design and construction costs with dual purpose foundations.

Recommendation/Conclusion

Staff requests that Council approve the proposed motions.

Concurrence
Legal, Public Works and the Finance Departments concur.

89

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Attachment #1

Formal Task Assignment Document

Task Number 2018-07.01

The general provisions and clauses of Agreement On-Call Svcs. shall be in full force and effect for this Task Assignment

Location of Project: 6th Avenue South and South 239th Street, Des Moines, WA 98198

Project Title: Capital Improvement Project (CIP) 39 - 6th Avenue S and S 239th Street Pipe Replacement

Maximum Amount Payable Per Task Assignment: $97,509.75

Completion Date: March 31, 2020

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

The original task is being supplemented by the attached Scope of Work (Amendment 1) for Additional Services in the amount of $20,991.68.

Original Budget	$76,518.07
Amendment 1	$20,991.68
Total Budget	$97,509.75

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Letter Dated: _____

Consultant Signature: _____ Date: 6/10/19

Agency Approving Authority: _____ Date: _____

DOT Form 140-089 EF Formal Task Assignment
Revised 6/05

Parametrix
ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

AMENDMENT 1 – SCOPE OF WORK

City of Des Moines
CIP 39 6th Avenue S/S 239th Street Pipe Replacement Project

The City of Des Moines (City) has requested that Parametrix provide civil engineering and environmental services to obtain permits and prepare design and an opinion of cost for Surface Water Capital Improvement Project (CIP) 39 on 6th Avenue South and South 239th Street. This amendment provides for additional services for the design to replace the staircase on 239th down to the viewing platform. The new outfall pipe will need to be anchored to the existing slope, and the concrete anchors could also serve as a foundation for the staircase. The staircase will be replaced in kind with wood materials.

Task 6 – Additional Services – Structural Design

Goal

The goal of Task 6 is to prepare plans and structural calculations for foundations and a staircase to replace the existing aging staircase that is currently closed to public access.

Approach

Parametrix will provide preliminary plans, final plans, structural calculations, and technical specifications for the concrete pipe anchors/foundations and the staircase.

This task will include the following:

- Preliminary and Final plans for the anchors/foundations and staircase replacement.
- Estimated costs for the foundations and staircase will be added to the opinion of cost included in the current scope of work.
- Structural calculations will be prepared as appropriate.
- Technical specifications for the foundations and staircase will be provided and incorporated into the current deliverables as applicable.

Assumptions

- Foundation/anchors will be concrete at grade with helical pile support that can be installed by hand on the slope without accessing the beach.
- The staircase will be replaced in kind and with wood materials.
- The existing viewing platform will remain, and no work on the platform is included in this scope of services.
- Existing encroachments, such as the existing railroad tie retaining walls, will not be repaired or included in this scope of services.

Deliverables

- No additional deliverables are included. The work described herein will be incorporated into the deliverables already included in the Scope of Services.

Client: City of Des Moines
Project: TA 2018-07 6th Ave S and S 239th St Pipe Replacement CIP 39
Project No: 214-1792-022

Budget Estimate
Additional Services - Structural Design

Task	SubTask	Description	Labor Dollars	Lbr Hrs	Austin Fisher Sr Consultant	Steven Wagner Sr Engineer	Christy Pope Sr Project Control Specialist	John M. Betzvog Designer IV
01		**Environmental & Design**						
	06	Additional Work	$20,991.68	128	4	80	4	40
		Labor Totals:	$20,991.68	128	4	80	4	40
		Totals:	**$20,991.68**		**$980.24**	**$14,678.40**	**$460.64**	**$4,872.40**

Amendment 1 Total **$20,991.68**

6/10/2019

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Consent Calendar Item #6

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Amendment 1 to the Professional Management Services Contract with Wesley

ATTACHMENTS:
1. Amendment 1
2. Professional Management Services Contract – Wesley

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: June 18, 2019

CLEARANCES:
[ ] Community Development
[ ] Marina
[X] Parks, Recreation & Senior Services
[ ] Public Works

CHIEF OPERATIONS OFFICER: DSB

[X] Legal
[X] Finance
[ ] Courts
[ ] Police

APPROVED BY CITY MANAGER FOR SUBMITTAL:

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider a contract amendment to the existing Management Services Agreement with Wesley to include additional services and personnel at the City's Senior Activity Center.

Suggested Motion

Motion: "I move to approve Amendment 1 to the Management Services Agreement with Wesley, to provide additional services and personnel at the Senior Activity Center, and authorize the City Manager to sign the Amendment substantially in the form as submitted."

Background
In June of 2018 the City entered into a professional services agreement with Wesley in order for Wesley to manage the City's Senior Activity Center. Wesley is invested in the Des Moines community and they are experts in providing quality services for seniors. Wesley has been a community partner for decades and has a long standing history of providing top quality services and programs for seniors, many of which are similar to what the City provides at our Senior Center.

Over the last 12 months the partnership with Wesley has been extremely successful and as a result, the City and Wesley continue to look at ways to partner and to increase opportunities and services.

Discussion
Following the recent resignation of one of the City's Recreation Specialists at the Senior Center, City staff discussed with Wesley the potential for Wesley to provide additional personnel at the Center. The proposed Amendment provides for an additional Wesley staff person to be located at the Senior Center. This Agreement will continue to strengthen the current partnership approach to providing senior services for the community in a more integrated and efficient way.

The recent partnership with Wesley has improved the overall level of service for seniors at the Senior Center and adding services and personnel will further improve their experience.

Alternatives
Council could choose not to approve the contract. Under this scenario, City Administration would immediately begin recruiting candidates to fill the position. (Not recommended).

Financial Impact
The contract with Wesley has resulted in a lower total cost to the City for operation and management of the Senior Center. In addition to the cost savings, services and participation has increased.

Recommendation
Administration recommends that the City Council approve the Amendment with Wesley.

Attachment #1

CONTRACT AMENDMENT #1

CONTRACT FOR PROFESSIONAL MANAGEMENT SERVICES BETWEEN THE CITY OF DES MOINES AND WESLEY

THIS AMENDMENT/ADDENDUM is entered into on this _____ day of June, 2019, pursuant to that certain Contract entered into on the 13th day of June, 2018, between the **CITY OF DES MOINES,** WASHINGTON (hereinafter "City"), and **WESLEY,** (hereinafter "WESLEY or CONTRACTOR"),..

The parties herein agree that the Contract dated June 13, 2018, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

1. **SECTION** 1, is hereby amended to add Section 1(i) which will read as follows:

(i) Beginning on _____, 2019, Wesley shall provide an additional staff person to act as a Recreation Specialist for the Activity Center. The staff member provided by Wesley will be called the Senior Center Resident Coordinator and shall meet the expectations of the job description that is provided as Exhibit C. All other provisions of this Agreement shall also apply to this position.

2. **SECTION 4b**, is hereby amended to read as follows:

The monthly invoice shall be the total cost of compensation of the Contractor provided Senior Services Manager and Senior Center Resident Coordinator, including the direct, indirect, and Wesley administrative overhead costs.

3. The first sentence of **SECTION 4c** is hereby amended to read as follows:

The City shall pay Wesley for all actual costs associated with providing the Senior Service Manager and Senior Center Resident Coordinator, including direct and indirect expenses, and overhead, not to exceed $13,500 per month during the Term (as defined below)(the "Services Fee").

Except as modified hereby, all terms and conditions of contract dated June 13, 2018 remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the date first above written.

WESLEY:	CITY OF DES MOINES:
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	By:_____ *(signature)* Print Name: Michael Matthias Its City Manager *(Title)* DATE:_____ Approved as to form: _____ City Attorney DATE:_____

JOB DESCRIPTION

Senior Center Engagement Coordinator

Exhibit C

JOB SUMMARY

The Senior Center Engagement Coordinator provides professional community recreation program and special event planning, development and supervision. The incumbent interacts with a broad and diverse constituency of citizens, organizations, and agencies. This position assists in the recruiting, training, supervision, and scheduling of volunteers. Hours vary based on program schedule and may include occasional evenings and weekends.

ESSENTIAL FUNCTIONS

- Plans, leads and supervises recreational, educational and social activities for assigned areas.
- Prepares and administers senior services budgets and monitors expenditures and revenue for assigned areas in accordance with established procedures.
- Coordinates, approves and monitors contractual service agreements for instructional staff.
- Coordinates facilities and programs with other agencies as assigned.
- Maintains monthly records and prepares written reports relating to senior services activities and facilities for assigned areas.
- Coordinates, schedules and supervises use of facility during normal operating hours.
- Assists in training volunteers in safety procedures and ensures all safety rules, regulations and procedures are followed. Provides for risk management practices.
- Assists in recruiting, training and supervising volunteers and instructors for senior services programs.
- Prepares the program quarterly newsletter, publicity, promotion and advertising for assigned areas.
- Communicates effectively with program participants and provides activities designed to promote health, fitness and socialization for older adults.
- Answers department telephone, assists customers with their requests, directs calls to appropriate personnel, takes messages and provides information.
- Assists facility users/staff with program information and registration, facility set-up and take-down, equipment check-out, lost and found, and general site supervision and security.
- Assists with participant registration system regarding scheduling, fee collection, accounting, participant records, refunds and notification, and class/program evaluations.
- Oversees participant use of Park and Recreation Department program facilities, vehicles, and equipment.
- Purchases supplies and equipment as needed.
- Attends to injury and incident victims, providing assistance and First Aid when needed.
- Completes accurately all City/Department forms for supervisory review and action when needed.
- Assists the Parks, Recreation and Senior Services Department professional staff with special projects as needed.
- Establishes and maintains cooperative, effective working relationships with co-workers, other City employees, and the general public using principles of good customer service.
- Reports for scheduled work with regular, reliable and punctual attendance.
- Performs other duties as assigned, including but not limited to being assigned to work in other functional areas to cover absences or relief, equalize peak work periods, or balance the workload.

QUALIFICATIONS/REQUIREMENTS

- Current principles and practices related to the coordination of a community recreation program, with emphasis on older adults.
- Scheduling techniques and procedures for recreation activities, facilities and special events.
- Interpersonal skills using tact, patience and courtesy.

- Principles and practices of administration, supervision and training.
- Standard First Aid, CPR and Bloodborne Pathogens procedures.
- Maintain effective working relationships with individuals and groups encountered in fulfilling job requirements.
- Ability to effectively plan, schedule, oversee and evaluate programs and personnel.
- Ability to analyze problems and negotiate effectively.
- Ability to make oral presentations.
- Ability to communicate effectively both orally and in writing using correct English usage, grammar, spelling, punctuation and vocabulary.
- Ability to use computer technology such as DASH registration systems, facility scheduling, and report preparation.
- Ability to perform the essential functions of the position.

Education Background

- Bachelor's degree in Parks and Recreation Administration or a related field; or equivalent and
- Two years' experience in recreation or gerontology; or

- **Licensure, Registration, Certification**
  - Maintain a valid First Aid/CPR card (within three months of employment).
  - Maintain a King County Food Handlers Permit (within three months of employment).
  - Possession of and the ability to maintain throughout employment a valid Washington State Driver's License with a good driving record.
  - Successful completion of a pre-employment background and criminal history check.

- **Physical Demands**
  - Indoor and outdoor work environments. Outdoor environment can include uneven and unstable walking surfaces, tripping hazards, and inclement weather conditions.
  - Occasional travel to off-site locations is required.
  - Hand-eye coordination and fine-manipulation skills are necessary to operate computers and a variety of office machinery.
  - The position also requires the ability to speak and hear to exchange information, sit for extended periods of time, bend and stretch to retrieve and maintain files and program supplies, and lift up to 50 pounds.

INFECTIOUS RISK CATEGORY

NO RISK: No contact with patient's blood or other body fluids. No protective equipment required to be worn.

I have received, read and understand the above job description and can perform the essential functions of the job with or without reasonable accommodation. In the event I need future reasonable accommodation(s) it is my responsibility to submit that request in writing to Human Resources for review.

Employee Signature: _____ Date: _____

Date Created:
Date Revised:

W:\Human Resources\HR Public\Job Desc\April 2019

CONTRACT FOR PILOT PROJECT PROVIDING PROFESSIONAL MANAGEMENT SERVICES
Between
THE CITY OF DES MOINES
and
WESLEY

THIS CONTRACT is made and entered into between the CITY OF DES MOINES, a Washington Municipal Corporation ("the City") and WESLEY, a 501(c)(3) not-for-profit organization ("Wesley" or "Contractor").

WHEREAS, the City currently provides and coordinates quality Senior Services with an emphasis on creating a sense of community for older adults and their families; and

WHEREAS, the Des Moines Senior Activity Center, located at 2045 South 216th Street is owned and operated by the City, and provides programs that enhance the experience of being an older adult and are focused on meeting the goals of successful aging; and

WHEREAS, such programs and services include coordinated meal services, scheduled outings, and on site activities at the Senior Center including positive and useful medical classes and clinics which have benefitted seniors in attendance; and

WHEREAS, Wesley, is an organization, located in Des Moines, that has provided retirement communities and a network of services offering a continuum of care in the community for many years; and

WHEREAS, Wesley's vision is to build a network of services providing a continuum of care for older adults; and

WHEREAS, other governmental and community service organizations and foundations also provide senior nutritional, fitness, health care, personal growth, emotional support to seniors in the Des Moines and Normandy Park communities; and

WHEREAS, coordination of efforts among these organizations may positively impact the quality and availability of Senior Services in Des Moines and Normandy Park; and

WHEREAS, the City and Wesley have agreed that the City will engage Wesley in a Pilot Project to oversee and manage the day to day operations at the Senior Center; and

WHEREAS, this agreement between the City of Des Moines and Wesley is made in furtherance of these mutual goals to benefit the Senior Community;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the parties, and other good and valuable consideration, it is mutually agreed as follows:

1. **Senior Center Services.**
   a. The City does hereby engage Wesley and Wesley does hereby accept the engagement by the City to oversee and manage the day to day operations at the Senior Center.

   b. Wesley shall provide professional programming, oversight, supervision, and management of the Des Moines Senior Activity Center and its associated programs located at 2045 South 216th Street, and in connection therewith Wesley shall provide the services generally described in Exhibit A hereto (the "Senior Center Services").

   c. In performing said work, Wesley shall provide a staff person to manage the day-to-day operations at the Senior Activity Center, and to work in coordination with the City to manage other City staff assigned to the Senior Activity Center (currently 1.5 FTE's), as well as volunteers and organizations associated with the Senior Activity Center.

   d. The staff member provided by Wesley will be called the Senior Services Manager, and shall meet the expectations of the job description that is provided as Exhibit B.

   e. Wesley shall provide a recommendation to the City of the staff person that they intend to appoint to the position of Senior Services Manager. The City shall have right to review the qualifications of the candidate and approve or deny the recommended candidate. The candidate will also be subject to a City of Des Moines background check.

   f. The Senior Center shall be open to the public Monday through Friday from 8:00 a.m. to 4:30 p.m. excluding those state and/or federal holidays on which the offices of the City of Des Moines are closed for business.

   g. The parties recognize that evening and weekend activities may be scheduled outside of these normal operating hours, however, these evening and weekend activities shall be an addition to the normal operating hours listed above and not be treated as an off-set or substitute.

   h. All data, documents, and files created by Contractor under this Agreement may be stored at City facilities or at Wesley, until this contract expires or is terminated, at which time they will be turned over to the City. Wesley shall make such data, documents, and files available to the City upon its request at all reasonable times for the purpose of editing, modifying, and updating as necessary. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost.

2. **Employee Supervision and Independent Contractor.**
   a. The Parties intend that the Services provided by Wesley under this Contract are provided as an independent contractor. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties. Neither Wesley and/or any Wesley employees shall be entitled to any benefits accorded City employees by virtue of the services provided under this Contract. The City will not be responsible for

withholding or otherwise deducting federal income tax or social security payments, or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor.

b. Accordingly that Wesley has the sole ability and responsibility to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. Wesley shall be solely responsible for the payment of salaries and/or benefits of its employees engaged in the provision of the Senior Center Services and in complying with all laws, rules, and regulations governing such payments.

c. Wesley shall require and ensure all employees associated with the Services to be performed under the terms of this Agreement pass all required background checks, including but not limited, to background checks under the Child and Adult Abuse Information Act. In addition, all employees driving a vehicle on Senior Center business must at all times possess a valid driver license and have an acceptable Abstract of Driving Record (ADR).

d. Wesley's employees will agree to follow the City's Personnel Manual.

3. **City Rights and Responsibilities.**

a. The City shall provide all materials, tools, software, equipment, utilities, and all other things necessary or required at the Senior Activity Center for the satisfactory performance of the work, and the City shall provide Wesley with access to the City's Senior Activity Center.

b. The Senior Center shall be used by Wesley solely for the provision of the Senior Center Services. The City reserves the right to use the Senior Center for other activities and by other entities so long as those activities do not interfere with the day to day operation of the Senior Center and the provision of the Senior Center Services in accordance with the terms of this Agreement.

c. The City further agrees to maintain, repair, and, if and as deemed necessary in the sole discretion of the City, replace, the real property, including the landscaping and parking lot, furniture, fixtures, equipment, including a copier and computer, kitchen equipment and cookware comprising the Senior Center, subject to the City's right to seek indemnity with respect to the cost thereof, if applicable, pursuant to Section 10 below.

d. The City shall continue to pay all utilities related to the ownership and/or operation of the Senior Center.

4. **Compensation.** In consideration for the complete and faithful performance of the Contract, Wesley shall be paid as follows:

a. Wesley will invoice the City not later than the 5th of the following month.

b. The monthly invoice shall be the total cost of compensation of the Contractor provided Senior Services Manager, including the direct, indirect, and Wesley administrative overhead costs.

c. The City shall pay Wesley for all actual costs associated with providing the Senior Services Manager, including direct and indirect expenses, and overhead, not to exceed $7,500 per month during the Term (as defined below) (the "Services Fee"). Beginning in the second year and for each subsequent year that this Agreement is in effect, the compensation payments shall increase annually at a rate of 95% of the annual All Urban Consumer Price Index (CPI-U) for the Seattle-Tacoma area for June over June. The Services Fee shall be due and payable on the 20th day of each month and if not paid when due shall be subject to a late fee of 1% per month (the "Overdue Rate") from the date due to the date paid in full.

d. The Services Fee shall be prorated in the event the Term commences other than on the first day of a month or terminates other than on the last day of a month.

e. In consideration for the payment of the Services Fee, other than those costs and expenses for which the City has specifically agreed to remain responsible pursuant to Sections 3 and 10 hereof, Wesley shall be responsible for all of the costs and expenses related to the provision of the Senior Center Services including, but not limited to, all employee wages and benefits and related taxes.

5. Term.

a. Unless earlier terminated as provided herein or unless extended as provided herein the initial term of this Agreement (the "Initial Term") shall for two (2) years from the Commencement Date (as hereinafter defined). For purposes hereof, the Commencement Date shall mean June 16, 2018.

b. Upon mutual written agreement of the parties, the Initial Term of this Agreement can be extended for an additional two year (the "Renewal Term" and together with the Initial Term, the "Term").

c. Notwithstanding the foregoing, the Term of this Agreement may be earlier terminated, in whole or in part, at any time, by either party without cause upon ninety (90) days written notice of termination to the non-terminating party which notice shall set forth the termination date.

d. Further, this Agreement may be terminated by either party (the "non-defaulting party") on written notice to the other (the "defaulting party") in the event of a breach by the defaulting party of its obligations under this Agreement, which is not cured within ten (10) days in the case of a monetary breach or thirty (30) days in the case of a non-monetary breach after written notice from the non-defaulting party setting forth in reasonable detail the nature of such breach; provided, however, in the case of a non-monetary breach which cannot reasonably be cured within thirty (30) days, the defaulting party shall have an additional period of thirty (30) days in which to complete

the cure provided it commences the cure within the initial thirty (30) day cure period and diligently prosecutes the same to completion.

6. **Performance Standards.**
The Services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance.

7. **Record Keeping.**
All records or papers of any sort relating to the City and the project will always be the property of the City and shall be surrendered to the City upon demand. All information concerning the parties, which is not otherwise a matter of public record or required by law to be made public, is confidential, and neither party will disclose that information without the express written consent of the other party. Wesley acknowledges that the City, as a public agency, is subject to the Public Records Act in Chapter 42.56 RCW.

8. **Assignment.**
Wesley shall not assign this Contract or any interest herein, nor any money due or to become due hereunder without first obtaining the written consent of the City, nor shall Wesley subcontract any part of the consulting Services to be performed hereunder, without first obtaining the consent of the City. The City has the full discretion to determine whether to consent to assignment.

9. **Modification.**
No change, alteration, modification, or addition to this Contract will be effective unless it is in writing and properly signed by both parties.

10. **Indemnification.**
Wesley shall defend, indemnify and hold the City, officials, employees and volunteers harmless from all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the negligent acts, alleged negligent acts, errors or omissions of Wesley in the performance of this Agreement.

The City shall defend, indemnify and hold Wesley, officials, employees and volunteers harmless from all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the negligent acts, alleged negligent acts, errors or omissions of the City in the performance of this Agreement.

It is further specifically and expressly understood that the indemnification provided herein constitutes both parties waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11. Liability Insurance.

Wesley shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Wesley, their agents, representatives, employees or subcontractors.

Wesley's maintenance of insurance as required by the Contract shall not be construed to limit the liability of Wesley to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

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

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing coverage at least as broad. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under Wesley's Commercial General Liability insurance policy with respect to the work performed for the City, using ISO endorsement form CG 20 26, or coverage at least as broad.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Minimum Amounts of Insurance: Wesley shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

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

1. Wesley's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Wesley's insurance and shall not contribute with it.

2. Wesley shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

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

D. Verification of Coverage Wesley shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of this Agreement. Upon request by the City, Wesley shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract.

12. Dispute Resolution Procedures.

a) ***Mediation/Arbitration***. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the Parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under 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 Contract 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.

b) ***Venue, Applicable Law and Personal Jurisdiction.*** All questions related to this Contract shall be resolved under the laws of the State of Washington. If either party deems it necessary to institute legal action arising from this Contract, such action shall be instituted in the King County Superior Court. The Parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Contract until the parties have exhausted the mediation procedures required by the previous paragraph.

13. Severability.

If any term, provision, covenant, or condition of this Contract 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 because of such decision.

14. Waiver.

The waiver by either party of any breach of any term, condition, or provision of the Contract 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 Contract.

15. Captions.

The captions used herein are for convenience only and are not a part of this Contract 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 the terms, covenants, and conditions of this Contract.

17. Concurrent Originals.

This Contract may be signed in counterpart originals.

18. Ratification and Confirmation.

Any acts consistent with the authority and prior to the effective date of this Contract are hereby ratified and confirmed.

Management Services Contract (Pilot Program)
Senior Services and Activity Center

IN WITNESS THEREOF, four (4) identical counterparts of this Contract, each of which shall be deemed an original thereof, have been duly executed by the Parties herein named, on the day and year first above written.

CITY OF DES MOINES

By_____
Its City Manager

Dated 6-11-2018

CONTRACTOR

_____
Wesley, Title EXECUTIVE DIRECTOR

Dated 6/13/2018

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

WESLEY PROVIDED SERVICES AND RESPONSIBILITIES

- Coordinate with the City to develop the goals of the Senior Center which shall include maximizing the benefits and resources offered by the Senior Center.

- Develop a schedule of programs and activities to be offered at the Senior Center which are designed to achieve the goals of the Senior Center; provided, however, in no event shall the programs and activities offered at the Senior Center during the Term of this Agreement be less than what is being offered by the City as of the Execution Date.

- Hire and provide a Senior Services Manager to oversee and manage the day to day operations of the Senior Center, including City staff (currently 1.5 FTE's), as well as volunteers and organizations associated with the Senior Activity Center.

- Review and make recommendations to the City concerning policies and procedures necessary for the effective operation of the Senior Center.

- Monitor customer satisfaction and take such steps as may be deemed necessary and appropriate by Wesley to maintain and/or improve, as applicable, customer satisfaction and provide a report at least quarterly or as requested by the City.

- Coordinate the services offered at the Senior Center with City-contracted vendors, including coordination of meal services, currently provided by Catholic Community Services.

- Coordinate with other City Departments and Department Directors as necessary.

- Identify and promptly notify the City of any maintenance requirements and/or needed capital improvements to the Senior Center.

- The Senior Services manager shall meet regularly with City Administration to report on the operations of the Senior Center.

- Provide periodic reporting to the City on the results of operations at the Senior Center.

EXHIBIT B

SENIOR SERVICES MANAGER
Job Description

Nature of Work

This position is responsible for administrative, supervisory, and professional work in the planning, development, and operation of a comprehensive senior services program managing recreation and continuing education activities, health and nutrition programs, facilities, personnel, volunteers and special events. Work is coordinated with other senior and human services providers in the community. Work is performed under the general direction of assigned supervisor. Work is completed independently with considerable autonomy. The incumbent is responsible for supervision, scheduling and evaluation of regular full-time, part-time and extra-hire staff and volunteers.

Essential Functions

- Plans, manages, implements and evaluates a comprehensive senior citizen program including recreation, social, health, nutrition, and human services programs.
- Assures the development of new programs, services and activities as appropriate.
- Assures adequate equipment and supplies; analyzes productive output to identify improvement needs and forecast requirements of personnel, programs, services, activities, supplies and equipment.
- Inspects and evaluates recreation programs and facilities; formulates recommendations for appropriate additions, replacements, and repairs; investigates complaints/feedback regarding recreational programs, services, activities, personnel, and facilities.
- May provide staff support to Senior Services Advisory Committee and Human Services Advisory Committee.
- Plans, prepares, develops, monitors and manages an annual budget for senior services functions. Approves purchases of supplies and operating inventory within established limits. Analyzes and controls expenditures to assure conformance with budget and established fiscal policies; obtain sources of funding and grants as appropriate.
- Establishes work performance standards, goals and objectives; reviews and resolves conflicts; monitors, reviews and approves time sheets.
- Coordinates services offered at the senior center that are funded, but not staffed, by other agencies.
- Communicates with City administrators, personnel, outside organizations, groups, and schools to coordinate, promote, publicize, and evaluate recreation programs, services, and activities.
- Assures the timely and accurate preparation of records, files, and comprehensive reports related to the programs, services, activities, operations, and budget of senior services.
- Researches and applies for outside funding for services and equipment including grant writing, fund raising, and securing donations; administer grant-funded projects and services. Develops partnerships and sponsorships for programs and facility improvements.

- Attends or chairs various professional, staff, and committee meetings and conferences; prepare and deliver speeches to park, civic and community groups as appropriate.
- Serves as technical advisor to community and city staff.
- Assists in short- and long-range planning for a comprehensive senior services program. Coordinates facilities and programs with other public agencies and organizations.
- Manages division computer system, training, and planning.
- Assures employees and volunteers are trained in safety procedures and ensures that all safety rules, regulations, and procedures are followed. Provides for risk management practices.
- Proposes long range capital improvement and development of senior programs facilities, equipment, and programs.
- Establishes and implements policies, procedures, and standards consistent with city policies and ordinances.
- Maintains communications and effective working relationships with co-workers, supervisors, other city employees, other government agencies, elected and appointed officials, community groups, and the general public. Makes presentations to council and community groups.
- Coordinates and monitors service provider and interlocal contracts; insurance agreements for facilities; human services contracts; concessions and program related contracts.
- May perform administrative and record-keeping functions as needed.
- Makes recommendations for hiring, trains, supervises, and evaluates work performance of assigned staff and volunteers; establishes work priorities and performance standards for staff; monitors performance and provides effective feedback; works with staff to correct any deficiencies; implements any necessary disciplinary action after appropriate consultation with the City's Human Resources Director.
- May serves as technical advisor to Seattle Southside RTA Sports Tourism Committee.
- Establishes and maintains cooperative, effective working relationships with co-workers, City employees, and the general public using principles of good customer service.
- Reports for scheduled work with regular, reliable and punctual attendance.
- Performs other duties as assigned, including but not limited to being assigned to work in other functional areas to cover absences or relief, equalize peak work periods, or balance the workload.

Necessary Knowledge, Skills, and Abilities

Knowledge of:

- Current principles and practices related to the administration of a comprehensive senior citizen program.
- Planning techniques and procedures for parks and recreation systems.
- Fund development and grant writing.
- Principles of customer service, conflict resolution, public relations and marketing.
- Effective personnel management techniques, and all applicable city policies and procedures.
- Budget planning, accounting, grant funding development and control techniques.
- Recordkeeping techniques and research methods.
- Sound purchasing and inventory control practices.

- Office procedures, methods, and equipment including computers and applicable software applications such as word processing, spreadsheets, and databases; social media.
- All phases of senior recreation and human services programming and volunteer coordination.
- Scheduling techniques and procedures for recreation facilities.
- Standard first aid, CPR, and bloodborne pathogen procedures.
- Pertinent federal, state and local laws, codes and regulations.

Ability to:

- Develop and implement senior center programs and events.
- Organize and express ideas effectively through the use of oral and written communications.
- Effectively use interpersonal skills in a tactful, patient, and courteous manner.
- Apply principles and practices of management, administration, supervision, and training.
- Develop, monitor, and manage the division budget.
- Analyze community recreational needs and recommend appropriate programs, services and activities.
- Estimate and project costs and expenditures.
- Develop program funding and obtain and administer grants.
- Develop and implement goals and objectives of the assigned division.
- Organize work to meet schedules and timelines.
- Write reports, business correspondence, and procedure manuals.
- Effectively present information and respond to questions from City Council, top management, clients, customers, the general public, and/or public groups.
- Respond to common inquiries and/or complaints/feedbacks from customers, regulatory agencies, or members of the business community.
- Demonstrate positive and effective interaction and communication with individuals of diverse occupational and social-economic backgrounds.
- Work effectively on several projects concurrently.
- Develop and implement comprehensive procedures for the effective management of senior citizen programs.
- Interpret and explain policies and procedures established by administration or City Council.
- Supervise the work of staff including coordinating, assigning, monitoring, and evaluating work; hiring, training, counseling, and disciplining staff (after consultation with City Human Resources Director).
- Establish and maintain effective working relationships with staff, other City employees/departments, City officials, community groups, and the public.
- Make timely decisions considering relevant factors and evaluating alternatives, exercising discretion and sound independent judgment.
- Create and meet schedules, time lines and work independently with little direction.
- Communicate clearly and concisely, both orally and in writing.
- Work effectively in a dynamic environment that is constantly changing, resulting in continually re-evaluating and shifting priorities.

- Ability to work both independently and within a collaborative team-oriented environment; contribute openly, respectfully disagree, understand the ideas of others, listen well and work for consensus.

Education and Experience Requirements

- Bachelor's degree from an accredited college or university with major course work in gerontology, recreation administration or related field; and
- Three years of increasingly responsible senior center programming experience, including at least one year in a supervisory capacity.

Special Requirements

- Must obtain a valid First Aid/CPR card within three months of employment, and maintain throughout employment.
- Must obtain and maintain a current King County Health Department Food Workers Permit.
- Possession of and the ability to maintain throughout employment a valid Washington State Driver's License with an acceptable Abstract of Driving Record (ADR).
- Successful completion of a pre-employment background (including references) and criminal history check.
- Because of the known effects of tobacco use, the City of Des Moines does not hire applicants who use tobacco products.

Working Conditions and Physical Abilities

- Environment: Work is performed at indoor and outdoor recreational facilities; travel to different locations; may be exposed to inclement weather conditions; work and/or walk on various types of surfaces, including slippery or uneven surfaces; may be required to work extended hours including evenings and weekends, and may be required to travel outside City boundaries to attend meetings.
- Physical: Primary functions require sufficient physical ability and mobility to work in an office and recreation facility setting; to stand or sit for prolonged periods of time; to occasionally stoop, bend, kneel, crouch, reach, and twist; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; to travel to other locations using various modes of private and commercial transportation; and to verbally communicate to exchange information.

Equal Opportunity Employer

- The City of Des Moines is committed to hiring a diverse workforce and all qualified applicants, including all ethnic backgrounds and persons with disabilities, are encouraged to apply. The City is an Equal Opportunity Employer and does not unlawfully discriminate on the basis of race, sex, age, color, religion, national origin, marital status, sexual orientation, veteran status, disability status, or any other basis prohibited by federal, state, or local law.
- In accordance with the Americans with Disabilities Act, an employer is obligated to make a reasonable accommodation only to the known limitations of an otherwise qualified individual with a disability. In general, it is the responsibility of the applicant or employee with a disability to inform the employer that an accommodation is needed to participate in

the application process, to perform essential job functions or to receive equal benefits and privileges of employment.

General Information

- The statements contained herein reflect general details as necessary to describe the principal functions for this job classification, the level of knowledge and skill typically required and the scope of responsibility, but should not be considered an all-inclusive listing of work requirements.
- The physical abilities described above are representative of those that must be met by an employee to successfully perform the essential functions of the job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.
- The provisions of this job description do not constitute an expressed or implied contract. Any provision contained herein may be modified and/or revoked without notice.
- Updated 2018.

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Consent Calendar Item #7

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Highline College Urban Agriculture Use Agreement for Mary Gay Park

ATTACHMENTS:

1. Urban Agriculture Use Agreement between the City of Des Moines and Highline College

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: June 17, 2019

CLEARANCES:
[X] Community Development DCL
[ ] Marina ____
[X] Parks, Recreation & Senior Services ____
[X] Public Works ____

CHIEF OPERATIONS OFFICER: DSB

[X] Legal TG
[X] Finance BAW
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this agenda item for the City Council to approve the Urban Agriculture Use Agreement between the City of Des Moines and Highline College (Attachment 1) for use of Mary Gay Park for urban agriculture and to authorize the City Manager to sign substantially in the form submitted.

Suggested Motion

Motion 1: "I move to approve the Urban Agriculture Use Agreement between the City of Des Moines and Highline College, and authorize the City Manager to sign the Amendment substantially in the form as attached."

Background

In 2017, the City supported the College's grant application from the King Conservation District. Highline College and the City of Des Moines have been working together over the past year to explore a partnership related to increasing urban agriculture within the City. Currently, the City and Highline College have an agreement

related to using Sonju Park for urban agriculture. The College has asked to explore other available areas, including expanding area at Sonju, and utilizing Parkside Park and Mary Gay Park to facilitate the mission of the program. Key objectives of the program include:

- Bring 4-6 acres of land into active production (grant requirement)
- Educate and develop sustainable farmers
- Improve local food security
- Provide opportunities for entrepreneurship and healthy living
- Create spaces that that welcome the broader Des Moines Community to learn about sustainability, self-sustenance, entrepreneurship and healthy living.

Key considerations for the Council include:

- Use of public land for market garden farming that involves sale of produce.
- Environmental considerations.
- Public benefits.

The Municipal Facilities and Environment Council Committees were briefed on the project, on January 24 and February 21, 2019 respectively.

Discussion

On May 23, 2019, City staff and Highline College provided information to the City Council regarding analysis of potential locations for Highline College's urban agriculture program. Mary Gay Park was recommended as the preferred location for the program. City Council directed staff to bring forward for approval an agreement with Highline College for use of appropriate areas for urban agriculture at Mary Gay Park, to include public benefits negotiated with the College.

The proposed agreement outlines the uses and programming to be approved at Mary Gay Park. Key benefits include:

- Educational curriculum, materials and workshops of benefit to the program participants, Highline School District and community at large.
- Community events:
    - Urban Agriculture Spring Summit
    - Fall Harvest Festival
    - Farm to Table Events
    - Food Truck
    - Pumpkin Patch
    - Permaculture Club meetings

Financial Impact

There would be no financial impact unless the Council determines that monetary compensation is required from Highline College.

Recommendation

Administration recommends that City Council approved the agreement and authorize the City Manager to sign substantially in the form submitted.

Attachment #1

2019 URBAN AGRICULTURE USE AGREEMENT
BETWEEN THE CITY OF DES MOINES AND HIGHLINE COLLEGE

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 HIGHLINE COLLEGE (hereinafter "College") for the use of certain City facilities between and including June 27, 2019 and December 31, 2024.

WHEREAS, the City Council finds that the Highline College Urban Agriculture program enhances the quality of life for residents of the City of Des Moines and wishes to permit it to operate at the Mary Gay Park property throughout the year as may be approved by the City Manager, and

WHEREAS, Highline College is public college in the State of Washington, and

WHEREAS, the City receives an unquantifiable public benefit from hosting the Urban Agriculture program on City property, including educational opportunities to learn about sustainable agriculture practices, food security and public health, and an increased sense of community among attendees and visitors, and

WHEREAS, the City Council finds that the benefit to the City from the beneficial use, maintenance, and improvement of the previously unimproved park land; the educational opportunities for the public; benefit to the Des Moines Area Food Bank and other community partners; and the opportunity for events for the public are reasonable and sufficient consideration for the planned use of the Park for the College's benefit; now therefore,

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

1. General Terms:

a. Upon execution of this Agreement, and subject to the conditions below, the City grants permission to the College to use and occupy, for its Urban Agriculture program the portion of Mary Gay Park depicted in Exhibit "A" attached to this agreement ("Program Area").

b. The College's Urban Agriculture program's use of the Program Area may include installing raised beds; cultivation of the soil; planting; irrigation; and other activities consistent with best agricultural practices as identified by the College's Urban Agriculture program.

c. Prior to use of the Program Area, the City will complete a CPTED (Crime Prevention through Environmental Design) evaluation of the site and provide recommendations for site safety to the College.

d. Community partners chosen by the College may participate in the Urban Agriculture activities permitted under this agreement, subject to approval by the City. Community partners may include but are not limited to King Conservation District, International Rescue Committee, Food Innovation Network, Elk Run Farm and Des Moines Area Food Bank. The College shall be responsible for management and supervision of the participating community partners.

e. The College shall be responsible for all acts and omissions of its officers, personnel, employees, agents, contractors, invitees, students, clients, customers, community partners, or volunteers.

f. Use of the Program Area by Highline College and program participants shall be limited to regular park hours, unless otherwise approved by the City.

g. The College shall have exclusive use of the garage located within Mary Gay Park for storage of a tractor and equipment. The College shall be responsible to inspect and maintain the garage to ensure the garage is safe for human occupancy and in a neat and orderly condition. It shall be the responsibility of the College to ensure that no person shall enter the garage if it is determined that an unsafe condition exists. Any personal property shall be stored in the garage at the owner's sole risk, and the City shall not be responsibility for any loss for any reason, including but not limited to theft, vandalism, fire, flood, building collapse, or act of god.

h. Water and electricity cost will be billed to the College based on proportionate use.

i. The College shall maintain the Program Area.

j. The College shall prune the orchard trees in Mary Gay Park using best practices to encourage fruit production and shall harvest the produce.

k. Food produced in Mary Gay Park through the Urban Agriculture program may be sold at the Des Moines Farmer's Market consistent with program guidelines and with the permission of the Farmer's Market, or may be donated to the Des Moines Area Food Bank.

l. No food produced in Mary Gay Park shall be sold in the Park except pursuant to separate special event agreement between the parties.

m. The parties express their intent to identify a site within Mary Gay Park for the College to construct a semi-permanent greenhouse at the College's expense to expand Urban Agriculture opportunities within the Park. The greenhouse shall be negotiated and approved by the City Manager.

n. The College may exclude the public from raised beds and/or ground disturbed for cultivation in the Program Area by use of signs and/or non-intrusive fencing, subject to approval by the City.

o. Recognizing that Mary Gay Park is a City park open to the public for recreational purposes, the College shall not exclude the public from any area other than lands in the Program Area being put to agricultural purpose or the garage. The College shall not interfere with the public's enjoyment of any other area of the Park during hours when the public is permitted to use the Park.

p. It shall be the duty and responsibility of the College to ensure that the Program Area and any area where work connected with the Urban Agriculture program is being conducted are free from all hazards to persons or property, regardless of whether the hazards are latent, apparent, or obvious.

q. The College shall install interpretive signage regarding the agricultural use of the Program Area with the design to be approved by the City prior to installation.

r. The College shall provide one or more events per year open to the public that provide an opportunity for learning about sustainable agricultural practices and the activities of the College at the Park.

2. Indemnification

The College shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with this agreement, except for injuries and damages caused by the sole negligence of the City. In the event that the City is required to defend itself for any

claims or suits arising out of acts or omissions of the College or the College's officers, personnel, employees, agents, contractors, invitees, students, clients, customers, community partners, or volunteers, the College shall be responsible for City's costs, including reasonable attorney's fees for such defense.

3. All Work Performed at College's Risk

The College assumes all risks and hazards of the conduct of the Urban Agriculture program at Mary Gay Park. The College shall take all necessary precautions and shall be responsible for the safety of the College and the College's officers, personnel, employees, agents, contractors, invitees, students, clients, customers, community partners, or volunteers in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at College's own risk, and the College shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. In case of injury to the College, the College waives all claims or legal actions, financial or otherwise, against the City of Des Moines, its elected officials, employees, sponsors, agents, or volunteers connected with this agreement unless the injury is caused by the sole negligence of the City.

4. Termination

Either party may terminate this Agreement with or without cause with thirty (30) days prior written notice. The College shall return the Program Area to the condition that existed at the time this agreement was executed within thirty (30) days of termination, unless otherwise directed by the City.

5. Discrimination

The College shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person in respect to any actions taken in connection with this agreement.

6. Notice

Any notice or other communication given hereunder shall be deemed sufficient, if in writing and delivered personally to the addressee, or sent by certified or registered mail, return receipt requested, addressed as follows, or to such other address as may be designated by the addressee by written notice to the other party:

To City of Des Moines:
Janet Best, Administrative Assistant II
City of Des Moines Parks, Recreation, and Senior Services
1000 S 220th St
Des Moines, WA 98198
jbest@desmoineswa.gov
(206) 870-6547

To Highline College:
Alice Madsen
Executive Dean for Workforce Education
Highline College
2400 S 240th St
Des Moines, WA 98198
amadsen@highline.edu
(206) 592-4893

7. Assignability

The rights, duties, and obligations of either party to this Agreement may not be assigned to any third party without the prior written consent of the other party.

8. Entire Agreement

This Agreement and any documents incorporated by reference herein contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this

Agreement. No amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

9. 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 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.

10. Severability

If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.

IN WITNESS, the parties below execute this Contract, and certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. This contract shall become effective on the last date entered below.

City of Des Moines

_____
Michael Matthias
City Manager

Date: _____

Approved as to form:

_____
Tim George
City Attorney

Date: _____

Highline College

_____

Date: _____

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Consent Calendar Item #8

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Interlocal Agreement with Highline School District for a School Resource Officer at the Olympic Site

ATTACHMENTS:
1. Interlocal Agreement with the Highline School District for a School Resource Officer at the Olympic Site

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Police Department

DATE SUBMITTED: June 19, 2019

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

CHIEF OPERATIONS OFFICER: _____

[X] Legal
[X] Finance
[ ] Courts
[X] Police

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation

The purpose of this agenda item is for City Council consideration of an ILA with the Highline School District to provide for a School Resource Officer for the upcoming school year at the temporary Highline High School at the Olympic Site, located at 615 S 200th St.

Suggested Motion

Motion 1: "I move to approve the ILA with the Highline School District to provide for a School Resource Officer for the upcoming school year at the temporary Highline High School at the Olympic Site, located at 615 S 200th S, and authorize the City Manager to sign the agreement substantially in the form as attached."

Background
The Highline School District is temporarily relocating Highline High School to the Olympic Site in Des Moines, located at 615 S 200th St. The District and the Des Moines Police Department have been in contact regarding contracting a Des Moines Police Officer as a school resource officer at the temporary Highline High School. This would be a one year position, and the school district will provide funding to the City of Des Moines as stated in the attached contract.

Discussion
The City of Des Moines started the School Resource Officer Program at Mount Rainier High School in the year 2000 with a grant from the Federal Government. Over the years this has been a very beneficial program for the students, the police department and the community at large. Incidents of violence in and around schools continues to be a grave concern and this program helps serve as a deterrent. The program also allows and provides for a strong police nexus to the youth in our community.

The Highline School District is temporarily relocating Highline High School from Burien due to construction at the site. The students will be attending high school at the Olympic Site in Des Moines at 615 S. 200th St. Given that the building is located within the jurisdiction of Des Moines, it is appropriate to have a Des Moines officer present at the school.

Alternatives
Not pass the ILA or approve it with amendments (Not recommended).

Financial Impact
The District will reimburse the City of Des Moines $80,000 for the officer which is consistent with the cost to the City for the officer over the school year.

City Council Joint Meeting with Highline School District Board
Earlier this year the Des Moines City Council attended a joint public meeting with the Highline School District Board at the school district office. At this meeting, the two elected bodies decided to work together to prepare this ILA with the full consent of the Des Moines City Council.

Recommendation
The recommendation is to approve the contract. It will allow the Des Moines Police Department to have an active role with the students attending the high school and will also assist in crime prevention and education.

Attachment #1

INTERLOCAL AGREEMENT
For
SCHOOL RESOURCE OFFICER
Between
THE CITY OF DES MOINES and HIGHLINE SCHOOL DISTRICT 401

In Accordance with the Interlocal Cooperation Act (RCW 39.34), the City of Des Moines ("The City"), and Highline School District 401 ("The District"), each of which is a Washington Municipal Corporation, hereby enter into the following INTERLOCAL AGREEMENT:

RECITALS

WHEREAS:

A. The District and the City desire to promote law enforcement and related services to the Temporary Highline High School at the Olympic Site and other Highline District Schools within the City;

B. A School Resource Officer Program has been proposed for Temporary Highline High School at the Olympic Site with additional services to other Highline District Schools within the City as hereinafter described;

C. The District and the City recognize the potential benefits of the School Resource Officer Program to the citizens of the City and particularly to the students and staff of the Temporary Highline High School at the Olympic Site; and

D. It is in the best interest of the citizens and residents of the District and the City to establish this program,

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

I. TERM of AGREEMENT and RENEWAL

1.1 This Agreement shall be for one (1) school year.

1.2 This Agreement shall commence as of September 1, 2019 and shall terminate as of June 30, 2020.

1.3 This Agreement may be renewed by written agreement of all of the Parties.

1.4 This Agreement may be terminated by either party by 90 ninety (90) days written statement of termination directed to the other party. Should the Agreement be terminated by either party, the City will reimburse the District on a prorated basis for any months remaining on the Agreement that the District has previously paid at a rate of one-tenth of the annual fee for each full month.

II. SCHOOL RESOURCE OFFICER PROGRAM CONTINUED

2.1 A School Resource Officer Program has been established between the City of Des Moines Police Department ("Des Moines PD") and the Temporary Highline High School at the Olympic Site ("the High School"), with additional services to other Highline District Schools located within the City of Des Moines. Said program is hereby continued for the term of this Agreement.

2.2 Through the School Resource Officer Program, the High School and the Des Moines PD have committed to providing a safe, fun environment that promotes education and interaction with the students in a positive caring manner. This is accomplished with a committed partnership among the school, students, staff, parents, police department, and neighbors to enhance the schools and the community.

III. RIGHTS AND DUTIES OF THE DES MOINES PD

3.1 The Chief of the Des Moines PD ("the Chief") shall assign one (1) regularly employed police officer as a School Resource Officer ("SRO") to the High School who will also provide additional services to other Highline District Schools located within the City of Des Moines.

3.2 The SRO shall be assigned to the school district for a minimum of twenty (20) hours per week while school is in session. Additional time may be authorized by the department at the request of the school district not to exceed a total of forty (40) hours per week subject to department approval and provided the SRO's assistance is not required for other police activities away from the school. Absences from the school by the SRO during the school year for training or other Des Moines PD activities shall not exceed five (5) school days in duration at any one time. The Des Moines PD may temporarily reassign the SRO during school holidays and vacations.

3.3 The SRO shall also act as an instructor for specialized, short-term law enforcement related programs at the high school or other District schools within Des Moines when invited to do so by the principal or members of the faculty.

3.4 The SRO shall have the following additional duties and responsibilities:

3.4.1 When requested by the principal, the SRO shall attend parent/faculty meetings to solicit support and understanding of the program.

3.4.2 The SRO shall make himself/herself available for conferences with students, parents, and faculty members in order to assist them with problems of law enforcement or crime prevention in nature.

3.4.3 The SRO shall become familiar with all community agencies which offer assistance to youths and their families such as youth job placement assistance, mental health clinics, drug treatment centers, etc. The SRO shall make referrals to such agencies when necessary thereby acting as a resource person to the students, faculty, and staff of the school.

3.4.4 The SRO shall assist the principal in developing plans and strategies to prevent and/or minimize dangerous situations that may result in student unrest.

3.4.5 Should it become necessary to conduct formal police interviews with the students, the SRO shall adhere to the Police Department Policy and legal requirements with regard to such interviews.

3.4.6 The SRO shall take law enforcement action as required, including but not limited to appropriate law enforcement action against intruders and unwanted guests who may appear at the school and related school activities. As soon as practicable, the SRO shall make the principal of the school aware of any law enforcement action.

3.4.7 The SRO shall give assistance to other police officers in matters regarding his/her school assignment, whenever necessary.

3.4.8 The SRO shall patrol the assigned school and surrounding neighborhoods in order to identify, investigate, and prevent incidents involving weapons, violence, harassment, intimidation, and other law violations. The SRO may also be assigned investigations related to runaways, assaults, thefts, and truancy, provided such investigations relate to the students attending the school to which the SRO is assigned. The SRO may also be assigned or provide traffic enforcement duties at the schools and surrounding neighborhoods. Such duties may include school zone speed enforcement.

3.4.9 The SRO shall maintain detailed and accurate records of the operation of the School Resource Officer Program.

3.4.10 The SRO shall not act as a school disciplinarian, as disciplining students is a school responsibility. The SRO shall not perform any non-law enforcement functions. However, if the principal believes an incident is a violation of the law, the principal may contact the SRO and the SRO shall then determine whether law enforcement action is appropriate. School Resource Officers are not to be used for regularly assigned duties such as lunchroom duty. If there is a problem area, the SRO may assist the school until the problem is solved.

3.4.11 The SRO shall have a primary obligation to the City, not the School District. This contract and performance thereof by the City police officers shall not create any special relationship with any person or duties to protect any specific persons from harm or injury including the party signing this contract. The law enforcement/peacekeeping duties to be performed pursuant to this contract are the same in extent and scope as those provided by police officers to every member of the public.

3.4.12 Any exceptions to the above must be mutually agreed upon by the Chief of Police of the Des Moines PD, the School District, and the School Principal.

IV. RIGHTS AND DUTIES OF THE DISTRICT

4.1 The District shall provide the SRO with the materials and facilities necessary to the performance of the SRO duties at the High School.

4.2 The following materials and facilities are deemed necessary to the performance of the SRO's duties:

4.2.1 Access to a properly lighted private office with a telephone that may be used for general business purposes.

4.2.2 A location for files and records that can be properly locked and secured.

4.2.3 A desk with drawers, a chair, work table, filing cabinet, and officer supplies.

4.2.4 Access to a computer, and/or secretarial assistance.

V. FINANCING OF THE SCHOOL RESOURCE OFFICER

5.1 The District will compensate the City for a portion of the direct salary and benefits incurred for the assigned School Resource Officer for the ten month duration of the 2019-2020 school year. The District will pay the City of Des Moines $80,000 each school year for school resource officer services totaling $80,000 related to this Agreement.

5.2 The City will invoice the District $80,000 in salary and benefits to be incurred during the ten month period on or before the first day of each school year.

5.3 Any overtime hours requested and authorized by either party to this Agreement shall be paid by the party requesting and authorizing the additional overtime hours. If the District requests and authorizes the overtime hours, the District will be separately invoiced for the direct salary and related benefits for the overtime hours worked by the assigned School Resource Officer.

VI. EMPLOYMENT STATUS OF SCHOOL RESOURCE OFFICER

The SRO shall remain an employee of the Des Moines Police Department, and shall not be an employee of the School District. The School District and the Chief acknowledge that the SRO shall remain under the direct supervision of the City of Des Moines Police Department.

VII. APPOINTMENT OF SCHOOL RESOURCE OFFICER

7.1 The SRO must be a volunteer for the position with a minimum of three (3) years of law enforcement service or experience.

7.2 The appointment of the SRO shall be at the discretion of the Chief based upon:

7.2.1 A written application to the Chief that outlines his/her qualifications; and

7.2.2 Input from the High School principal or the principal's designee and the District's Director of Safety and Security.

7.3 Additional criteria for consideration by the Chief shall include job knowledge, training, education, appearance, attitude, communication skills, and bearing.

VIII. DISMISSAL OF SCHOOL RESOURCE OFFICER; REPLACEMENT

8.1 In the event the principal of the High School feels that the SRO is not effectively performing his or her duties and responsibilities, the principal shall recommend to the Superintendent of the District that the SRO be removed from the program and shall state the reasons therefore in writing. Within a reasonable time after receiving the recommendation from the principal, the Superintendent or his/her designee shall advise the Chief or his/her designee of the principal's request. If the Chief desires, the Superintendent and Chief, or their designees, shall meet with the SRO to mediate or resolve any problems. At such meeting, specified members of the staff of the school may be required to be present. If, within a reasonable amount of time after commencement of such mediation the problem cannot be resolved or mediated or in the event mediation is not sought by the Chief, then the SRO shall be removed from the program and a replacement shall be obtained.

8.2 The Chief may dismiss or reassign the SRO based upon Des Moines PD Rules, Regulations and/or General Orders and when it is in the best interest of the Parties, the students and the citizens of the City of Des Moines.

8.3 In the event of the resignation, dismissal, or reassignment of the SRO, or in the case of long term absences by the SRO, the Chief shall provide a temporary replacement for the SRO within thirty (30) school days of receiving notice of such absence, dismissal, resignation, or reassignment. As soon as practicable, the Chief shall appoint a permanent replacement for the SRO position.

IX. LIABILITY

Each party shall be responsible and liable for the consequences of any act or failure to act on the part of itself, its employees and its agents. Each party shall be responsible for its own negligence; neither party shall indemnify nor hold the other party harmless.

X. MISCELLANEOUS PROVISIONS

9.1 Effective Date. This Agreement shall be effective upon ratification of the governing body and execution by the Chief Executive Officer of each of the Parties.

9.2 Amendment. This Agreement may be amended only upon consent of all Parties hereto. Any amendment hereto shall be in writing and shall be ratified and executed by the Parties in the same manner in which it was originally adopted.

9.3 Waiver. The waiver by any Party of any breach of any term, covenant, or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same term, covenant, or condition of this Agreement.

9.4 Severability. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.

9.5 Entire Agreement. This Agreement represents the entire understanding of the Parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.

9.6 Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or whether signed in counterparts.

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

Dr. Susan Enfield, Superintendent
Highline School District No. 401
15675 Ambaum Boulevard SW
Burien WA 98166

Ken Thomas, Chief of Police
City of Des Moines Police Department
21900 11th Ave. S
Des Moines WA 98198

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EXECUTED and APPROVED by the Parties in identical counterparts of this Agreement, each of which shall be deemed an original hereof, on the dates set forth below.

APPROVED AS TO FORM:

_____
City Attorney

DATED this ___ th day of _____ , 2019

CITY OF DES MOINES

By_____
Michael Matthias, Its City Manager

At the direction of the Des Moines City Council at an open public meeting on this_____day of_____, 2019.

APPROVED AS TO FORM:

_____
Attorney for Highline School Dist. No. 401

DATED this _____ day of _____ , 2019

HIGHLINE SCHOOL DISTRICT NO. 401

By_____
Dr. Susan Enfield, Its Superintendent

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Consent Calendar Item #9

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Draft Resolution No. 19-073, Authorizing Staff to Apply for and Accept a Washington State Boating Facilities Program Grant for the Des Moines Marina Guest Moorage Electrical Upgrades Project

ATTACHMENTS:

1. Draft Resolution No. 19-073
2. Draft Project Agreement

FOR AGENDA OF June 27, 2019

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: June 20, 2019

CLEARANCES:
[ ] Community Development
[X] Marina Scott
[ ] Parks, Recreation & Senior Services
[ ] Public Works

CHIEF OPERATIONS OFFICER: DSB
[X] Legal TG
[X] Finance Bauw
[ ] Courts
[ ] Police

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation

This purpose of this agenda item is to authorize the City Manager or his designee to apply for a grant from the State's Boating Infrastructure Grants program through the Recreation and Conservation Office (RCO), to help fund upgrades to the electrical distribution system in the Marina's guest moorage area, and to authorize the City Manager to act as a representative/agent for the City with full authority to bind the City regarding all matters related to the project agreement with the State, if the grant should be approved. The following motion will appear on the consent calendar:

Suggested Motion:

Motion: "I move to adopt Draft Resolution 19-073, authorizing administration to apply for a Boating Infrastructure Grant in the amount of approximately $90,000 for improvements in the Marina's guest moorage area, and authorize the City Manager to sign the State's Project Agreement for the grant, if the grant application is successful."

Background

The Guest Moorage area at the north end of the Marina was remodeled in 1988. The project included new concrete floats, a new fuel dock and a new electrical distribution system, (shore power pedestals). Since that time the fuel dock has been upgraded twice and a new activity float with a tent have been added, but the electrical distribution system is essentially the same. Recreational boats have changed significantly in the three decades since the electrical system was installed in the guest moorage area. Newer boats are larger and have more appliances and older vessels are being retro-fitted with modern appliances and instruments. In both cases more shore-side power is needed by transient boaters that visit the Marina but the capacity of the system in the guest moorage area is the same as it was in 1988.

Discussion

Currently the shore power pedestals in the guest moorage area can deliver 30 amps of power at 120 Volts. This proposed project would replace all of the existing shore power pedestals with units with the capacity to deliver a maximum of 50 amps of power at 240 Volts. All of the wire runs from the main distribution panel would also be replaced with larger gauge cables that will support the increased load. The main distribution panel will be upgraded with new ground fault circuit interrupter breakers that will meet the requirements in the National Electric Code. Some repairs and reconfiguration of the cables that supply the main distribution panel will also be done during this project.

The current system was adequate for many years but the pace of change is accelerating and the Marina staff is anticipating more big changes in the recreational boating. Some of the biggest manufactures in the industry are developing diesel-electric hybrid propulsion systems for boats in the 30 to 60 foot size range. The hybrid systems have the advantage of better fuel economy mainly because the batteries can be recharged at charging stations, much like gasoline-electric hybrid vehicles do now. Shore side recharging also reduces carbon emissions because part of the inputs to the shore power pedestals come from renewable sources like wind, solar and hydro. The Marina staff is confident that hybrid systems will become more prevalent in the industry and they plan to "pre-install" the capacity to add charging stations to the new system. Essentially this means that the supply cable runs will be sized to meet the increased capacity of the shore power pedestals plus the capacity needed by future charging stations.

RCO will not consider an application complete and will not award a grant without a Resolution of the City Council. While an applying organization may use their preferred formatting, the text of the Resolution is mandatory and cannot be changed from the text provided by RCO. Draft Resolution 19-073 contains the mandatory language.

Alternatives

The City Council may decline to adopt the Draft Resolution, which would eliminate the project from consideration for the RCO grant.

Financial Impact
The current estimate for the total cost of the project is approximately $120,000. If awarded, the Boating Infrastructure Grant would pay of 74% of the total project, or about $90,000. The City's share would be approximately $30,000. This project is being proposed for the 2020 Capital Improvement Program. If the Draft Resolution does not pass, the City will not be eligible for the RCO grant and the City would have to find alternative funding sources or not make the planned improvements at this time.

Conclusion
N/A

Recommendation
Staff recommends that the Council adopt Draft Resolution 19-073 as written.

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Attachment #1

CITY ATTORNEY'S FIRST DRAFT 06/20/2019

DRAFT RESOLUTION NO. 19-073

A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON.

Recreation and Conservation Office
Applicant Resolution/Authorization

Organization Name (sponsor): CITY OF DES MOINES, WASHINGTON

Resolution No.:

Project(s) Number(s), and Name(s): 19-1532 DEV Des Moines Marina Guest Moorage Electrical Upgrades

This resolution/authorization authorizes the person identified below (in section 2) to act as the authorized representative/agent on behalf of our organization and to legally bind our organization with respect to the above Project(s) for which we seek grant funding assistance managed through the Recreation and Conservation Office (Office)..

WHEREAS, state grant assistance is requested by our organization to aid in financing the cost of the Project(s) referenced above;

NOW, THEREFORE, BE IT RESOLVED that:

1. Our organization has applied for or intends to apply for funding assistance managed by the Office for the above "Project(s)."

2. Des Moines City Manager Michael Matthias is authorized to act as a representative/agent for our organization with full authority to bind the organization regarding all matters related to the Project(s), including but not limited to, full authority to: (1) approve submittal of a grant application to the Office, (2) enter into a project agreement(s) on behalf of our organization, (3) sign any amendments thereto on behalf of our organization, (4) make any decisions and submissions required with respect to the Project(s), and (5) designate a project contact(s) to implement the day-to-day management of the grant(s).

3. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's WEBSITE at: https://rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf. We understand and acknowledge that if offered a project agreement to sign in the future, it will contain an indemnification and legal venue stipulation (applicable to any sponsor) and a waiver of sovereign immunity (applicable to Tribes) and other terms and conditions substantially in the form contained in the sample project agreement and that such terms and conditions of any signed project agreement shall be legally binding on the sponsor if our representative/agent enters into a project agreement on our behalf. The Office reserves the right to revise the project agreement prior to execution and shall communicate any such revisions with the above authorized representative/agent before execution.

4. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative/agent has full legal authority to enter into a project agreement(s) on its behalf, that includes indemnification, waiver of sovereign immunity (as may apply to Tribes), and stipulated legal venue for lawsuits and other terms substantially in the form contained in the sample project agreement or as may be revised prior to execution.

5. Grant assistance is contingent on a signed project agreement. Entering into any project agreement with the Office is purely voluntary on our part.

6. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the project agreement, the characteristics of the project, and the characteristics of our organization.

7. Our organization further understands that prior to our authorized representative/agent executing the project agreement(s), the RCO may make revisions to its sample project agreement and that such revisions could include the indemnification, the waiver of sovereign immunity, and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the project agreement(s), confer with our authorized representative/agent as to any revisions to the project agreement from that of the sample project agreement. We also acknowledge and accept that if our authorized representative/agent executes the project agreement(s) with any such revisions, all terms and conditions of the executed project agreement (including but not limited to the

indemnification, the waiver of sovereign immunity, and the legal venue stipulation) shall be conclusively deemed to be executed with our authorization.

8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.

9. Our organization acknowledges and warrants, after conferring with its legal counsel, that no additional legal authorization beyond this authorization is required to make the indemnification, the waiver of sovereign immunity (as may apply to Tribes), and the legal venue stipulation substantially in form shown on the sample project agreement or as may be revised prior to execution legally binding on our organization upon execution by our representative/agent.

10. [Recreation and Conservation Funding Board Grant Programs Only] If match is required for the grant, we understand our organization must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non cash matching share commitments to this project should they not materialize.

11. Our organization acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office may also determine an amount of retainage and hold that amount until the Project is complete.

12. [Acquisition Projects Only] Our organization acknowledges that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to in writing by our organization and the Office. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or an "Assignment of Rights" for other than fee acquisitions (which documents will be based upon the Office's standard versions of those documents), to be recorded on the title of the property with the county auditor.

13. [Acquisition Projects Only] Our organization acknowledges that any property acquired in fee title must be immediately made available to the public unless otherwise provided for in policy, the project agreement, or authorized in writing by the Office Director.

14. [Development, Renovation, Enhancement, and Restoration Projects Only - If your organization owns the property] Our organization acknowledges that any property owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or Office in writing and per the project agreement or an amendment thereto.

15. [Development, Renovation, Enhancement, and Restoration Projects Only - If your organization DOES NOT own the property] Our organization acknowledges that any property not owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant as required by grant program policies unless otherwise provided for per the project agreement or an amendment thereto.

16. [Only for Projects located in Water Resources Inventory Areas 1 - 19 that are applying for funds from the Critical Habitat, Natural Areas, State Lands Restoration and Enhancement, Riparian Protection, or Urban Wildlife Habitat grant categories; or the Puget Sound Acquisition and Restoration program, or a Salmon Recovery Funding Board approved grant] Our organization certifies the following: the Project does not conflict with the Puget Sound Action Agenda developed by the Puget Sound Partnership under RCW 90.71.310.

17. This resolution/authorization is deemed to be part of the formal grant application to the Office.

18. Our organization warrants and certifies, after conferring with its legal counsel, that this resolution/authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises and obligations set forth herein.

This application authorization was adopted by our organization during the meeting held:

Location: Des Moines City Hall, 21630 11th Ave S, Des Moines, Washington.

Date: June 27, 2019

Signed and approved on behalf of the resolving body of the organization by the following authorized member(s):

_____ _____

M A Y O R D A T E

APPROVED AS TO FORM:

_____

City Attorney

ATTEST:

_____

City Clerk

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Attachment #2

Natural Resources Building
P.O. Box 40917
Olympia, WA 98504-0917

1111 Washington St. S.E.
Olympia, WA 98501

(360) 902-3000
TTY: (360) 902-1996
Fax: (360) 902-3026

E-mail: Info@rco.wa.gov
Web site: www.rco.wa.gov

STATE OF WASHINGTON

RECREATION AND CONSERVATION OFFICE

January 2018

Hello:

The following project agreement is the contract a sponsor of a funded project and the Recreation and Conservation Office (RCO) will sign to guide and govern project implementation and obligations that extend after the contract has ended. RCO does not negotiate project conditions. This agreement was revised in January 2018. RCO suggests that all potential sponsors read and understand the terms of the agreement. A few considerations are below:

- The first three pages of the agreement are dependent upon your project type and grant category. Once you have a funded project, specific information on these pages will auto-populate based upon answers you provided in your application.

- The remaining pages of the agreement are the Standard Terms and Conditions, which are the same across all funded projects. There may be sections of the Standard Terms and Conditions that do not apply to your proposal based upon the type of project you are conducting and the funding you are receiving. For example, Section 22 is entitled PROVISIONS FOR BOATING PROJECT GRANTS and only would apply to your proposal if it was a project that supported recreational boating.

If you have questions as you review the agreement, please contact your assigned RCO outdoor grants manager.

Thank you.

RCO

Project Number:

USFS Number:

WASHINGTON STATE
Recreation and
Conservation Office

Project Sponsor: **Project Number:**

Project Title: **Approval Date:**

A. PARTIES OF THE AGREEMENT

B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the Sponsor for the project named above per the director's authority granted in RCW 79A.25.020.

C. DESCRIPTION OF PROJECT

D. PERIOD OF PERFORMANCE

The period of performance begins on (project start date) and ends on (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement or specifically provided for by policies published in RCO manuals as of the effective date of this agreement.

The Sponsor must request extensions of the period of performance at least 60 days before the project end date.

The Sponsor has obligations beyond this period of performance as described in Section F: Long-Term Obligations.

E. STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Project Agreement are hereby incorporated by reference as part of this Agreement.

F. LONG-TERM OBLIGATIONS

G. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed $. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
Project Sponsor			
Total Project Cost			

H. FEDERAL FUND INFORMATION

I. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

Project Number:
USFS Number:

J. AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by all parties. Extensions of the period of performance and minor scope adjustments consented to in writing (including email) by the Sponsor need only be signed by RCO's director or designee, unless otherwise provided for in another agreement a Sponsor has with the RCO. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so, and such signature shall be binding on the Sponsor if the representative/agent signing has been authorized to do so by Applicant Resolution/Authorization provided to the RCO and such Applicant Resolution/Authorization has not been withdrawn by the governing body in a subsequent resolution.

Any amendment to this Agreement, unless otherwise expressly stated, shall be deemed to include all current federal, state, and local government laws and rules, and funding board policies applicable and active and published in RCO manuals or on the RCO Website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

K. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including any applicable policies published in RCO manuals or on the RCO Website as exist on the effective date of this Agreement and any amendments to this Agreement. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

L. SPECIAL CONDITIONS

M. AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

Project Contact

Name:	
Title:	Natural Resources Building
Address:	PO Box 40917 Olympia, Washington 98504-0917
Email:	

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

N. ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

O. EFFECTIVE DATE

This Agreement, for project , shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the Sponsor and the RCO, whichever is later (effective date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D: PERIOD OF PERFORMANCE are allowed only when this Agreement is fully executed and an original is received by RCO.

Project Number:

USFS Number:

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE PROJECT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

By: _____ **Date:** _____

Name: (printed) _____

Title: _____

By: _____ **Date:** _____

Pre-approved as to form:

By: _____ **Date:** _____

Assistant Attorney General

Project Number:
USFS Number:

Table of Contents

Funding Board Project Agreement		1
Standard Terms and Conditions of the Project Agreement		6
SECTION 1.	CITATIONS, HEADINGS AND DEFINITIONS	6
SECTION 2.	PERFORMANCE BY THE SPONSOR	10
SECTION 3.	ASSIGNMENT	10
SECTION 4.	RESPONSIBILITY FOR PROJECT	10
SECTION 5.	INDEMNIFICATION	11
SECTION 6.	INDEPENDENT CAPACITY OF THE SPONSOR	11
SECTION 7.	CONFLICT OF INTEREST	12
SECTION 8.	COMPLIANCE WITH APPLICABLE LAW	12
SECTION 9.	RECORDS	13
SECTION 10.	PROJECT FUNDING	14
SECTION 11.	PROJECT REIMBURSEMENTS	14
SECTION 12.	ADVANCE PAYMENTS	16
SECTION 13.	RECOVERY OF PAYMENTS	16
SECTION 14.	COVENANT AGAINST CONTINGENT FEES	17
SECTION 15.	INCOME (AND FEES) AND USE OF INCOME	17
SECTION 16.	PROCUREMENT REQUIREMENTS	18
SECTION 17.	TREATMENT OF EQUIPMENT AND ASSETS	18
SECTION 18.	RIGHT OF INSPECTION	19
SECTION 19.	STEWARDSHIP AND MONITORING	19
SECTION 20.	PREFERENCES FOR RESIDENTS	20
SECTION 21.	ACKNOWLEDGMENT AND SIGNS	20
SECTION 22.	PROVISIONS FOR BOATING PROJECT GRANTS	20
SECTION 23.	PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS	21
SECTION 24.	PROVISIONS APPLYING TO ACQUISITION PROJECTS	21
SECTION 25.	LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS	23
SECTION 26.	CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS	24
SECTION 27.	RECORDED NOTICE OF GRANT	25
SECTION 28.	PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS	25

SECTION 29.	PROVISIONS FOR FEDERAL SUBAWARDS ONLY	25
SECTION 30.	PROVISIONS FOR BOATING INFRASTRUCTURE GRANTS	28
SECTION 31.	PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY	28
SECTION 32.	PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY	29
SECTION 33.	PROVISIONS FOR FARM AND FOREST ACCOUNT PROJECTS (FARMLAND AND FORESTLAND PRESERVATION PROJECTS ONLY)	29
SECTION 34.	PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY	29
SECTION 35.	PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY	30
SECTION 36.	ORDER OF PRECEDENCE	34
SECTION 37.	LIMITATION OF AUTHORITY	35
SECTION 38.	WAIVER OF DEFAULT	35
SECTION 39.	APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH	35
SECTION 40.	SPECIFIC PERFORMANCE	35
SECTION 41.	TERMINATION AND SUSPENSION	35
SECTION 42.	DISPUTE HEARING	36
SECTION 43.	ATTORNEYS' FEES	37
SECTION 44.	GOVERNING LAW/VENUE	37
SECTION 45.	PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR	37
SECTION 46.	SEVERABILITY	38

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.

B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.

C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

acquisition project – A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

Agreement or project agreement – The document entitled "Funding Board Project Agreement" accepted by all parties to the present transaction, including without limitation these Standard Terms and Conditions of the Project Agreement, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Funding Board Project Agreement subject to any limitations on their effect.

applicant – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.

application – The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the "Application" in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

Boating Infrastructure Grant (BIG) – A program administered through the United States Fish and Wildlife Service.

C.F.R. – Code of Federal Regulations

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

development project – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

education project – A project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

education and enforcement project – A project that provides information, education, and outreach programs; encourages responsible recreational behavior, and may provide law enforcement for the benefit of outdoor recreationists.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

enhancement project – 1) A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site, or 2) a project that (i) supports hatchery reform to improve hatchery effectiveness to minimize impacts to wild fish populations, (ii) ensures compatibility between hatchery production and salmon recovery programs, or (iii) supports sustainable fisheries (WAC 420.04.010).

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or $5,000 (2 C.F.R. § 200.33 (2013)).

funding board or board – The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under RCW 79A.25.110, or the Salmon Recovery Funding Board (SRFB) created under RCW 77.85.110.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

long-term compliance period – The period of time after the project end date or end of the period of performance (depending on the project types and grant program). During this period, the Sponsor has continuing obligations under the Agreement. This period may have a nonspecific end date (in perpetuity) or an expressly specified number of years.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and applicable regulations and policies.

landowner agreement – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

maintenance – A project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreation or salmon recovery.

maintenance and operation – A project that maintains and operates existing areas and facilities through repairs, upkeep, and routine services for the benefit of outdoor recreationists.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

monitoring project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

monitoring and research project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

Office – Means the Recreation and Conservation Office or RCO.

notice of grant – As required by RCO or another authority, a document that has been legally recorded in the county or counties where the project property is located that describes the grant funded project located on the property, the funding sources, and agencies responsible for awarding the grant.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

planning (RCFB projects only) – A project that results in one or more of the following: a study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

planning (SRFB projects only) – A project that results in a study, assessment, project design, or inventory.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. This administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.

project area, RCFB – A geographic area that delineates a grant assisted site which is subject to project agreement requirements (WAC 286.04.010).

project area, SRFB – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project (WAC 420.04.010).

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (2 C.F.R. § 200.83 (2013)).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

research project – Means a project that studies salmon and the effectiveness of recovery restoration efforts on the population or habitat condition.

RCO – Recreation and Conservation Office – The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by RCW 79A.25.110 and 79A.25.150 and charged with administering this Agreement by RCW 77.85.110 and 79A.25.240.

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

restoration project – A project that brings a site back to its historic function as part of a natural ecosystem or improving the ecological functionality of a site.

restoration and enhancement project – A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting fish stocks.

RCFB – Recreation and Conservation Funding Board

RCW – Revised Code of Washington

Recreational Trails Program (RTP) – A Federal Highways Administration grant program.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in Section G: Project Funding.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

useful service life – Period during which an asset or property is expected to be useable for the purpose it was acquired, developed, renovated, and/or restored per this Agreement.

WAC – Washington Administrative Code.

SECTION 2. PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

SECTION 3. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the RCO.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the funding board undertakes to assist the Sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the Sponsor. The funding board undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is Sponsored by more than one entity, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO has no responsibility for reviewing, approving, overseeing or supervising design or construction of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO will act only to confirm at a general, lay, and nontechnical level, solely for the purpose of compliance and payment and not for safety or suitability, that the project has apparently been completed as per the Agreement.

SECTION 5. INDEMNIFICATION

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

This provision shall be included in any agreement between Sponsor and any contractors, subcontractor and vendor, of any tier.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06 or Section 30B.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

Project Number:
USFS Number:

SECTION 7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

SECTION 8. COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the funding board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.

B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.

C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

    1. **Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130).** If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

D. **Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 05-05 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the Sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.

E. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

F. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

SECTION 9. RECORDS

A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.

B. **Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 11: PROJECT REIMBURSEMENTS. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.

D. **Public Records.** Sponsor acknowledges that the funding board is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04. Additionally, in compliance with RCW 77.85.130(8), Sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

SECTION 10. PROJECT FUNDING

A. **Authority.** This Agreement is funded through a grant award from the recreation and conservation funding board per WAC 286 and/or the salmon recovery funding board per WAC 420. The director of RCO enters into this Agreement per delegated authority in RCW 79A.25.020 and 77.85.120.

B. **Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.

C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

D. **Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in Section H: FEDERAL FUND INFORMATION are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).

E. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 11. PROJECT REIMBURSEMENTS

Project Number:
USFS Number:

A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in Section G: PROJECT FUNDING. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.

B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.

C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.

D. **Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:

1. All approved or required activities outlined in the Agreement are done;
2. On-site signs are in place (if applicable);
3. A final project report is submitted to and accepted by RCO;
4. Any other required documents and media are complete and submitted to RCO;
5. A final reimbursement request is submitted to RCO;
6. The completed project has been accepted by RCO;
7. Final amendments have been processed;
8. Fiscal transactions are complete, and
9. RCO has accepted a final boundary map, if requested by RCO, for which the Agreement terms will apply in the future.
10. Notice of Grant (if applicable) filed with the county lands records office and a stamped copy received by RCO

E. **Requirements for Federal Subawards:** Match. The Sponsor's matching share must comply with 2 C.F.R. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:

1. Are verifiable from the non-Federal entity's (Sponsor's) records;
2. Are not included as contributions for any other Federal award;
3. Are necessary and reasonable for accomplishment of project or program objectives;

4. Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013);

5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

6. Are provided for in the approved budget when required by the Federal awarding agency identified in Section H: FEDERAL FUND INFORMATION of this Agreement; and

7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

F. **Requirements for Federal Subawards:** Close out. Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:

1. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.

2. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

3. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.

4. Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property rust relationship and 200.329 Reporting on real property (2013).

SECTION 12. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements. See WAC 420-12.

SECTION 13. RECOVERY OF PAYMENTS

A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

B. **Overpayment Payments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

C. **Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

SECTION 14. COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 15. INCOME (AND FEES) AND USE OF INCOME

RCFB Projects. See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

A. **Income.**

1. **Farm and Forest Account (Farmland and Forestland Preservation Grants).** Excepted from this section is income generated and fees paid on/for properties which received funds from the Farm and Forest Account (RCW 79A.15.130).

2. **Firearms and Archery Range Recreation Projects.** Excepted from this section are safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).

3. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any policies adopted by the RCFB or SRFB.

B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) during or after the reimbursement period cited in the Agreement, must be sed to offset:

1. The Sponsor's matching resources;

2. The project's total cost;

3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;

4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;

5. Capital expenses for similar acquisition and/or development and renovation; and/or

6. Other purposes explicitly approved by RCO

C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:

1. Grant program laws, rules, policies, and funding board policies;

2. Value of any service(s) furnished;
3. Value of any opportunities furnished; and
4. Prevailing range of public fees in the state for the activity involved.

D. **Requirements for Federal Subawards.** Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

SECTION 16. PROCUREMENT REQUIREMENTS

A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists the Sponsor must follow these minimum procedures:

1. Publish a notice to the public requesting bids/proposals for the project;
2. Specify in the notice the date for submittal of bids/proposals;
3. Specify in the notice the general procedure and criteria for selection; and
4. Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
5. Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

   Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

   This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

B. **Requirements for Federal Subawards.**

1. For all Federal subawards except RTP projects, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
2. For RTP subawards, Sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

SECTION 17. TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in published funding board policies, or approved by RCO in writing.

A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.

C. **Requirements for Federal Subawards.** Except in the RTP, procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

4. Adequate maintenance procedures must be developed to keep the property in good condition.

5. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

D. **Requirements for RTP Subawards.**

1. The subrecipient (Sponsor) shall follow such policies and procedures prescribed by and allowed by the State, as well as federal law and federal rules issued by the Federal Highways Administration and 2 CFR 200.

2. Sponsor may be required to pay prevailing wage rates as required by the Davis Bacon Act as amended.

SECTION 18. RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure as described in Section 23.C: Control and Tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 19. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in funding board policy, this Agreement, or as otherwise directed by RCO consistent with existing policies. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 20. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 21. ACKNOWLEDGMENT AND SIGNS

A. Publications. The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.

B. Signs.

1. During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director; and

2. During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.

C. Ceremonies. The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.

D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:

1. The fund source;

2. The percentage of the total costs of the project that is financed with federal money;

3. The dollar amount of federal funds for the project; and

4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 22. PROVISIONS FOR BOATING PROJECT GRANTS

If requested by RCO, or required per state or federal law or rule with respect to any project or project element that supports recreational boating, Sponsor shall manage the project or project element per federal rules to include 2 C.F.R. Part 200, and place a United States Coast Guard (or other federal agency) logo and funding program information at the project site.

Project Number:
USFS Number:

SECTION 23. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for construction of land or facilities in a development, maintenance, renovation or restoration project:

A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted by the board and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration (WAC 286.13.130). It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.

B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.

   1. Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval of the board or RCO.

C. **Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure (such as landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise approved by the board.

D. **Nondiscrimination.** Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

   "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

E. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009", "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.

SECTION 24. PROVISIONS APPLYING TO ACQUISITION PROJECTS

Project Number:
USFS Number:

The following provisions shall be in force only if the project described in this Agreement is an acquisition project (including projects with any acquisition component):

A. **Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the Sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.

B. **Evidence of Title.** The Sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.

C. **Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be delivered to RCO before final payment.

D. **Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the Sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The Sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the funding board project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.

    1. **Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, access, and/or use the property for public purposes consistent with the funding source and project agreement. See WAC 286 or 420. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the Sponsor has acquired a perpetual easement for public purposes.

    2. **Assignment of Rights.** The Assignment of Rights document transfers certain rights to RCO and the state such as public access, access for compliance, and enforcement. Sponsors shall use this document when an easement or lease is being acquired under this Agreement. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

    3. **Easements and Leases.** The Sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; Sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E. **Real Property Acquisition and Relocation Assistance.**

    1. **Federal Acquisition Policies.** When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended, and applicable regulations and procedures of the federal agency implementing that Act.

2. **State Acquisition Policies.** When state funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.

3. **Housing and Relocation.** In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the Sponsor agrees to provide any housing and relocation assistance required.

F. **Buildings and Structures.** In general, grant funds are to be used for outdoor recreation, conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsor must consult with RCO regarding treatment of such structures and compliance with Section 8.D Archeological and Cultural Resources.

G. **Hazardous Substances.**

1. **Certification.** The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(13), and certify:

   a. No hazardous substances were found on the site, or

   b. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."

2. **Responsibility.** Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.

3. **Hold Harmless.** The Sponsor will defend, protect and hold harmless the State and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the Sponsor is acquiring, except to the extent, if any, that the State, its officers and agents caused or contributed to the release. The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

H. **Requirements for Federal Subawards.** The non-federal entity (Sponsor) must submit reports at least annually on the status of real property in which the federal government retains an interest, unless the federal interest in the real property extends 15 years or longer. In those instances where the federal interest attached is for a period of 15 years or more, the federal awarding agency or the pass-through entity (RCO), at its option, may require the Sponsor to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a federal awarding agency or RCO may require annual reporting for the first three years of a federal award and thereafter require reporting every five years) (2 C.F.R § 200.329 (2013)).

SECTION 25. LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

A. **Long-Term Obligations of RCFB Projects.** Sponsor shall comply with WAC 286-13-160, 170, and 180.

B. **Long-Term Obligations of SRFB Projects.** Sponsor shall comply with WAC 420.

C. **Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by policy, program rules, or this Agreement, or approved in writing by RCO or the funding board, RCO requires that the project area continue to function as intended after the period of performance in perpetuity.

D. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. Also see WAC Title 286 or 420 and applicable policies. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policy or unless a transfer or change in use is approved by the funding board through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon this Agreement, applicable law and RCFB/SRFB policies.

For acquisition projects that are expressly term limited in the Agreement, such as one involving a lease or a term-limited restoration, renovation or development project or easement, the restriction on conversion shall apply only for the length of the term, unless otherwise provided in this Agreement, by funding board policy, other RCO approved written documents, or required by applicable state or federal law.

When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per established funding board policies, and the board or RCO may pursue such remedies as are allowed by law and board policies, and/or this Agreement.

SECTION 26. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition, development, maintenance, renovation, or restoration project:

A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:

1. According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
2. In a reasonably safe condition for the project's intended use;
3. Throughout its estimated useful service life so as to prevent undue deterioration;
4. In compliance with all federal and state nondiscrimination laws, regulations and policies.

B. **Open to the public.** Unless otherwise specifically provided for in the Agreement of funding board policies, and in compliance with applicable statutes, rules, and funding board policies, facilities must be open and accessible to the general public, and must:

1. Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.

2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.

3. Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the board, or by RCO in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

SECTION 27. RECORDED NOTICE OF GRANT

At the request of RCO, Sponsor shall record a notice of grant on the property and shall submit to the RCO a recorded and registry stamped copy of such notice. The purpose of the notice of grant is to ensure that the present and future use of the facility is and shall remain subject to the terms and conditions described in this Agreement. The notice of grant shall be in a format specified by RCO.

SECTION 28. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate Sponsor, including any nonprofit Sponsor, shall:

A. Maintain corporate status with the state, including registering with the Washington Secretary of State' s office, throughout the Sponsor's obligation to the project as identified in the Agreement.

B. Notify RCO before corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities, and transfer all property and assets to the successor. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the Sponsor's obligation to the qualified successor if requirements are met.

C. Maintain sites or facilities open to the public and may not limit access to members.

SECTION 29. PROVISIONS FOR FEDERAL SUBAWARDS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded with a federal subaward as identified in Section H: FEDERAL FUND Information:

A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.

B. **Binding Official.** Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

C. **Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, paragraph C.

1. **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

2. **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

D. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in Section H: Federal Fund Information.

The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.

Project Number:
USFS Number:

E. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

G. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).

H. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

I. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

J. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).

K. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

L. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

SECTION 30. PROVISIONS FOR BOATING INFRASTRUCTURE GRANTS

A. **Use of Sport Fish Restoration Logo.** Per 50 CFR 86 Sec 75 and 76, the user of the logo must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from; any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the logo, or any other alleged action of the user; and any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the logo. No one may use any part of the logo in any other manner unless the United States Fish and Wildlife Service's Assistant Director for Wildlife and Sport Fish Restoration or Regional Director approves in writing.

SECTION 31. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Firearms and Archery Range Recreation Account.

A. **Liability Insurance.** The Sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it carries, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of people who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars ($1,000,000) for the death of, or injury to, each person.

B. **Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.

C. **Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the project as identified in this Agreement in Section F. LONG-TERM OBLIGATIONS.

D. **Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.

E. **Government Agencies.** The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.

F. **Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

SECTION 32. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "Project Agreement General Provisions" of the LWCF are made part of this Agreement and incorporated herein. The Sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the Sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

SECTION 33. PROVISIONS FOR FARM AND FOREST ACCOUNT PROJECTS (FARMLAND AND FORESTLAND PRESERVATION PROJECTS ONLY)

The following sections will not apply to Farmland and Forestland Preservation Projects if covered separately in a recorded RCO approved Agricultural Conservation Easement, or Forest Conservation Easement (or other method):

A. Section 15 - Income and Income Use;

B. Section 19 - Stewardship and Monitoring;

C. Section 21 - Acknowledgement and Signs;

D. Section 24 -- Provisions Applying To Acquisition Projects, Sub-sections D, F, and G;

E. Section 25C -Perpetuity; and

F. Section 26 -- Construction, Operation, Use and Maintenance of Assisted Projects.

SECTION 34. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

SECTION 35. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded in part or wholly from the Puget Sound Acquisition and Restoration program.

The Sponsor agrees to the following terms and conditions:

A. **Cost Principles/Indirect Costs For State Agencies.** GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements," if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

B. **Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.

C. **Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ http://www.usfa.dhs.gov/applications/hotel to see if a property is in compliance or to find other information about the Act.

D. **Drug Free Workplace Certification.** Sub-recipient (Sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E.

E. **Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except for the extent authorized as a direct cost of carrying out the scope of work.

F. **Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor), if any. Sub-recipient (Sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the sub-recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

The sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

The federal agency funding this Agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

G. **Lobbying.** The chief executive officer of this recipient agency (Sponsor) shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States, unless authorized under existing law. The recipient (Sponsor) shall abide by its respective Cost Principles (OMB Circulars A-21, A-87, and A-122), which generally prohibits the use of federal grant funds for litigation against the United States, or for lobbying or other political activities.

The Sponsor agrees to comply with 40 C.F.R. Part 34, New Restrictions on Lobbying. Sponsor shall include the language of this provision in award documents for all sub-awards exceeding $100,000, and require that sub-awardees submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any Sponsor who makes a prohibited expenditure under 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure.

All contracts awarded by Sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at 40 C.F.R. Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, Sponsor affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

H. **Reimbursement Limitation.** If the Sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the Sponsor for costs incurred in excess of the RCO approved budget.

I. **Disadvantaged Business Enterprise Requirements.** The Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.

J. **Minority and Women's Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

These goals are expressed as a percentage of the total dollars available for purchase or agreement and are as follows:

Purchased Goods 8% MBE 4% WBE

Purchased Services 10% MBE 4% WBE

Professional Services 10% MBE 4% WBE

Meeting these goals is voluntary and no agreement award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and Sponsor and ALL prospective bidders or people submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

K. MBE/WBE Reporting. In accordance with the deviation from 40 C.F.R. §33.502, signed November 8, 2013, DBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

1. There are any funds budgeted in the contractual/services, equipment or construction lines of the award;
2. $3,000 or more is included for supplies; or
3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as
4. Described in items (a) and (b).

When completing the form, recipients (Sponsors) should disregard the quarterly and semi-annual boxes in the reporting period Section 1B of the form. For annual submissions, the reports are due by October 30th of each year or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients (Sponsors) with funds budgeted for non-supply procurement and/or $3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in Section 5B when completing the form.

MBE/WBE reports should be sent to the DBE Coordinator in the Sponsor's region. Contact information can be found at http://www.epa.gov/osbp/contactpage.htm. The coordinators also can answer any questions.

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. To be in compliance with regulations, the Sponsor must submit a final MBE/WBE report. Non-compliance may impact future competitive grant proposals. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm.

L. **Procurement involving an EPA Financial Assistance Agreement.** Pursuant to 40 C.F.R. § 33.301, the Sponsor agrees to make the following six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (Sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

1. Ensure Disadvantaged Business Enterprise (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government Sponsors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government Sponsors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

4. Encourage contracting with a consortium of DBEs when an agreement is too large for one of these firms to handle individually.

5. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development of the Department of Commerce.

6. If the Sponsor awards subcontracts, require the Sponsor to take the steps in paragraphs (a) through (e) of this section.

M. **Lobbying & Litigation.** By signing this Agreement, the Sponsor certifies that none of the funds received from this Agreement shall be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

The chief executive officer of this Sponsor agency shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Sponsor shall abide by its respective Attachment in 2 C.F.R. Part 200, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

For subawards exceeding $100,000, EPA requires the following certification and disclosure forms:

1. Certification Regarding Lobbying, EPA Form 6600-06: http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf

2. Disclosure of Lobbying Activities, SF LLL: http://www.epa.gov/ogd/AppKit/form/sflllin_sec.pdf

3. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

N. Payment to Consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients (Sponsors) or by a recipients' (Sponsor's) contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with his/her normal travel reimbursement practices).

Subagreements with firms for services that are awarded using the procurement requirements in 40 C.F.R. Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient (Sponsor) with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 C.F.R. § 30.27(b) or 40 C.F.R. § 31.369(j), as applicable, for additional information.

As of January 1, 2014, the limit is $602.24 per day $75.28 per hour.

O. Peer Review. Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

P. International Travel (Including Canada). All International Travel must be approved by the US Environmental Protection Agency's Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.

Q. Unliquidated Obligations (ULO). Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

SECTION 36. ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

1. Federal law and binding executive orders;
2. Code of federal regulations;
3. Terms and conditions of a grant award to the state from the federal government;
4. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
5. State law (constitution, statute);

6. Washington Administrative Code;

7. Funding board or RCO policies.

SECTION 37. LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate by writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

SECTION 38. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

SECTION 39. APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 40. SPECIFIC PERFORMANCE

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement and/or enforcement of long-term obligations. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

SECTION 41. TERMINATION AND SUSPENSION

The funding board and RCO will require strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by the funding board. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

A. For Cause.

1. The funding board or the director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:

   a. If the Sponsor breaches any of the Sponsor's obligations under this Agreement;

   b. If the Sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or

   c. If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;

2. Prior to termination, the RCO or the funding board shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director or board approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.

3. RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

B. **For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

1. The Sponsor was not in default; or

2. Failure to perform was outside Sponsor's control, fault or negligence.

C. **Rights of Remedies of the RCO.**

1. The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

2. In the event this Agreement is terminated by the funding board or director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. **Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

1. **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

SECTION 42. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

A. The disputed issues;

B. The relative positions of the parties;

C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 43. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

SECTION 44. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

SECTION 45. PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR

In the cases where this Agreement is between the funding board (which includes the State of Washington for purposes of this Agreement) and a federally recognized Indian Tribe, the following terms and conditions apply, but only between those parties:

A. Notwithstanding the above venue provision, if the State of Washington intends to initiate legal action against a federally recognized Indian tribe relating to the performance, breach, or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such an action in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such action in federal court, otherwise the State may sue the Tribe in the Thurston County Superior Court, or such other superior court where venue is proper, if not proper in Thurston County. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the State may bring suit in Thurston County Superior Court or such other superior court where venue is proper, if not proper in Thurston County.

B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such actions under subsection A above, shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers, or employees, or the State of Washington, its agencies, or its officers and employees may exceed the amount of funding awarded under this Agreement.

C. As requested by RCO, the Tribe shall provide to RCO its governing requirements and procedures for entering into Agreement with RCO and waiving its sovereign immunity. In addition, the tribe shall provide to RCO all authorizations the Tribe requires to authorize the person(s) signing the Agreement on the Tribe's behalf to bind the Tribe and waive the Tribe's sovereign immunity as provided herein.

D. The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purposes of allowing the State to bring and prosecute to completion such actions relating to the performance, breach, or enforcement of this Agreement as provided in subsection A above, and to bring actions to enforce any judgment arising from such actions. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the funding board, the RCO, and any other state agencies as the term "agency" is broadly understood to include, but not be limited to, departments, commissions, boards, divisions, bureaus, committees, offices, councils, societies, etc.

SECTION 46. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

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Public Hearing Item #1

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Second Reading and Continued 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. Written Public Comments
4. DSHS Comments and Response

FOR AGENDA OF: June 27, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: June 19, 2019

CLEARANCES:
[X] Community Development SMR
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

CHIEF OPERATIONS OFFICER: DSB

[X] Legal JG
[ ] Finance ____
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this agenda item is for the City Council to continue the public hearing and 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.

Suggested Motion

"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."

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. These facilities would be allowed only in the Pacific Ridge Commercial Zone and be subject to the appropriate permitting process as well as the essential public facilities regulations.

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. Prior to and during the May 9th public hearing, a number of verbal and written comments were received, including a letter from the State Department of Social and Health Services (DSHS). The DSHS letter expressed concern that the proposed regulations were too restrictive. The hearing was continued to June 27, 2019, primarily to allow for discussion with DSHS.

On June 3, 2019 DSHS staff were provided a tour of the Pacific Ridge Commercial area of the City, and met with City staff to discuss their previous comment letter. Upon conclusion of the tour and meeting, DSHS staff indicated that their questions were answered and they no longer have concerns related to Draft Ordinance 19-048.

Alternatives
The City Council may:

1. Enact Draft Ordinance 19-048 as written or with amendments.

2. Repeal Ordinance 1714, removing the interim zoning control.

3. 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
Administration recommends enactment of Draft Ordinance 19-048 as written.

Attachment #1

CITY COUNCIL'S DRAFT 06/20/2019

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

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

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 continued to June 27, 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,

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: **P: Permitted** **P/L: Permitted, but with special limitations** **CUP: Conditional use review required** **UUP: Unclassified use review required**	**NC**	**I-C**	**B-P**	**C-C**	**D-C**	**H-C**	**PR-C**	**T-C**	**W-C**
...									
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

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.

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: _____

Effective Date: _____

Attachment #2

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

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

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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Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
...									
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

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.

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.

M A Y O R

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)

Des Moines WA
The Waterland City

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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

Request for Interpretation: 22220 Marine View Drive Des Moines, WA 98198

Description of Request:
Our request for interpretation is to ensure that an Enhanced Service Facility (ESF), as a Residential Care Facility providing 24-hour nursing care to individuals with chronic mental and in some cases physical disabilities, fits the Nursing Homes (IC-Nursing and Residential Care Facility) definition in 18.01 DMMCA. It is the intention of Noble Healthcare to site an ESF at 22220 Marine View Drive in Des Moines, WA, a property located in the Des Moines Downtown-Commercial zoning district (D-C). Table 18.52.010B designates Nursing Homes (PR-R-Nursing care facility; IC-Nursing and residential care facility) as a permitted use in the D-C district. Nursing Homes (IC-Nursing and Residential Care Facility) are defined in 18.01 DMMCA.

Narrative Description of Project:
It is Noble Healthcare's intent to convert the building at 22220 Marine View Drive into a 16-bed Enhanced Services Facility (ESF). An ESF is a residential facility that provides 24-hour nursing care to individuals with varying physical, mental and behavioral health needs. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist and other mental health professionals. These individuals will have completed evaluation and treatment at a State Hospital or other Mental Health Institution, and have been deemed ready for for discharge to a lower level of care. The facility decides which individuals to admit by assessing individuals DSHS has found stable and no long in need of acute inpatient care. The facility may only admit referred individuals whom it determines are able to adequately can have care needs met by the facility and without endangering the safety of other residents and members of the community.

Historically, individuals discharged from State Hospitals or other mental health institutions transitioned to nursing homes, assisted living facilities, adult family homes, or received support services in some other community setting. With few of these facilities specializing in mental or behavioral health, and few willing to admit these types of individuals, community discharge options have been, and continue to be, scarce. An ESF is one of several programs meant to provide the same bedside nursing, medication assistance, and basic life services as a traditional nursing home with the addition of specialized training, support and resources specific to those with mental health needs. It is meant to be a residential setting that is well equipped to provide someone discharging from an institutional setting with the support they need to maintain the highest level of function possible; the same mandate given to all long-term care facilities.

An ESF provides 24-hour nursing care, and, operationally is very similar to a nursing home or assisted living facility, though with a much higher expertise and focus on mental and behavioral health support. The type and level of care provided to a resident is driven by individual need; the aim is to provide a residential setting equipped to facilitate aging-in-place. The small scale and high staffing ratios of the proposed ESF are designed to foster the most individualized care possible. Residents live in private rooms and have basic needs like meals, housekeeping, and laundry services provided in the facility. Just as in other residential care settings (Nursing Homes, Assisted Living Facilities) bedside nursing care and assistance with personal care and

mobility is provided by nursing assistants, and at a level appropriate for the individual. In addition to nursing services, a mental health professional (licensed mental health counselor, licensed marriage and family therapist, licensed independent clinical social worker, licensed advanced social worker, licensed psychologist or psychiatrist), is on site 8-hours per day to support individual residents, and take part in care-planning. Staff provided support includes assistance with arranging and accompanying residents on medical and other off-site appointments as necessary.

An ESF is meant to support resident activity in the community. The small scale and high staffing levels of an ESF are intentional. This is to provide residents with a level of support that enables them to take part in meaningful activities inside and outside of the facility. This is one reason why the Marine View Drive location is so promising. Its walkability, shopping, dining, and access to public transit make it an ideal location. We envision daily outings coupled with constant activities inside the facility. We would work to actively cultivate partnerships in the surrounding community to provide opportunities for residents to interact with the community.

It is important to understand that an ESF, as a licensed residential facility, provides care on a voluntary basis. Just as with a traditional nursing home or assisted living facility, residents are not civilly committed or detained as they may be to a state hospital or mental health facility licensed under RCW 71 or 72. This is because the the mental health and behavioral challenges of an ESF resident do not rise to a level that requires an institutional setting.

Technical Description:
The information below is an effort to further clarify 1)What an Enhanced Service Facility is (ESF), 2) How Washington DSHS licenses and funds ESFs, 3) What Services are provided by an ESF, 4) The staffing model of an ESF, 5) Capacity of an ESF and 6) Zoning Considerations

1. **ESF DESCRIPTION** - An Enhanced Service Facility is a 24-hour residential facility that provides treatment and services to persons for whom acute inpatient treatment is **not** medically necessary, and who have been determined by DSHS to be inappropriate for placement in other licensed facilities due to complex mental and behavioral health needs. RCW 70.97.010

   The Washington State Legislature authorized DSHS to develop Enhanced Services Facilities (ESFs) under Chapter 70.97 RCW. This new category of licensed residential facility provides a community placement option for individuals whose complicated personal care, mental health and behavioral challenges do not rise to a level that requires an institutional setting. Individuals are referred to an ESF if they are coming out of state and community psychiatric hospitals after having completed treatment, or have no other placement option due to their complex behavior, medical, chemical dependency and/or mental health needs.

2. **ESF LICENSING & FUNDING** - An Enhanced Service Facility is licensed by Washington DSHS Residential Care Services (RCS). RCS is responsible for the licensing and

oversight of all residential care settings. Residential care settings include: adult family homes, assisted living facilities, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, Enhanced Service Facilities, and certified community residential services and supports.

From the perspective of WA State Dept of Health Construction Review, an ESF is categorized as one of three types described in WAC 388-107-0700: 1) a nursing home, 2) an assisted living facility, or 3) an adult family home. The category is determined by resident admission practices, specifically:

> *(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).*

It is the intention for the proposed site to be licensed as category 1: nursing home type.

Resident care and services in an ESF are funded by a 1915(c) waiver from the Centers for Medicare and Medicaid Services (CMS). The intent of the federal waiver for Home and Community-Based Services (HCBS) is to ensure that individuals can receive long-term care services and supports in home or in the community, rather than in an institutional setting. Individuals being served by these programs have full access to the benefits of community living settings, in addition to having the opportunity to receive services in the most integrated setting possible. Under HCBS requirements and 1915(c) funding, licensed Adult Family Homes, Assisted Living Facilities, Nursing Homes and Enhanced Services Facilities are able to bolster their ability to provide resources and support to individuals with behavioral and mental health care needs that a other residential care facilities of the same licensure would otherwise find challenging. CMS waiver services cannot be provided in an institutional setting, only in a residential care setting.

3. **SERVICES OFFERED** - An ESF's services are tailored to each individual's needs. A scope of services is described in WAC 388-106 (Long-term Care) and service regulatory framework is outlined WAC 388-107 (Licensing Requirements For Enhanced Service

Facilities). WAC 388-107-0550 describes 'basic services' to be provided as Housekeeping, Food Services, and Laundry. WAC 388-107-0210 further describes Care and Services as:

> *The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:*
> *(1) The care and services identified in the resident's person-centered service plan;*
> *(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status, and potential for improvement or decline;*
> *(3) Services by the appropriate professionals based upon the resident's assessment and person-centered service plan; and*
> *(4) The care and services in a manner and in an environment that:*
> > *(a) Actively supports, maintains or improves the resident's quality of life;*
> > *(b) Actively supports the resident's safety; and*
> > *(c) Reasonably accommodates the resident's individual needs and preferences except when the accommodation endangers the health or safety of the resident, another resident, or a member of the community.*

As described above, the type and level of care provided to a resident is driven by the resident's '*person-centered service plan.*' The person-centered service plan is developed and updated by the '*Person-centered service planning team.*' As described in WAC 388-107-0100 the service planning team includes the resident and/or their representative, the ESF's nursing staff, a mental health professional, a DSHS case manager, and any other persons as needed.

In developing a service plan, the team utilizes the clients Comprehensive Assessment Reporting Evaluation or CARE. The CARE is an assessment described in WAC 388-106-0075. The CARE is used to determine the level of care and serviced needed by a Medicaid client receiving or applying to receive long-term care or services in a residential setting (adult family homes, assisted living facilities, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, Enhanced Service Facilities, and certified community residential services and supports) throughout the State of Washington. WAC 388-107-0070 outlines criteria to be included in a comprehensive assessment for an ESF client that is in addition to the CARE:

> *The enhanced services facility must obtain sufficient information to be able to assess the capabilities, needs, and preferences for each resident, and must complete a comprehensive assessment. The assessment addresses the following, within fourteen days of the resident's move-in date:*
> *(1) Individual's recent medical history, including, but not limited to:*
> *(a) Diagnoses from a licensed medical or health professional, unless the resident objects for religious reasons;*
> *(b) Chronic, current, and potential skin conditions; or*

(c) Known allergies to foods or medications; or

(d) Other considerations for providing care or services.

(2) Currently necessary and contraindicated medications and treatments for the individual, including any prescribed medications, over-the-counter medications, and antipsychotic medications.

(3) The individual's nursing needs.

(4) Significant known challenging behaviors or symptoms of the individual causing concern or requiring special care, including:

(a) History of substance abuse;

(b) History of harming self, others, or property;

(c) Other conditions that require behavioral intervention strategies;

(d) Individual's ability to leave the enhanced services facility unsupervised;

(e) Any court order or court stipulation regarding activities, surroundings, behaviors, and treatments; and

(f) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted outdoors in a specific location on the premises.

(5) Individual's special needs, by evaluating available information, or if available information does not indicate the presence of special needs, selecting and using an appropriate tool to determine the presence of symptoms consistent with, and implications for, care and services of:

(a) Mental illness, or needs for psychological or mental health services;

(b) Developmental disability;

(c) Dementia. While screening a resident for dementia, the enhanced services facility must:

(i) Base any determination that the resident has short-term memory loss upon objective evidence; and

(ii) Document the evidence in the resident's record.

(d) Other conditions affecting cognition, such as traumatic brain injury or other neurological conditions.

(6) Individual's activities, typical daily routines, habits and service preferences.

(7) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort.

(8) Who has decision-making authority for the individual, including:

(a) The presence of any advance directive or other legal document that will establish a substitute decision maker in the future;

(b) The presence of any legal document that establishes a current substitute decision maker or court orders for treatment, or documents indicating resident is under the supervision and care of the department of corrections; and

(c) The scope of decision-making authority of any substitute decision maker.

*(9) A plan to use antipsychotic medications as prescribed and documented in the clinical record in accordance with chapters **71.05** and **70.97** RCW.*

(10) If the resident is a medicaid client the assessment must include elements of the CARE assessment.

Based on the needs identified in the Comprehensive assessment, a person-centered service plan may include varying levels of inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician, psychiatrist, or other mental health professional, and support for participation in activity programs inside and outside the facility.

As is the case with other licensed residential facility types (nursing homes and assisted living facilities), the facility ultimately decides if an individual's needs are able to be met by the facility, and if the individual will be admitted. WAC 388-107-0300 states:

The enhanced services facility must only admit or continue to provide services to a resident when:

(1) The department has determined that the individual is eligible for placement in an enhanced services facility.

(2) The facility can safely and appropriately meet the assessed needs and preferences of the resident:

(a) With available staff; and

(b) Through reasonable accommodation.

(3) Admitting the resident does not negatively affect the ability of the facility to:

(a) Meet the needs, and does not endanger the safety, of other residents and members of the community; or

(b) Safely evacuate all people in the facility during an emergency according to the approved fire safety and evacuation plans appropriate to the occupancy type of the building.

WAC 388-106 provides an additional scope of services that an individual receives in a facility operating under the residential support waiver and WAC 388-106-0336 (3), specifically outlines ESF services. They include:

(3) Enhanced services facilities that will provide:

a. *Personal care - This generally means appropriate level of assistance with Activities of Daily Living (ie bathing, bed mobility, dressing, eating, locomotion, personal hygiene, etc.)*
b. *Supportive services; - This can include assistance and support with managing things like personal finances, transportation to medical appointments, full meal service, laundry, etc.*

c. *Supervision in the home and community;*
d. *Twenty-four hour on-site staff;*
e. *The development and implementation of an individualized behavior support plan to prevent and respond to crises;*
f. *Medication management; and*
g. *On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through WAC388-107-0270*

4. **STAFFING** - WAC 388-107-0230 through WAC388-107-0270 - establishes the staffing requirements for an ESF. These include:

   a. 24-hour licensed nurse support on site (at least 20 hours per week of which must be a Registered Nurse),
   b. A mental health professional (typically a social worker, mental health counselor, or psychologist) on duty in the facility at least 8-hours per day, and
   c. A staffing ratio of 1 staff to 4 residents, 24 hours per day (must be nursing assistant, licensed nurse, or mental health professional).

   In addition to the required clinical staff outlined above, support staff including housekeepers, physical plant maintenance, and administrative staff will be on site.

5. **CAPACITY** - An ESF is permitted to license no more than 16-beds per facility. The intent is for this ESF, located at 22220 Marine Drive, to be licensed for the maximum 16-beds. This means there would be 16 private bedrooms in the facility to care for a maximum of 16 residents. Bathrooms, dining areas, sittings rooms, etc are all common. An ESF of this size would likely have 4 full bathrooms, 1 kitchen, 1 dining room and a couple of sitting rooms.

6. **ZONING CONSIDERATIONS** - The Downtown-Commercial Zoning code lists "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."

   As is outlined above in the description of services and admission criteria, the definition in DMMC 18.01 is an apt description of the services provided by an ESF, the clients served, as well as the setting itself as a residential care facility. No service provided in an ESF, admission criteria, 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.

To reiterate, an ESF is the same residential facility type as nursing homes and assisted living facilities as evidenced by the following:

1. An ESF is licensed and regulated by DSHS Residential Care Services (just as all other residential care settings including nursing homes and assisted living facilities in the state)
2. An ESF uses the same resident evaluation tool (CARE) as all other residential care facilities (including nursing homes and assisted living facilities) to drive a plan of care and service level. This tool was developed by DSHS Aging and Long-Term Support Administration to document a client's functional ability, determine eligibility for long-term care services, evaluate what and how much assistance a client will receive, and develop a plan of care.
3. An ESF is only permitted to admit residents deemed no longer in need of acute inpatient medical and/or mental health care, and is not permitted, licensed, or equipped to provide acute inpatient care as a hospital, acute mental health facility, or other such institution would
4. An ESF is not a placement option for detained or civilly committed individuals
5. An ESF offers a scope of services (as described in WAC 388-106-0336) identical to other long-term residential care settings, including assisted living facilities, only with more specific staffing requirements
6. 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.
7. An ESF is subject to the same building code requirements 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 the licensed nursing home building code.

In an email dated February 5, 2019, Des Moines Community Development staff stated,*"This type of facility would be considered a mental health facility due to the information provided in Chapter 70.97.030 RCW which calls out specific criteria for admission to an ESF. . . To be clear, the proposed facility is not permitted at the desired location within the D-C zone."*

In response, using admission criteria (medical history, diagnoses, disability type and status, etc.) is an improper approach to classifying a facility and would be considered a discriminatory practice. It is our understanding that RCW 35.63.220 prohibits a city from *"enact(ing) or maintain(ing) an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps* (42 U.S.C. Sec. 3602) *differently than a similar residential structure."* An ESF is clearly a similar structure to a nursing home both in building code and scope of service. There is a good deal of related case-law citing RCW 35.63.220, the Fair Housing Act of 1968, and more generally the 14th amendment, that

rules against using medical history, medical diagnoses, disability, or other admission criteria, in zoning decisions for residential facilities.

Residential care facilities should not be treated differently based on the chronic conditions they treat. Many nursing homes, assisted living facilities, adult family homes, and ESFs, specialize in providing care for certain conditions (i.e. dementia care, TBI care, memory-care, hip-knee rehab, respiratory conditions, bariatric care, post-stroke care, etc). There are nursing homes (Skilled Nursing Facility and Assisted Living Facility) operating in Des Moines currently that could elect to take part in Expanded Community Service contracts which carry admission criteria and goals very similar to an ESF, namely accepting stabilized residents from state hospitals. Just as their decision to take part in such contracts, would not put them outside the definition of nursing home in DMMC 18.01, neither should an ESF's service to that population cause it to fall out of the definition.

In further response to the email cited above, in the city code, Chapter 18.01, Mental Health Facilities are listed under Essential Public Facilities (EPF). Residential Care Services (RCS), the licensing and regulatory authority responsible for ESF, does not license Mental Health Facilities. As RCS does not license Mental Health Facilities, an ESF should not be considered one. Mental Health Facilities cited in RCW refers to Evaluation and Treatment Institutions as licensed in RCW 71 and 72. An ESF, as a residential facility and not an institutional setting, does not fit this definition. As described above, an ESF serves a population whose mental and behavioral health needs are not appropriate for an inpatient institution. In fact, WAC 388-107-0001, which is the WAC establishing and specific to ESFs, clearly says that an ESF *"is **not** an evaluation and treatment facility certified under chapter 71.05 RCW,"* an ESF is licensed under the authority of RCW 70.97.

In an email dated February 15, 2019, Des Moines Community Development staff stated, *"An ESF is regulated under WAC 388-107, not WAC 388-106 which is irrelevant to an ESF."* WAC 388-106 is cited because it relates to Long-term care. ESF are required by statute to use assessment tools from chapter 106 and ESF scope of services is specifically mentioned in 106. In these ways it is relevant to an ESF, as is Chapter 107.

Again, the definition in DMMC 18.01 of "**Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility)**" is a perfect description of an ESF. That being the case, this seems to clearly be a permitted primary use.

Please let us know if you have any questions on any of this.

Susan Cezar

From: Bonnie Wilkins
Sent: Wednesday, May 8, 2019 1:28 PM
To: 'Doreen Harper'; _CityCouncil
Subject: RE: EPF & ESF Hearing

Hi Doreen,

Your email has been received and will be forwarded to staff.

Thank you,
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)

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-----Original Message-----
From: Doreen Harper [mailto:woodmontcac1@yahoo.com]
Sent: Wednesday, May 8, 2019 12:19 PM
To: _CityCouncil <CityCouncil@desmoineswa.gov>
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 it's 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

Susan Cezar

From: sally moncrieff <spaaso@yahoo.com>
Sent: Thursday, May 9, 2019 3:04 PM
To: Tim George
Cc: Susan Cezar; Michael Matthias
Subject: Re: Response to Email = RE: Comments on Draft ORdinance No. 19-048

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

Mr George,
Thank you for responding to my email.
A neighbor told me that Council would be voting on allowing an ESF to be sited downtown.

I went online and read the Council agenda and then the Council packet. I found the agenda lacking in details so then went to the packet and then to the Comprehensive Plan.

My understanding from the packet and Comp Plan is that the vote is to amend the Comp Plan to create a new definition for ESF and I also understood the vote to be to allow ESF in the downtown zone.

I do find the language in the packet very difficult to interpret and I also found the Comp Plan language difficult to interpret.

All of my information was off of the city web site.

My neighbors are under the same impression as I am and also complain that it's difficult to interpret what the Public Hearing is meant to accomplish and what the result of tne motions would be.

I'm very happy to hear that ESF will not be allowed in the Downtown zone.

I assume then that ESF would be categorized with Public Institutions and be zoned as those uses are.

Thank you again for taking the time to correct my misunderstanding

Sally Moncrieff

Sent from my iPhone

On May 9, 2019, at 10:36 AM, Tim George <TGeorge@desmoineswa.gov> wrote:

> Good morning Ms. Moncrieff,
>
> In response to your email below, I wanted to provide clarification. The Draft Ordinance being considered tonight, if passed, would prohibit Essential Services Facility's (ESF) in the Downtown Marina District (D-C zone). Essentially, the ordinance would do the opposite of what you stated below. The ordinance would confirm that an ESF is **not** an allowed use in the Downtown.

If you don't mind sharing where you found the information related to the draft ordinance, we'd like to have the opportunity to correct the record if there is mis-information out there.

Here is a link to the packet for tonight's public hearing, if you would like to review the ordinance and related
materials: http://www.desmoinesmail.com/WebPDF/Council/Packet_Archive/2019/050919.pdf

Thank you for taking the time to comment.

Tim George
City Attorney

From: sally moncrieff <spaaso@yahoo.com>
Date: May 8, 2019 at 8:39:21 PM PDT
To: "lbangs@desmoineswa.gov" <lbangs@desmoineswa.gov>
Subject: Public Hearing to consider Draft Ordinance No 19-048 - Please decline or move to pass to a second 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 Bangs,
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.
Respectfully,
Sally Moncrieff
720 S 231st St
Des Moines, WA 9819

Attachment #4

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.

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

Washington State Department of Social and Health Services

Transforming Lives

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 (ALTSA). 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 ALTSA 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.

Washington State Department of Social & Health Services
Transforming lives

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, ALTSA 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
- Unified Residential ESF is a 16-bed facility in the Spokane Valley
- Everett ESF is a 16-bed facility in Everett

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).

City of Des Moines
PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
21630 11TH AVENUE SOUTH, SUITE D
DES MOINES, WASHINGTON 98198-6398
(206) 870-7576 FAX (206) 870-6544

May 8, 2019

Bill Moss
Assistant Secretary
Department of Social and Health Services
Aging and Long-Term Support Administration
PO Box 45600
Olympia, WA 98504-5600

Via e-mail

Assistant Secretary Bill Moss,

Thank you for your letter regarding Draft Ordinance No. 19-048. It has been made a part of the official comment record.

This proposed Ordinance, which will be considered for a first reading on May 9, 2019, updates and clarifies the City's Municipal Code in a number of ways that are in line with furthering the Department of Social and Health Services (DSHS) goals for the successful implementation and integration of Enhanced Service Facilities (ESF) into local communities.

First, the Ordinance clarifies that an ESF is an Essential Public Facility (EPF). This is consistent with your letter and the fact sheet that was provided with your letter. Second, it confirms that applications to site ESF's will be processed in the same manner as other EPF's. Finally it permits ESF's to be located in the largest commercial/mixed use zone in the City. This zone allows for and currently includes residential uses, and has a large number of suitable (and many vacant) parcels, great access to transportation, and various other characteristics detailed below that make it an appropriate location to provide a small, community based setting for an ESF.

The siting of ESF's in Des Moines first came to light when the City was approached in early 2019 by Josh Wester, Cale Wester and Zachary Wester of Noble Healthcare (NH) regarding the placement of an Enhanced Service Facility at 22220 Marine View Drive South in Des Moines. The proposed location was an existing commercial office building in the Downtown-Commercial (D-C) zone. The D-C zone is a commercial zone in the heart of the City's downtown business district, with little residential use. The building is located between a bank and a retail store on a main thoroughfare. It is also located within 100 yards of four separate bars/taverns.

In early February of 2019, the Wester's were told by City staff that it did not appear an ESF was a permitted use in the D-C commercial zone but that staff was willing to work with them to find another suitable location in the City where this use would be permitted. Rather than working with the City, Josh Wester declined to consider other sites.

An interim zoning regulation was enacted in March of 2019 to address the fact that ESF's were not specifically identified in the City's Municipal Code. Draft Ordinance 19-048 proposes to permanently adopt these regulations.

Unlike the original commercial site that Noble Health identified for an ESF in the City's business district, the PR-C zone actually provides a mix of commercial and residential with established neighborhoods that have been identified by DSHS as being vital to the successful operation of an ESF. In fact, of all of the parcels in the zone, 41% of the parcels contain residential uses. Additionally, roughly 10% of the parcels are vacant and a number of others are likely available to be rented or purchased.

The PR-C Zone is also the City's largest commercial and mixed use zone at approximately 140 acres, and accounts for roughly 45% of all commercial/mixed use properties in the City. Finally, the PR-C Zone is similar to the locations of other existing ESF's sited in the DSHS fact sheet and has "excellent access to transportation facilities, view opportunities, and higher-density development." DMMC 18.135.030. All of these characteristics not only make the PR-C Zone a more appropriate location for an ESF, but the Zone also contains available parcels.

The City of Des Moines recognizes the need for ESF's in communities and is committed to work with DSHS to appropriately and responsibly locate these facilities in a manner that furthers our shared goals. The City Council will be considering Draft Ordinance 19-048 on Thursday May 9 but staff will be recommending that the Council not take action, but rather to pass the Draft Ordinance to a second reading at a future meeting. Prior to adoption the City would welcome further conversations with DSHS in order for the City to provide additional information on Noble Healthcare's unwillingness to explore more suitable locations or consider community/ESF resident impacts as well as to allow DSHS to provide input and/or suggested amendments to the City's Draft Ordinance.

Sincerely,

Susan M. Cezar, L.E.G.
Chief Strategic Officer/Community Development Director

CC: City Council
Representative Tina Orwall
Michael Matthias, City Manager
Dan Brewer, Chief Operations Officer
Tim George, City Attorney
Bonnie Wilkins, City Clerk

CITY COUNCIL REGULAR MEETING

Speaker Sign-Up Sheet

June 27, 2019

NAME (PLEASE PRINT)	ADDRESS	TOPIC	PHONE/E-MAIL ADDRESS

CITY COUNCIL

PUBLIC HEARING Speaker Sign-Up Sheet

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

June 27, 2019

NAME (PLEASE PRINT)	ADDRESS	PHONE/E-MAIL ADDRESS

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

June 18, 2019

Ms. Susan M. Cezar, L.E.G.
Chief Strategic Officer/Community Development Director
City of Des Moines
21630 11th Ave. S.
Des Moines, WA 98198

Dear Ms. Cezar,

I wanted to thank you and your colleagues for taking the time to meet with my staff and provide a tour of the Des Moines zoning areas. We appreciated hearing about the city's plans for future growth and development.

The Aging and Long-Term Support Administration's mission is to transform lives by promoting choice, independence and safety through innovative services. Enhanced Services Facilities (ESFs) are an important component of our long-term care system which provides supports to the elderly and people with disabilities in safe and healthy settings. While we understand the city's concerns, we believe that ESFs could also be sited in other mixed commercial and residential areas besides the Pacific Ridge-Commercial zone. We encourage the city to consider expanding the allowable zoning for ESFs in the future.

Thank you and your colleagues again for allowing us to visit and tour. Should you have any questions about ESFs, please do not hesitate to contact me at 360-725-2311.

Sincerely,

Bill Moss
Assistant Secretary

DSHS: *Transforming Lives*

Suggested Motion

"I move to continue the public hearing on Draft Ordinance No. 19-048 to July 11, 2019 or as soon thereafter as the matter may be heard."