

CANCELLED

AGENDA

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

March 12, 2020 – 7:00 p.m.

NOTE: The City of Des Moines is currently operating under a Proclamation of Emergency issued on March 5, 2020 in response to the COVID-19 outbreak. Gatherings of more than ten people are discouraged in order to stem the spread of the virus. As a result, the City Council will be suspending Public Comment during Council meetings and will be limiting the business conducted to essential matters only. Public Comment is still encouraged but will only be accepted in writing, either by email to the City Clerk at bwilkins@desmoineswa.gov or by mail; Attn: City Clerk, 21630 11th Avenue S., Des Moines WA 98198. City Council meetings will remain open to the public but can also be viewed live on Comcast Channel 21 or live streamed on the City's website at www.desmoineswa.gov.

All written Public Comment will be entered into the record and be available for review on the City's website. Consistent with state law, Public Comment will be allowed during the Council Meeting for any matters requiring a public hearing.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE/~~WRITTEN PUBLIC COMMENT~~

~~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: CORONAVIRUS (COVID-19) UPDATE

Item 2: WOODMONT SLIDE UPDATE

CONSENT CALENDAR

- Item 1: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers through March 5, 2020 included in the attached list and further described as follows:
- | | | | |
|---------------------------|----------------|----|------------|
| Total A/P Checks/Vouchers | #160262-160331 | \$ | 584,151.20 |
| Electronic Wire Transfers | # 1406-1406 | \$ | 57.00 |
| Electronic Wire Transfers | # 1413-1419 | \$ | 168,526.74 |
| Payroll Checks | # 19361-19368 | \$ | 4,552.61 |
| Payroll Direct Deposit | #100001-100191 | \$ | 381,451.67 |
- Total Checks and Wires for A/P and Payroll: \$1,138,739.22
- Item 2: NATIONAL SERVICE RECOGNITION DAY PROCLAMATION
Motion is to approve the Proclamation recognizing April 7, 2020 as National Recognition Day.
- Item 3: WOODMONT LANDSLIDE EMERGENCY REPAIRS – CIP BUDGET AMENDMENT AND PROPERTY ACQUISITION
Motion 1 is to direct City Staff to bring forward a budget amendment to the 2020-2025 Capital Improvement Plan and the 2020 Capital Budget to include the Woodmont Emergency Landslide Repairs
- Motion 2 is to ratify and approve the executed Vacant Land Purchase and Sale Agreement for the purchase of the property identified by King County Tax Parcel Number 9536600530 in Des Moines, for the purchase price of \$15,000.00 plus closing cost, and direct City Staff to bring forward a budget amendment to the 2020-2025 Capital Improvement Plan and the 2020 Capital Budget reflecting the cost for the purchase.
- Item 4: PUGET SOUND GATEWAY PROJECT SR 167 AND SR 509 COMPLETION PROJECTS – LOCAL FUNDING AND PHASING INTERLOCAL AGREEMENT
Motion is to approve the Puget Sound Gateway Program Interlocal Agreement between the Washington State Department of Transportation and the City of Des Moines, and authorize the City Manager to sign substantially in the form as submitted.
- Item 5: INTERLOCAL AGREEMENT – VALLEY SPECIAL WEAPONS AND TACTICS TEAM
Motion is to approve Addendum 1 to the ILA between Auburn, Federal Way, Kent, Renton, Tukwila and Port of Seattle authorizing the City of Des Moines to join the Valley Special Weapons and Tactics Team, and to authorize the City Manager to sign the Addendum substantially in the form as attached.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Item 1: PUBLIC HEARING TO CONSIDER DRAFT ORDINANCE 19-112
RELATING TO CODE CLEAN-UP ITEMS TO CORRECT
OMISSIONS, ERRORS, AND INCONSISTENCIES AND TO
CLARIFY CITY COUNCIL INTENT
Staff Presentation: Principal Planner Laura Techico

OLD BUSINESS

Item 1: CONSIDERATION OF FUTURE CITY OF DES MOINES
PARTICIPATION IN StART (SEA-TAC AIRPORT
STAKEHOLDER ROUNDTABLE)
Staff Presentation: City Manager Michael Matthias

NEW BUSINESS

Item 1: COUNCIL COMMITTEE WORK PLANS
Staff Presentation: Chief Operations Officer Dan Brewer

EXECUTIVE SESSION

NEXT MEETING DATE

March 26, 2020 City Council Regular Meeting

ADJOURNMENT

CANCELLED

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CITY OF DES MOINES
Voucher Certification Approval

March 12, 2020

Auditing Officer Certification

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

As of **March 12, 2020** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through March 5, 2020 and payroll transfers through March 5, 2020 included in the attached list and further described as follows:

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



Beth Anne Wroe, Finance Director

	# From	# To	Amounts
Claims Vouchers:			
Total A/P Checks/Vouchers	160262	- 160331	584,151.20
Voided Checks			0.00
Electronic Wire Transfers	1406	1406	57.00
Electronic Wire Transfers	1413	1419	168,526.74
Total claims paid			752,734.94
Payroll Vouchers			
Payroll Checks	19361	19368	4,552.61
Direct Deposit	100001	100191	381,451.67
Total Paychecks/Direct Deposits paid			386,004.28
Total checks and wires for A/P & Payroll			1,138,739.22

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: National Service Recognition Day
Proclamation

FOR AGENDA OF: March 12, 2020

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: February 11, 2020

ATTACHMENTS:

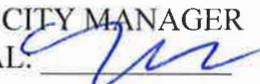
- 1. Proclamation

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- Legal _____
- Finance _____
- Courts _____
- Police _____
- City Clerk *Phu*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to recognize April 7, 2020 as National Service Recognition Day.

Suggested Motion

Motion: "I move to approve the Proclamation recognizing April 7, 2020 as National Service Recognition Day."

Background

National Service Recognition Day is a nationwide effort to recognize the positive impacts of national service, to thank those who serve and have served, and to encourage more citizens to give back to their Communities.

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Proclamation

WHEREAS, service to others is a hallmark of the American character, and central to how we meet our challenges; and

WHEREAS, AmeriCorps and Senior Corps participants address the most pressing challenges facing our communities, from educating students for the jobs of the 21st century, fighting the opioid epidemic, responding to natural disasters, supporting veterans and military families; and

WHEREAS, national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and

WHEREAS, AmeriCorps and Senior Corps participants serve in more than 50,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our economic and social well-being; and

WHEREAS, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and

WHEREAS, the Corporation for National and Community Service shares a priority with local leaders nationwide to engage citizens, improve lives, and strengthen communities; and is joining with the National League of Cities, the National Association of Counties, Cities of Service, and local leaders across the country; now therefore

THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS

April 7, 2020 as National Service Recognition Day

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

SIGNED this 12th day of March, 2020.

Matt Pina, Mayor

The Waterland City

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Woodmont Landslide Emergency
Repairs – CIP Budget Amendment and
Property Acquisition

AGENDA OF: March 12, 2020

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: March 6, 2020

ATTACHMENTS:

1. December 20, 2019 Proclamation of
Emergency
2. Vacant Land Purchase and Sale Agreement
3. Project CIP Worksheet

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DSS

- Legal JG
 Finance blw
 Courts N/A
 Police N/A

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

Purpose and Recommendation:

The purpose of this agenda item is for City Council to authorize City Staff to process a 2020 budget amendment related to the emergency measures taken known as the Woodmont Emergency Landslide Repairs as declared by the December 20th, 2019 Proclamation of Emergency (Attachment 1) and to ratify the Vacant Land Purchase and Sale Agreement with Thomas J Orseno for the purposes of acquiring the property identified as King County Tax Parcel Number 9536600530 (Attachment 2).

Suggested Motion(s)

Motion 1: “I move to direct City Staff to bring forward a budget amendment to the 2020-2025 Capital Improvement Plan and the 2020 Capital Budget to include the Woodmont Emergency Landslide Repairs.”

Motion 2: “I move to ratify and approve the executed Vacant Land Purchase and Sale Agreement for the purchase of the property identified by King County Tax Parcel Number 9536600530 in Des Moines, for the purchase price of \$15,000.00 plus closing costs, and direct City Staff to bring forward a budget amendment to the 2020-2025 Capital Improvement Plan and the 2020 Capital Budget reflecting the cost for the purchase.”

Background:

On December 20, 2019, a significant rainfall event impacted the Puget Sound region resulting in a significant landslide adjacent to Woodmont Beach Drive and Marine View Drive. Damage was extensive and completely obstructed vehicular access to approximately 100 homes within the Lower Woodmont Neighborhood. The damage also prompted the closure of Woodmont Drive S just east of Marine View Drive due to roadway embankment and shoulder failure, ultimately undermining the stability of the roadway. In response, a Proclamation of Emergency was issued by the City Manager on December 20th, 2019 (Attachment 1), thereby waiving competitive bidding requirements and award of professional services and public works contracts for any emergency related work.

The City entered into contract with Scarsella Bros, Inc. to provide emergency services for landside debris removal, traffic control, storm drainage repair, roadway repair, roadway embankment repair, guardrail repair, tree removal, and all other incidental work to reopen public Rights-of-Way. The City also entered into contract with HWA GeoSciences under the City's 2018-2019 General Civil Engineering On-Call Contract to provide emergency geotechnical engineering services to guide the landslide mitigation efforts and ensure roadway stabilization measures are appropriate for this specific site. All work has been substantially and physically complete as of February 4th, 2020.

To have completed the landslide repairs, the City obtained a Construction Easement/Right of Entry for King County Tax Parcel Number 9536600530 where the majority of landslide damages occurred.

Discussion

The Woodmont Emergency Landslide Repair work performed consisted of geotechnical and civil engineering, debris cleanup, storm drainage repair and replacement, temporary traffic control, roadway embankment construction, guardrail removal and replacement, erosion control, and site monitoring. All work, disregarding the parcel purchase, is estimated to cost approximately \$245,000.00.

The acquisition of King County Tax Parcel Number 9536600530 allows the City to own and maintain the Woodmont Drive South roadway embankment repair as well as limit any future disturbance of the hillside at this specific slide location. A permanent embankment easement was reviewed for this site, but it was determined that due to the extent of damages caused by the landslide, the easement would have encumbered the entire property. The parties agreed to a purchase price of \$15,000.00, which represents a fair market value as the parcel was not suited for improvements due to topography.

Alternatives

None

Financial Impact

City Staff estimates the total cost of the emergency work to be approximately \$260,000.00 which includes all administration, engineering, construction, and Right-of-Way acquisition. It is anticipated that the following revenue sources will be utilized to cover these expenditures as illustrated in the CIP worksheet (Attachment 3). The Finance Director may recommend an alternate source of funding at the time of the budget amendment based on fund balance levels.

- \$172,500.00 Surface Water Utility
- \$87,500.00 One-Time Sales Tax

Recommendation

Staff recommends adoption of the motion(s).

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PROCLAMATION OF EMERGENCY

WHEREAS, Des Moines staff has reported to the City Manager, beginning on December 19 or December 20, 2019, a mudslide occurred in the Woodmont Beach neighborhood that has resulted in Woodmont Beach Drive being completely blocked. This road is the only access to the lower Woodmont neighborhood. Due to the mudslide, at the time of this proclamation, there is no access to and from the lower Woodmont neighborhood in the City of Des Moines, and

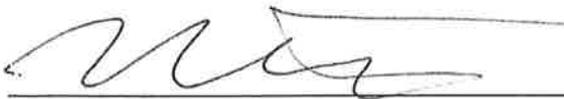
WHEREAS, these problems may last for a significant period of time and cause a threat to life and property, and

WHEREAS, this constitutes an emergency as defined by the Des Moines Comprehensive Emergency Management Plan and necessitates the utilization of emergency powers granted pursuant to chapter 2.36 DMMC, RCW 36.40.180, and RCW 38.52.070(2); now therefore,

BE IT PROCLAIMED BY THE City Manager of the City of Des Moines that an emergency exists in the City of Des Moines; therefore, the Des Moines Director of Emergency Management and City departments are authorized to take emergency actions and to provide emergency services to protect the health and safety of persons and property pursuant to the City of Des Moines Comprehensive Emergency Management Plan ("Plan"), chapter 38.52 RCW, and chapter 2.36 DMMC. As directed pursuant to the Plan, each City department is authorized to exercise the powers vested under this proclamation to enter into contracts and to incur obligations necessary to combat such victims of such disaster in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements.)

DATED this 20th day of December, 2019.

CITY OF DES MOINES



City Manager

APPROVED AS TO FORM:



Des Moines City Attorney

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Form 25
Vacant Land Purchase & Sale
Rev. 7/19
Page 1 of 5

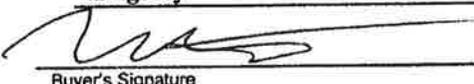
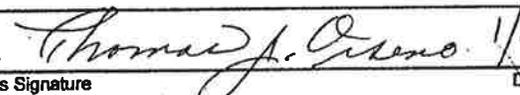
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VACANT LAND PURCHASE AND SALE AGREEMENT
SPECIFIC TERMS

- Date: January 9, 2020 MLS No.: _____ Offer Expiration Date: _____
- Buyer: City of Des Moines Michael Matthias (signer)
Buyer Buyer Status
- Seller: Thomas J Orseno
Seller Seller
- Property: Legal Description attached as Exhibit A. Tax Parcel No(s): 9536600530
XXXXX Des Moines King WA 98198
Address City County State Zip
- Purchase Price: \$ 15,000.00 fifteen thousand dollars Dollars
- Earnest Money: \$ 500.00 Check; Note; Other _____ (held by Selling Firm; Closing Agent)
- Default: (check only one) Forfeiture of Earnest Money; Seller's Election of Remedies
- Title Insurance Company: CW Title
- Closing Agent: CW Escrow Wendy Lemieux
Company Individual (optional)
- Closing Date: 2/10/20 Possession Date: on Closing; Other _____
- Services of Closing Agent for Payment of Utilities: Requested (attach NWMLS Form 22K); Waived
- Charges/Assessments Levied Before but Due After Closing: assumed by Buyer; prepaid in full by Seller at Closing
- Seller Citizenship (FIRPTA): Seller is; is not a foreign person for purposes of U.S. income taxation
- Subdivision: The Property: must be subdivided before _____; is not required to be subdivided
- Feasibility Contingency Expiration Date: 0 days after mutual acceptance; Other _____
- Agency Disclosure: Selling Broker represents: Buyer; Seller; both parties; neither party
Listing Broker represents: Seller; both parties
- Addenda: 22T(Title Contingency) 41C(Selling Commission)

42-agency disclosure

	<u>1-9-2020</u>		<u>1/9/20</u>
Buyer's Signature	Date	Seller's Signature	Date
_____	_____	_____	_____
Buyer's Signature	Date	Seller's Signature	Date
_____	_____	_____	_____
Buyer's Address	Seller's Address		
<u>Des Moines, WA 98198</u>	_____		
City, State, Zip	City, State, Zip		
_____	_____		
Phone No.	Fax No.	Phone No.	Fax No.
_____	_____	_____	_____
Buyer's E-mail Address	Seller's E-mail Address		
_____	_____		
<u>Windermere Real Estate South Inc</u>	<u>1840</u>	Listing Firm	MLS Office No.
Selling Firm	MLS Office No.	_____	_____
<u>Janel Stoneback</u>	<u>93953</u>	Listing Broker (Print)	MLS LAG No.
Selling Broker (Print)	MLS LAG No.	_____	_____
<u>(206) 244-5900</u>	<u>(206) 478-7773</u>	<u>(206) 241-6837</u>	_____
Firm Phone No.	Broker Phone No.	Firm Fax No.	_____
_____	_____	_____	_____
<u>Burien@windermere.com</u>	Listing Firm Document E-mail Address		
Selling Firm Document E-mail Address	_____		
<u>Janel@windermere.com</u>	Listing Broker's E-mail Address		
Selling Broker's E-mail Address	_____		
<u>111578</u>	<u>3553</u>	Listing Broker DOL License No.	Listing Firm DOL License No.
Selling Broker DOL License No.	Selling Firm DOL License No.	_____	_____

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

Continued

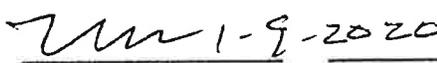
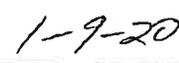
a. **Purchase Price.** Buyer shall pay to Seller the Purchase Price, including the Earnest Money, in cash at Closing, unless otherwise specified in this Agreement. Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Agreement and is not relying on any contingent source of funds, including funds from loans, the sale of other property, gifts, retirement, or future earnings, except to the extent otherwise specified in this Agreement. The parties shall use caution when wiring funds to avoid potential wire fraud. Before wiring funds, the party wiring funds shall take steps to confirm any wire instructions via an independently verified phone number and other appropriate measures.

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

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

c. **Condition of Title.** Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights. Seller shall not convey or reserve any oil and/or mineral rights after mutual acceptance without Buyer's written consent. Monetary encumbrances or liens not assumed by Buyer, shall be paid or discharged by Seller on or before Closing. Title shall be conveyed by a Statutory Warranty Deed. If this Agreement is for conveyance of a buyer's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a buyer's assignment of the contract sufficient to convey after acquired title. If the Property has been short platted, the Short Plat number is in the Legal Description.

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

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

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

Continued

- e. **Closing and Possession.** This sale shall be closed by the Closing Agent on the Closing Date. "Closing" means the date on which all documents are recorded and the sale proceeds are available to Seller. If the Closing Date falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, the Closing Agent shall close the transaction on the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed. Buyer shall be entitled to possession at 9:00 p.m. on the Possession Date. Seller shall maintain the Property in its present condition, normal wear and tear excepted, until the Buyer is provided possession. Buyer reserves the right to walk through the Property within 5 days of Closing to verify that Seller has maintained the Property as required by this paragraph. Seller shall not enter into or modify existing leases or rental agreements, service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining Buyer's consent, which shall not be unreasonably withheld. 60-69
- f. **Section 1031 Like-Kind Exchange.** If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys' fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding the Assignment paragraph of this Agreement, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange. 70-76
- g. **Closing Costs and Prorations and Charges and Assessments.** Seller and Buyer shall each pay one-half of the escrow fee unless otherwise required by applicable FHA or VA regulations. Taxes for the current year, rent, interest, and lienable homeowner's association dues shall be prorated as of Closing. Buyer shall pay Buyer's loan costs, including credit report, appraisal charge and lender's title insurance, unless provided otherwise in this Agreement. If any payments are delinquent on encumbrances which will remain after Closing, Closing Agent is instructed to pay such delinquencies at Closing from money due, or to be paid by, Seller. Buyer shall pay for remaining fuel in the fuel tank if, prior to Closing, Seller obtains a written statement from the supplier as to the quantity and current price and provides such statement to the Closing Agent. Seller shall pay all utility charges, including unbilled charges. Unless waived in Specific Term No. 11, Seller and Buyer request the services of Closing Agent in disbursing funds necessary to satisfy unpaid utility charges in accordance with RCW 60.80 and Seller shall provide the names and addresses of all utilities providing service to the Property and having lien rights (attach NWMLS Form 22K Identification of Utilities or equivalent). 77-88
 Buyer is advised to verify the existence and amount of any local improvement district, capacity or impact charges or other assessments that may be charged against the Property before or after Closing. Seller will pay such charges that are or become due on or before Closing. Charges levied before Closing, but becoming due after Closing shall be paid as agreed in Specific Term No.12. 89-92
- h. **Sale Information.** Listing Broker and Selling Broker are authorized to report this Agreement (including price and all terms) to the Multiple Listing Service that published it and to its members, financing institutions, appraisers, and anyone else related to this sale. Buyer and Seller expressly authorize all Closing Agents, appraisers, title insurance companies, and others related to this Sale, to furnish the Listing Broker and/or Selling Broker, on request, any and all information and copies of documents concerning this sale. 93-97
- i. **Seller Citizenship and FIRPTA.** Seller warrants that the identification of Seller's citizenship status for purposes of U.S. income taxation in Specific Term No. 13 is correct. Seller shall execute a certification (NWMLS Form 22E or equivalent) under the Foreign Investment In Real Property Tax Act ("FIRPTA") at Closing and provide the certification to the Closing Agent. If Seller is a foreign person for purposes of U.S. income taxation, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service. 98-102
- j. **Notices and Delivery of Documents.** Any notice related to this Agreement (including revocations of offers or counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and shall be deemed delivered only when the notice is received by Seller, by Listing Broker, or at the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and shall be deemed delivered only when the notice is received by Buyer, by Selling Broker, or at the licensed office of Selling Broker. Documents related to this Agreement, such as NWMLS Form 17C, Information on Lead-Based Paint and Lead-Based Paint Hazards, Public Offering Statement or Resale Certificate, and all other documents shall be delivered pursuant to this paragraph. Buyer and Seller must keep Selling Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice. 103-110
 Facsimile transmission of any notice or document shall constitute delivery. E-mail transmission of any notice or document (or a direct link to such notice or document) shall constitute delivery when: (i) the e-mail is sent to both Selling Broker and Selling Firm or both Listing Broker and Listing Firm at the e-mail addresses specified on page one of this Agreement; or (ii) Selling Broker or Listing Broker provide written acknowledgment of receipt of the e-mail (an automatic e-mail reply does not constitute written acknowledgment). At the request of either party, or the Closing Agent, the parties will confirm facsimile or e-mail transmitted signatures by signing an original document. 111-116

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

VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS

Continued

- k. **Computation of Time.** Unless otherwise specified in this Agreement, any period of time measured in days and stated in this Agreement shall start on the day following the event commencing the period and shall expire at 9:00 p.m. of the last calendar day of the specified period of time. Except for the Possession Date, if the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of 5 days or less, except for any time period relating to the Possession Date, shall not include Saturdays, Sundays or legal holidays. If the parties agree that an event will occur on a specific calendar date, the event shall occur on that date, except for the Closing Date, which, if it falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, shall occur on the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed. If the parties agree upon and attach a legal description after this Agreement is signed by the offeree and delivered to the offeror, then for the purposes of computing time, mutual acceptance shall be deemed to be on the date of delivery of an accepted offer or counteroffer to the offeror, rather than on the date the legal description is attached. Time is of the essence of this Agreement.
- l. **Integration and Electronic Signatures.** This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No modification of this Agreement shall be effective unless agreed in writing and signed by Buyer and Seller. The parties acknowledge that a signature in electronic form has the same legal effect and validity as a handwritten signature.
- m. **Assignment.** Buyer may not assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent unless the parties indicate that assignment is permitted by the addition of "and/or assigns" on the line identifying the Buyer on the first page of this Agreement.
- n. **Default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then the following provision, as identified in Specific Term No. 7, shall apply:
 - i. **Forfeiture of Earnest Money.** That portion of the Earnest Money that does not exceed five percent (5%) of the Purchase Price shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.
 - ii. **Seller's Election of Remedies.** Seller may, at Seller's option, (a) keep the Earnest Money as liquidated damages as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.
- o. **Professional Advice and Attorneys' Fees.** Buyer and Seller are advised to seek the counsel of an attorney and a certified public accountant to review the terms of this Agreement. Buyer and Seller shall pay their own fees incurred for such review. However, if Buyer or Seller institutes suit against the other concerning this Agreement, or if the party holding the Earnest Money commences an interpleader action, the prevailing party is entitled to reasonable attorneys' fees and expenses.
- p. **Offer.** This offer must be accepted by 9:00 p.m. on the Offer Expiration Date, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by the other party, by the other party's broker, or at the licensed office of the other party's broker pursuant to General Term j. If this offer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.
- q. **Counteroffer.** Any change in the terms presented in an offer or counteroffer, other than the insertion of or change to Seller's name and Seller's warranty of citizenship status, shall be considered a counteroffer. If a party makes a counteroffer, then the other party shall have until 9:00 p.m. on the counteroffer expiration date to accept that counteroffer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by the other party, the other party's broker, or at the licensed office of the other party's broker pursuant to General Term j. If the counteroffer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.
- r. **Offer and Counteroffer Expiration Date.** If no expiration date is specified for an offer/counteroffer, the offer/counteroffer shall expire 2 days after the offer/counteroffer is delivered by the party making the offer/counteroffer, unless sooner withdrawn.
- s. **Agency Disclosure.** Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. If Selling Broker and Listing Broker are the same person representing both parties then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

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

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

Continued

- t. **Commission.** Seller and Buyer shall pay a commission in accordance with any listing or commission agreement to which they are a party. The Listing Firm's commission shall be apportioned between Listing Firm and Selling Firm as specified in the listing. Seller and Buyer hereby consent to Listing Firm or Selling Firm receiving compensation from more than one party. Seller and Buyer hereby assign to Listing Firm and Selling Firm, as applicable, a portion of their funds in escrow equal to such commission(s) and irrevocably instruct the Closing Agent to disburse the commission(s) directly to the Firm(s). In any action by Listing or Selling Firm to enforce this paragraph, the prevailing party is entitled to court costs and reasonable attorneys' fees. Seller and Buyer agree that the Firms are intended third party beneficiaries under this Agreement. 172-179
- u. **Feasibility Contingency.** It is the Buyer's responsibility to verify before the Feasibility Contingency Expiration Date identified in Specific Term No.15 whether or not the Property can be platted, developed and/or built on (now or in the future) and what it will cost to do this. Buyer should not rely on any oral statements concerning this made by the Seller, Listing Broker or Selling Broker. Buyer should inquire at the city or county, and water, sewer or other special districts in which the Property is located. Buyer's inquiry should include, but not be limited to: building or development moratoriums applicable to or being considered for the Property; any special building requirements, including setbacks, height limits or restrictions on where buildings may be constructed on the Property; whether the Property is affected by a flood zone, wetlands, shorelands or other environmentally sensitive area; road, school, fire and any other growth mitigation or impact fees that must be paid; the procedure and length of time necessary to obtain plat approval and/or a building permit; sufficient water, sewer and utility and any service connection charges; and all other charges that must be paid. Buyer and Buyer's agents, representatives, consultants, architects and engineers shall have the right, from time to time during and after the feasibility contingency, to enter onto the Property and to conduct any tests or studies that Buyer may need to ascertain the condition and suitability of the Property for Buyer's intended purpose. Buyer shall restore the Property and all improvements on the Property to the same condition they were in prior to the inspection. Buyer shall be responsible for all damages resulting from any inspection of the Property performed on Buyer's behalf. If the Buyer does not give notice to the contrary on or before the Feasibility Contingency Expiration Date identified in Specific Term No. 15, it shall be conclusively deemed that Buyer is satisfied as to development and/or construction feasibility and cost. If Buyer gives notice this Agreement shall terminate and the Earnest Money shall be refunded to Buyer, less any unpaid costs. 180-197

Seller shall cooperate with Buyer in obtaining permits or other approvals Buyer may reasonably require for Buyer's intended use of the Property; provided that Seller shall not be required to incur any liability or expenses in doing so. 198-199

- v. **Subdivision.** If the Property must be subdivided, Seller represents that there has been preliminary plat approval for the Property and this Agreement is conditioned on the recording of the final plat containing the Property on or before the date specified in Specific Term No. 14. If the final plat is not recorded by such date, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. 200-203
- w. **Information Verification Period.** Buyer shall have 10 days after mutual acceptance to verify all information provided from Seller or Listing Firm related to the Property. This contingency shall be deemed satisfied unless Buyer gives notice identifying the materially inaccurate information within 10 days of mutual acceptance. If Buyer gives timely notice under this section, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. 204-207
- x. **Property Condition Disclaimer.** Buyer and Seller agree, that except as provided in this Agreement, all representations and information regarding the Property and the transaction are solely from the Seller or Buyer, and not from any Broker. The parties acknowledge that the Brokers are not responsible for assuring that the parties perform their obligations under this Agreement and that none of the Brokers has agreed to independently investigate or confirm any matter related to this transaction except as stated in this Agreement, or in a separate writing signed by such Broker. In addition, Brokers do not guarantee the value, quality or condition of the Property and some properties may contain building materials, including siding, roofing, ceiling, insulation, electrical, and plumbing, that have been the subject of lawsuits and/or governmental inquiry because of possible defects or health hazards. Some properties may have other defects arising after construction, such as drainage, leakage, pest, rot and mold problems. Brokers do not have the expertise to identify or assess defective products, materials, or conditions. Buyer is urged to use due diligence to inspect the Property to Buyer's satisfaction and to retain inspectors qualified to identify the presence of defective materials and evaluate the condition of the Property as there may be defects that may only be revealed by careful inspection. Buyer is advised to investigate whether there is a sufficient water supply to meet Buyer's needs. Buyer is advised to investigate the cost of insurance for the Property, including, but not limited to homeowner's, flood, earthquake, landslide, and other available coverage. Buyer acknowledges that local ordinances may restrict short term rentals of the Property. Brokers may assist the parties with locating and selecting third party service providers, such as inspectors or contractors, but Brokers cannot guarantee or be responsible for the services provided by those third parties. The parties shall exercise their own judgment and due diligence regarding third-party service providers. 208-225

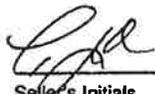
			
Buyer's Initials	Date	Seller's Initials	Date

Exhibit A

Lot 6, Block 27, Woodmont Beach Addition, according to the plat thereof recorded in Volume 22 of Plats, page 30, records of King County, Washington.

Situate in the County of King, State of Washington.

C.A. Q 1-9-20
mm 1-9-2020

This legal description has been copied from the last vesting deed recorded in the public record. This legal description may change after a complete examination of the subject property and subsequent issuance of a preliminary title insurance commitment. For a fully researched legal description, please refer to the Exhibit "A" in your preliminary title insurance commitment. Also, please refer to your preliminary title insurance commitment for all matters affecting the subject property in the public record, if any.

**TITLE CONTINGENCY ADDENDUM TO
PURCHASE & SALE AGREEMENT**

The following is part of the Purchase and Sale Agreement dated January 9, 2020 1
between City of Des Moines Michael Matthias (signer) ("Buyer") 2
Buyer Buyer
and Thomas J Orseno ("Seller") 3
Seller Seller
concerning xxxxx (9536600530) Des Moines WA 98198 (the "Property"). 4
Address City State Zip

1. **Title Contingency.** This Agreement is subject to Buyer's review of a preliminary commitment for title insurance, 5
together with any easements, covenants, conditions and restrictions of record. Buyer shall have _____ 6
days (5 days if not filled in) from the date of Buyer's receipt of the preliminary commitment for title insurance; 7
or mutual acceptance (from the date of Buyer's receipt, if neither box checked) to give notice of Buyer's 8
disapproval of exceptions contained in the preliminary commitment. 9

Seller shall have _____ days (5 days if not filled in) after Buyer's notice of disapproval to give Buyer 10
notice that Seller will clear all disapproved exceptions. Seller shall have until the Closing Date to clear all 11
disapproved exceptions. 12

If Seller does not give timely notice that Seller will clear all disapproved exceptions, Buyer may terminate this 13
Agreement within 3 days after the deadline for Seller's notice. In the event Buyer elects to terminate the 14
Agreement, the Earnest Money shall be returned to Buyer. If Buyer does not timely terminate the Agreement, 15
Buyer shall be deemed to have waived all objections to title, which Seller did not agree to clear. 16
2. **Supplemental Title Reports.** If supplemental title reports disclose new exception(s) to the title commitment, 17
then the above time periods and procedures for notice, correction, and termination for those new exceptions 18
shall apply to the date of Buyer's receipt of the supplemental title report. The Closing date shall be extended as 19
necessary to accommodate the foregoing times for notices. 20
3. **Marketable Title.** This Addendum does not relieve Seller of the obligation to provide marketable title at Closing 21
as provided for in the Agreement. 22

<u>MM</u>	<u>1-9-2020</u>	<u>MM</u>	<u>1-9-20</u>
Buyer's Initials	Date	Buyer's Initials	Date
		<u>MM</u>	<u>1-9-20</u>
		Seller's Initials	Date

SELLING FIRM'S COMMISSION

The following is part of the Purchase and Sale Agreement dated January 9, 2020 1
 between City of Des Moines Michael Matthias (signer) ("Buyer") 2
Buyer Buyer
 and Thomas J Orseno ("Seller") 3
Seller Seller
 concerning xxxxx (9536600530) Des moines WA 98198 (the "Property"). 4
Address City State Zip

Selling Firm's Commission. If there is no written listing agreement, ^{Buyer} Seller agrees to pay Selling Firm a commission 5
 of _____ % of sales price or \$ 450.00. If the Earnest Money is retained as 6
 liquidated damages, any costs advanced or committed by Selling Firm shall be reimbursed or paid therefrom, and the 7
 balance shall be divided equally between Seller and Selling Firm. 8

If Seller shall, within six months from the date hereof, sell the Property to Buyer or someone acting on Buyer's behalf, 9
 Seller shall pay Selling Firm the commission set forth above, less any portion of the above earnest money retained by 10
 Selling Firm. Provided, if a commission is paid to another member(s) of a multiple listing service in conjunction with 11
 such sale, the amount of commission payable to Selling Firm shall be reduced by the amount paid to such other 12
 member(s). "Sell" includes a contract to sell; an exchange or contract to exchange; an option to purchase; and/or a 13
 lease with option to purchase, regardless of when it closes. 14

MM 1-9-2020 Thomas J. Orseno 1-9-20
 Buyer's Initials Date Buyer's Initials Date Seller's Initials Date Seller's Initials Date

AGENCY DISCLOSURE

Washington State law requires real estate brokers to disclose to all parties to whom the broker renders real estate brokerage services whether the broker represents the seller (or lessor), the buyer (or lessee), both the seller/lessor and buyer/lessee, or neither. 1
2
3

This form is for use when the transaction forms do not otherwise contain an agency disclosure provision. 4

THE UNDERSIGNED BROKER REPRESENTS: Buyer, City of Des Moines 5

THE UNDERSIGNED BUYER / LESSEE OR SELLER / LESSOR ACKNOWLEDGES RECEIPT OF A COPY OF THE PAMPHLET ENTITLED "THE LAW OF REAL ESTATE AGENCY" 6
7

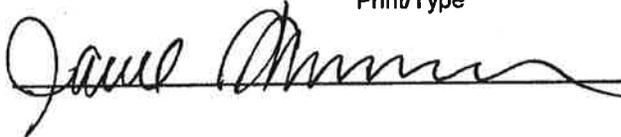
BUYER  1-9-2028 8
Signature Date

Signature Date 9

Signature Date 10

Signature Date 11

BROKER Janel Stoneback 12
Print/Type

BROKER'S SIGNATURE  13

FIRM NAME AS LICENSED Windermere Real Estate South Inc 14
Print/Type

FIRM'S ASSUMED NAME (if applicable) _____ 15
Print/Type

Client Signatures – Acknowledgement of Disclosures & Pamphlets:

Affiliated Business Arrangement Disc. Disclosure Rights And Obligations Fair Housing Law of Real Estate Agency

Windermere
 REAL ESTATE
 10000 WINDERMERE DRIVE, SUITE 100
 WINDERMERE, FL 33486
 (407) 943-1000
 www.windermere.com

SECTION ONE
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SECTION SIX
 SEWAGE TREATMENT CAPACITY

SECTION SEVEN
 PROTECT YOUR FAMILY FROM LEAD

SECTION EIGHT
 SEWAGE TREATMENT CAPACITY

SECTION NINE
 PROTECT YOUR FAMILY FROM LEAD

SECTION TEN
 SEWAGE TREATMENT CAPACITY

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SECTION TWENTY ONE
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 SEWAGE TREATMENT CAPACITY

SECTION TWENTY THREE
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SECTION TWENTY FOUR
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SECTION TWENTY FIVE
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SECTION TWENTY SIX
 SEWAGE TREATMENT CAPACITY

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SECTION THIRTY ONE
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 SEWAGE TREATMENT CAPACITY

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SECTION FORTY FOUR
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SECTION FORTY FIVE
 PROTECT YOUR FAMILY FROM LEAD

SECTION FORTY SIX
 SEWAGE TREATMENT CAPACITY

SECTION FORTY SEVEN
 PROTECT YOUR FAMILY FROM LEAD

SECTION FORTY EIGHT
 SEWAGE TREATMENT CAPACITY

SECTION FORTY NINE
 PROTECT YOUR FAMILY FROM LEAD

SECTION FIFTY
 SEWAGE TREATMENT CAPACITY

Sewage Treatment Capacity

SEWAGE TREATMENT CAPACITY CHARGE
 Effective January 1, 2014



WHAT IS THE CAUSEWAY'S CHARGE?
 The sewage treatment capacity charge is a fee that is assessed to the owner of a property with a sewerage system who connects to the local sewerage system after July 1, 2014.

WHY DO WE HAVE A CAUSEWAY CHARGE?
 To protect public health and the environment, King County's wastewater treatment system must be upgraded to meet the requirements of the Clean Water Act. This requires building new pipes, pump stations, and treatment plants.

King County
 Wastewater Treatment Division

Protect Your Family From Lead

Protect Your Family From Lead In Your Home





United States Environmental Protection Agency
 National Center for Environmental Health
 Lead Research and Control Division
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460
 (800) 424-LEAD
 www.epa.gov/lead

The undersigned acknowledges receipt of the following Documents and/or Pamphlets:

1. Affiliated Business Arrangement Disclosure
2. Disclosure Rights & Obligations
3. What Buyers and Sellers Need To Know About Fair Housing
4. Law of Real Estate Agency
5. Sewage Treatment Capacity Charge pamphlet
6. Protect Your Family From Lead In Your Home

Client: Muse

Date: 1-9-2020





Affiliated Business Arrangement Disclosure Statement

To: The Buyer(s) and/or Seller(s) of the Subject Property WRE Form 31
Rev. 02/2014

From: Windermere Real Estate/ South Inc ("Windermere")

Subject Property: Woodmont land

This is to give you notice that Windermere has a business relationship with Windermere Real Estate Mortgage Services Series/ _____ LLC ("Windermere Mortgage") and CW Title. Windermere owns 50% of Windermere Mortgage and less than 25% of the parent company of CW Title. Because of this relationship, a referral to these entities may provide Windermere a financial or other benefit. The benefit that Windermere may receive is limited to a return on its ownership interest, and neither Windermere nor your broker will be paid a referral fee.

Set forth below are the estimated charges or range of charges for the settlement services listed. You are NOT required to use the listed provider as a condition to your purchase or sale of the Subject Property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Windermere Mortgage: Loan fees range from 0-3% of the loan amount depending upon the program and the buyer's qualifications.

CW Title: Title insurance charges range from \$310 to \$2,400 depending upon the purchase price.

CW Title: Escrow charges range from \$475 to \$2300 depending upon the purchase price.

ACKNOWLEDGEMENT

I/we have read this disclosure form, and understand that Windermere is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as a result of this referral. I understand that my broker will not receive any financial or other benefit as a result of this referral.

Client Signature

1-9-2020

DATE

Client Signature

DATE



IMPORTANT INFORMATION CONCERNING YOUR DISCLOSURE RIGHTS AND OBLIGATIONS

Seller disclosure is one of the most important parts of a real estate transaction. Sellers need to know what information they are obligated to disclose, and Buyers need to understand their own duty of diligence and investigation. This Memo is provided by Windermere's attorneys as general legal information and not advice. Real estate brokers are not attorneys, and you should consult an attorney if you have any specific disclosure questions.

Information for Buyers

Most buyers expect far more disclosure from the seller than the law requires. Sellers have no duty to inspect their property or look for defects and may not even consider a condition a defect after living with it for years. Instead, Sellers have a limited duty to disclose material defects that substantially affect the physical condition of or title to the property and information that substantially adversely affects the value of the property.

Sellers typically have no duty to disclose neighborhood conditions or past events at the property. For instance, sellers usually have no legal duty to disclose the following conditions either at the property or in the neighborhood:

- Murders, suicides, rapes or other crimes;
- Ongoing criminal or gang activity in the neighborhood;
- Registered sex offenders in the neighborhood;
- Future development in the area; or
- Political or religious activities in the area.

If these or similar matters are of concern to a buyer, then the buyer should include an inspection and "Neighborhood Review" contingency in any agreement and follow through with the inspection.

Washington law imposes a duty of diligence on the buyer to fully investigate the property and any information provided by the seller. A buyer is charged with the knowledge that the buyer would have obtained with a diligent investigation. For example, a buyer who receives an inspection report identifying a possible defect has a duty to investigate further and may be barred from seeking compensation from the seller if the defect could have been discovered through further inspection. A diligent investigation is the best way for buyers to avoid problems after closing and for sellers to reduce their risk of claims. A diligent investigation often involves more than a standard home inspection.

Information for Sellers

Although the law provides sellers with many protections, it does not prevent unhappy buyers from starting a lawsuit, and most buyer lawsuits are not covered by insurance. Sellers should consider disclosure to be a form of insurance. By disclosing a condition, the seller shifts the burden of investigation to the buyer. By remaining silent, a seller risks the appearance of concealment and a lawsuit.

To prove fraudulent concealment, a buyer only has to prove that the seller had actual knowledge of a hidden defect and failed to disclose it. The buyer does not have to prove a seller's intent to deceive or hide the defect. At the same time, once the seller does disclose an actual or possible defect, the duty shifts to the buyer to exercise diligence and investigate. Instead of minimizing disclosures, a prudent seller will try to consider the property from the perspective of a buyer and then disclose what a buyer would want to know. Many of the conditions that lead to lawsuits would have been acceptable to the buyer if they had been disclosed in advance. Other conditions simply are not important enough to the buyer to fully investigate before purchasing a property. To maximize the benefit of disclosure law, sellers may want to make full disclosure of the property and neighborhood even if they have no legal duty to do so. It is usually better to be over-insured than not insured at all.

A handwritten signature in black ink, appearing to be 'W. M.', is located at the bottom right of the page.

What buyers and sellers need to know about Fair Housing

OUR GOALS AND OBJECTIVES

All of us at Windermere Real Estate are committed to the principles of Fair Housing practices for all. Fair Housing is a matter of dealing equally with all people as well as a matter of federal, state, and local laws. Fair Housing involves everyone, and we have to count on your being our partners in that effort as we work to find you a home, or sell your home.

We are experts in homes. It is our responsibility to provide you with the information you need to make a wise decision for yourself. Our task is to do our best to locate a home with the characteristics, location, and price you want, or to find a buyer that can satisfy your needs as a seller. It is also our task to provide you with enough information about current market conditions, including the sale prices of properties that have recently sold, to enable you to determine intelligently the price you are willing to pay or receive for a specific property.

You may wish to have available other kinds of information. Many buyers ask questions about the people who live in a neighborhood: "What kinds of people live here?" "Are there many children in the neighborhood?" "Are there any registered sex offenders nearby?" "Is there much crime here?" "Are there any especially noisy neighbors?"

Sellers may ask similar questions: "What kind of people make good prospective buyers?" "Who will fit well in this neighborhood?" "Do unmarried couples make good buyers?"

Such questions are outside the scope of our professional practice. Some of them raise Fair Housing issues, and all of them seek subjective

judgments rather than objective information. Such questions are important to buyers and sellers, but you ought to be aware of the laws that restrict the rights of buyers and sellers to make decisions based on such inquiries.

THE LAW

Federal law prohibits discrimination in a real estate transaction based on race, color, religion, familial status, sex, handicap, and/or national origin. In addition to the federal prohibitions, Washington law prohibits discrimination based on creed, marital status, sensory/physical/mental disability, use of a service animal (e.g., a seeing-eye dog), sexual orientation, and honorably discharged veteran or military status. Some local laws go even further to prohibit discrimination based on age, ancestry, gender identity, political ideology, and participation in Section 8 programs (for low-income families).

For buyers, there is a way to make your own private decision about whether a neighborhood and its surroundings are right for you. Most standard purchase forms used throughout our network allow you to include a contingency for a "Neighborhood Review" period. This gives you time to conduct your own exploration of the neighborhood for answers to the questions that are important to you. Ask your agent what options exist in your area for this kind of contingency.

Sellers should be aware of the laws that prohibit choosing a buyer based on legally protected class status. Generally speaking, if a seller receives a bona fide offer on a property, the seller cannot refuse to sell to, or even refuse to negotiate with,

continued


Windermere
REAL ESTATE



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TOTAL PROJECT SCOPE				PROJECT BUDGET ALLOCATIONS BY YEAR PER ADOPTED 6 YEAR PLAN									
Expenditures	10/10/19 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/2019	Estimated Year End 2020	Planned Year 2021	Planned Year 2022	Planned Year 2023	Planned Year 2024	Planned Year 2025	Planned Year 2026		
Design	-	-	-	-	-	-	-	-	-	-	-		
Total Design	-	-	-	-	-	-	-	-	-	-	-		
Prop/ROW/Easements	-	-	-	-	-	-	-	-	-	-	-		
Land	-	16,239	16,239	-	16,239	-	-	-	-	-	-		
Total Prop/ROW/Easements	-	16,239	16,239	-	16,239	-	-	-	-	-	-		
Construction	-	-	-	-	-	-	-	-	-	-	-		
Interfund Financial Services	-	24	24	24	-	-	-	-	-	-	-		
Services - Non-Capitalizable	-	225,557	225,557	2,435	223,122	-	-	-	-	-	-		
Materials - Non Capitalizable	-	-	-	-	-	-	-	-	-	-	-		
Internal Labor - Non Capitalizable	-	16,196	16,196	-	16,196	-	-	-	-	-	-		
Individual Assets > \$5,000 - Equipment	-	-	-	-	-	-	-	-	-	-	-		
Contingencies	-	1,984	1,984	-	1,984	-	-	-	-	-	-		
Total Construction	-	243,761	243,761	2,459	241,302	-	-	-	-	-	-		
Total Project Expense Budget:	-	260,000	260,000	2,459	257,541	-	-	-	-	-	-		

Funding Sources	10/10/19 Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/2019	Scheduled Year 2020	Scheduled Year 2021	Scheduled Year 2022	Scheduled Year 2023	Scheduled Year 2024	Scheduled Year 2025	Planned Year 2026
SWM Transfer	-	172,500	172,500	-	172,500	-	-	-	-	-	-
One Time Sales Tax	-	87,500	87,500	2,459	85,041	-	-	-	-	-	-
Total Project Revenue Budget:	-	260,000	260,000	2,459	257,541	-	-	-	-	-	-

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Puget Sound Gateway Project
SR 167 and SR 509 Completion Projects – Local
Funding and Phasing Interlocal Agreement

FOR AGENDA OF: March 12, 2020

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: March 3, 2020

ATTACHMENTS:

1. Interlocal Agreement GCB 3046 between WSDOT and City of Des Moines.
2. 2020-2025 Capital Improvement Worksheet – Puget Sound Gateway – SR509 Extension

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: PSB

- Legal TG
- Finance BW
- Courts N/A
- Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is for the City Council to approve the Puget Sound Gateway Program SR 167 and SR 509 Completion Projects Interlocal Agreement (Attachment 1). The following motion will appear on the consent calendar:

Suggested Motion

Motion: “I move to approve the Puget Sound Gateway Program Interlocal Agreement between the Washington State Department of Transportation and the City of Des Moines, and authorize the City Manager to sign substantially in the form as submitted.”

Background

The Washington State Legislature passed a transportation package in 2015 which included the Puget Sound Gateway Project. The Puget Sound Gateway Project extends SR 167 in Pierce County and SR 509 in King County. When the legislature passed this package, local contributors were required to help fund the construction of these projects. The agencies required to participate in making local contributions were not specifically identified.

A total of \$130 million in local contributions is required for the Puget Sound Gateway Project. This has been broken down further by \$60 million for the SR 509 Project and \$70 million for the SR 167 Project. The Port of Tacoma and the Port of Seattle have committed \$60 million, \$30 million to each project. The remaining \$70 million will come from other local agencies and a variety of other funding sources like state and federal grant programs. If the remaining local contributions are not identified, some elements of the Puget Sound Gateway Project would likely be eliminated. Two such project elements that would impact the City of Des Moines are the Veterans Drive Extension and the SeaTac Access.

A process involving approximately 20 different agencies has been consistently meeting with WSDOT to discuss how to address the local funding issue. This process included regular meetings with the executive committee members from both the SR 167 and SR 509 projects, and meetings of the local funding sub-committee members.

In order to reduce the burden of funding contributions on the local jurisdictions, the local funding sub-committee members worked together with WSDOT and the funding and phasing subcommittee's independent analysis team of Steve Gorcester (an independent grant strategist), Rita Brogan (an independent facilitator), and Andrew Bjorn (an economic consultant from BERK) to develop a grant funding strategy concept that will: 1) develop a funding partnership, 2) leverage partner match with grants, 3) provide benefit assessments to partners, 4) scale match contributions with relative net benefits, and 5) pursue grants and apply grants towards the local share required by the Legislature.

Local Benefit Assessments

The overarching consensus is that partner agencies that benefit most from the Puget Sound Gateway Project should contribute more than agencies that have little to no benefit. WSDOT initiated a local benefit assessment process using a team of consultants, which looked at an assessment of local net benefits for all local agencies in the study area. The assessment used nine categories to measure net benefits. Each category was weighted on a scale of one to four, with four being the highest net benefit in that category.

Each City was then placed in a proposed participation level categorized into one of three tiers, based on the relative benefit. Those tiers include:

- Tier 1 receiving significant direct benefits,
- Tier 2 receiving moderate benefits due to improved accessibility, and
- Tier 3 receiving a nominal level of benefits.

Tier 1 cities are expected to contribute \$2 million and Tier 2 cities are expected to contribute \$1 million. While Tier 3 cities are not expected to provide substantial financial contributions, they are expected to provide project support in several other ways, such as co-sponsoring and supporting grant applications. The City of Des Moines was identified as a Tier 2 City.

Grant Funding Partnerships and Phasing

The Puget Sound Gateway Project continues to be a benefit to all partners. The grant-focused strategy will leverage local match funds with grants to provide the necessary funding.

Grants applications will occur over the life of the project (expected to be more than 10 years). Grant applications for the initial stage of the project are currently underway.

Discussion

While Tier 2 cities, like the City of Des Moines, are expected to contribute \$1 million to the project, the number was negotiable based on relative benefits. On March 22, 2018 the City Council approved a Funding commitment letter which provided a commitment of \$500,000 to the Puget Sound Gateway Project. On June 14, 2018 the City Council approved a Local Funding and Phasing Memorandum of Understanding MOU (included with Attachment 1). This MOU, committed the City to a financial payment sometime in the 2022-2025 timeframe and would be invoiced as a single payment following the SR 509 Stage 2 Construction Contract receives Notice to Proceed.

Financial Impact

A number of potential offsetting revenue sources have been identified that would cover most if not all of the \$500,000 project contribution. Construction of the SR 509 project would generate approximately \$270,000 in sales tax revenue for the City of Des Moines. WSDOT will also be surplussing a large amount of Historic SR 509 right-of-way that runs through the middle of Des Moines. This property has been sitting dormant and unused for decades. While a lot of the property is wetlands, buffer, and critical area, some of this property is available for development. The Port of Seattle and WSDOT are currently in negotiations on some of this property (north of South 216th Street), which is currently zoned Business Park. When developed, the City would see various revenues including leasehold excise taxes, utility taxes, construction sales taxes, REET, and other permit fees. Other surplussed property could be developed residential, providing new on-going property tax revenue. The identified revenue source of use of One-Time Sales tax is shown in the City's project Capital Improvement Plan worksheet (Attachment 2).

Alternatives

The City Council may propose to make modifications to the Interlocal Agreement.

Recommendation

Staff recommends Council pass the suggested motion.

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**GCB 3046
INTERLOCAL AGREEMENT BETWEEN
WSDOT / City of Des Moines**

This INTERLOCAL AGREEMENT (Agreement) is entered into between the Washington State Department of Transportation (WSDOT) and the City of Des Moines (City), individually referred to as the "Party" and collectively referred to as the "Parties."

RECITALS

- A. The Parties desire to enter into an agreement with one another in order to jointly establish a mutual and cooperative system to carry out their respective obligations of this Agreement for the construction of the Puget Sound Gateway Program (PROGRAM).
- B. In 2015 the Washington State Legislature funded the construction of the PROGRAM through the Connecting Washington revenue package.
- C. The Legislature directed that \$130 million of the \$1.875 billion PROGRAM funding is to come through local funding sources.
- D. The City has entered into a Local Funding and Phasing Memorandum of Understanding (MOU) with WSDOT (Attachment A), commencing on July 1, 2018, acknowledging that the City is one of eighteen (18) Local Agency Partners committed to provide matching funds/contributions commensurate with the local benefits from the State Route (SR) 509 Completion Project (PROJECT) portion of the PROGRAM.

NOW THEREFORE, pursuant to Chapter 39.34 RCW, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Attachments A, B, C, and D are incorporated and made a part hereof, the Parties agree as follows:

IT IS MUTUALLY AGREED AS FOLLOWS:

1. General

- 1.1 This Agreement quantifies the City's local contribution commitment to be applied towards the SR 509 portion of the PROGRAM and defines the roles and responsibilities between the Parties for delivery of the PROJECT.
- 1.2 Stage 1 of the PROJECT is divided into Stage 1a and Stage 1b. Stage 1a consists of the SR 99/SR 509 bridge and other work (Attachment C) now under construction in partnership with Sound Transit. Stage 1b consists of reconstructing the SR 516 interchange, constructing a northbound auxiliary lane, constructing a southbound auxiliary lane from the S. 200th Street Interchange ramp to a new southbound Collector Distributor (CD) road along Interstate (I)-5, and constructing the southbound braided ramps. The PROJECT will also construct the SR 509 mainline from I-5 to the 28th/24th Avenue S. interchange, including the ramps to 28th/24th Avenue S. Stage 1b as well as the reconstruction of the 216th Street bridge, construction of one (1) toll point, and the restoration of the connection of S. 208th Street to SR 99.

Stage 2 of the PROJECT completes the SR 509 mainline from 28th/24th Avenue S. to S. 188th Street with the addition of south ramps at the S. 188th Street Interchange.

- 1.3 The City, in support of the Puget Sound Gateway Program, including the PROJECT in King County, is willing to contribute matching funds towards the required local contribution for the PROGRAM.
- 1.4 WSDOT and the City agreed on Terms of Understanding set forth in Attachment C, attached. The Terms of Understanding, and WSDOT's responses, address questions posed about the PROGRAM by the Des Moines City Council Transportation Committee as communicated to WSDOT on July 18, 2019 via email.
- 1.5 WSDOT and the City agreed on the terms set for in Attachment D, attached. This attachment is the Design and Construction of the SR 509 Completion Project: SR 516 Interchange Reconstruction Memorandum of Understanding between the cities of Des Moines, SeaTac, Kent, and King County Metro (the LOCAL AGENCIES), and the Washington State Department of Transportation (WSDOT/STATE)
- 1.6 The funding provided by the City of Des Moines will be used to support the SR 509 portion of the PROGRAM, including potentially being used as match to future grant applications.
- 1.7 This Agreement is effective upon the last date of execution of both Parties and will terminate when Stage 1b is constructed and is completed, unless mutually extended by the Parties.
- 1.8 WSDOT shall provide the City with a written notice of commencement of the PROJECT'S construction at least thirty (30) days prior to the commencement date.

2. WSDOT Responsibilities

- 2.1. WSDOT shall design and construct the PROJECT to be consistent with the Proposed Design Alternative for Stage 1b, subject to any deviations made in accordance with Section 2.2 below.
- 2.2. WSDOT shall coordinate and seek concurrence from Local Agency Partners, including the City, on any significant deviations from the Proposed Design Alternative contemplated during implementation of the PROJECT.

3. Payment

- 3.1 The City agrees to contribute local agency matching funds to the PROJECT component of the PROGRAM in the amount of Five Hundred Thousand Dollars (\$500,000) to WSDOT for the construction costs associated with the PROJECT.
- 3.2 WSDOT will invoice the City for a single payment of Five Hundred Thousand Dollars (\$500,000) after the SR 509 Stage 2 Construction Contract receives Notice to Proceed.

The City will pay WSDOT within thirty (30) days of receipt of the invoice from WSDOT.

- 3.3 The City shall not be obligated to contribute local agency matching funds in excess of Five Hundred Thousand Dollars (\$500,000) for the PROJECT. If WSDOT requests additional funds from the City in the future, a written amendment to this Agreement authorizing a contribution increase must be mutually agreed upon.

4. Contract Administration

- 4.1 The Parties do not by this Agreement create any separate legal or administrative entity. The Secretary of Transportation or his designee and the City of Des Moines designee as noted in Section 8 of this Agreement shall be responsible for working with each other to administer the terms of this Agreement. The Parties do not intend to jointly own any real or personal property as part of this undertaking. The Parties will cooperatively work together to further the intent and purpose of this Agreement.

5. Dispute Resolution

- 5.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: The Parties shall each appoint a member to a disputes board; these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to elevating this dispute to the Gateway Executive Committee and Secretary of Transportation as described in Attachment A, Section 7.2. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for their own costs and fees.

6. Indemnification

- 6.1 To the extent permitted by law, WSDOT and the City shall protect, defend, indemnify, and save harmless each other, their respective officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, Indemnifying Party's negligent acts or omissions. Neither WSDOT nor the City will be required to indemnify, defend, or save harmless each other if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of WSDOT and the City, the indemnity provisions provided herein shall be valid and enforceable only to the extent of WSDOT's or the City's own negligence. WSDOT and the City agree that their respective obligations under this subsection extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, WSDOT and the City, by mutual negotiation, hereby waive, with respect to the other party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event that WSDOT or the City incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable by the prevailing party. This indemnification shall survive the termination of this Agreement.

7. Venue

7.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in King County Superior Court. Further, the Parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.

8. Contacts and Notices

8.1 Contact between the Parties, including but not limited to invoicing, agreement administration, and notices will be directed to the below identified contacts as follows or his/her designee or such other addresses as either Party may, from time to time, designate in writing:

City Project Manager shall be:

Dan Brewer
21630 11th Avenue South, St. D
Des Moines, WA 98109
(206) 870-6581
Email:
dbrewer@desmoineswa.gov

WSDOT Project Manager shall be:

Susan Everett, PE
999 3RD Ave Ste 2200
Seattle, WA 98104
(360) 805-2978
Email: EverettS@wsdot.wa.gov

9. Amendment

9.1 This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

10. Severability

10.1 Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

11. No Third-Party Beneficiaries

11.1 This Agreement is executed for the sole and exclusive benefit of the signatory Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any right, remedy or other entitlement upon any person other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third-party, nor shall any provision herein give any third-party any right of action against any party hereto.

12. Audits/Records:

12.1 All records for the PROJECT in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years after acceptance as defined in WSDOT's Construction Manual M 41-01.32, Chapter 10. The City shall have full access to and right to examine said records, during normal business hours and as often as it deems

necessary. Should the City require copies of any records, it agrees to pay the costs thereof. The Parties agree that the work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the federal/state government.

13. City of Des Moines Signature Authority

13.1 The City Manager is authorized to execute this agreement.

14. Recording

14.1 The City will maintain a copy of this Agreement.

15. Working Days

15.1 Working days for this Agreement are defined as Monday through Friday, excluding Washington State furlough days or state holidays pursuant to RCW 1.16.050.

In Witness Whereof, the Parties hereto have executed this Agreement as of the date last written below.

City of Des Moines

Washington State
Department of Transportation

By _____

By _____

Printed _____

Printed _____

Date: _____

Date: _____

- Attachments:
- Attachment A: Final Gateway MOU
- Attachment B: City of Des Moines Commitment Letter
- Attachment C. Terms of Understanding Letter
- Attachment D. SR 516 Interchange Reconstruction MOU



Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

June 28, 2018

The Honorable Steve Hobbs
Chair
Senate Transportation Committee
P.O. Box 40444
Olympia, WA 98504-0444

The Honorable Judy Clibborn
Chair
House Transportation Committee
P.O. Box 40600
Olympia, WA 98504-0600

The Honorable Curtis King
Ranking Member
Senate Transportation Committee
P.O. Box 40414
Olympia, WA 98504-0414

The Honorable Mark Harmsworth
Ranking Member
House Transportation Committee
P.O. Box 40600
Olympia, WA 98504-0600

In the 2017 Legislative session, Engrossed Senate Bill 5096 Section 306(20)(b) directed WSDOT to develop a Memorandum of Understanding (MOU) to fund the \$130 million from local agency partners for the Puget Sound Gateway Program included in the 2015 Connecting Washington transportation revenue package. Engrossed Senate Bill 5096 stated that:

The secretary of transportation must develop a memorandum of understanding with local project stakeholders that identifies a schedule for stakeholders to provide local matching funds for the Puget Sound Gateway project. Criteria for eligibility of local match includes matching funds and equivalent in-kind contributions including, but not limited to, land donations. The memorandum of understanding must be finalized by July 1, 2018. The department must submit a copy of the memorandum of understanding to the transportation committees of the legislature and report regularly on the status.

In October 2017, WSDOT began a stakeholder process to help establish the local contributions necessary to achieve the \$130 million in local funding. The resulting Funding and Phasing Subcommittee, made up of 18 affected jurisdictions, has met five times. From this group, a grant-focused strategy emerged as the most feasible way to fund the \$130 million. A key element of the grant-focused strategy was to identify smaller project elements within the Gateway Program that provide clear and measurable benefits to local jurisdictions, called "Local Nexus Projects." The Funding and Phasing Subcommittee met regularly to establish a process for determining benefits derived from the Local Nexus Projects, align on contributions, and develop the MOU.

GCB 3046
Attachment A - Final Gateway
MOU

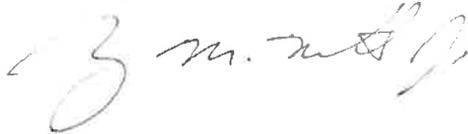
Puget Sound Gateway Program Memorandum of Understanding
June 28, 2018
Page 2

All 18 jurisdictions have endorsed and signed the attached Local Funding MOU.

Additionally, WSDOT and our local agency partners have already submitted four grant applications this spring for the Local Nexus Projects. We submitted three applications with the Puget Sound Regional Council (PSRC) and one with the Freight Mobility Strategic Investment Board (FMSIB). We received the FMSIB grant and two PSRC grants, totaling \$13 million, which combined with local match funding, brings the local contribution amount to over \$26 million for this initial grant cycle.

If you have any questions or would like to meet for an update on the Puget Sound Gateway Program, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Millar", written over a light blue horizontal line.

Roger Millar, PE, FASCE, FAICP
Secretary of Transportation

Puget Sound Gateway Program SR 167 and SR 509 Completion Projects

Local Funding and Phasing Memorandum of Understanding

1. Participating Parties

In addition to the Washington State Department of Transportation (WSDOT), the following Local Agency Partners constitute those parties currently participating in this Memorandum of Understanding pertaining to the local contribution requirement for the Puget Sound Gateway Program (Gateway Program):

- Port of Seattle
- Port of Tacoma
- King County
- Pierce County
- City of Algona
- City of Auburn
- City of Burien
- City of Des Moines
- City of Edgewood
- City of Federal Way
- City of Fife
- City of Kent
- City of Milton
- City of Pacific
- City of Puyallup
- City of SeaTac
- City of Sumner
- City of Tacoma

2. Background and Purpose of MOU

In July 2015, the Washington State Legislature and Governor Inslee acted to fund the Gateway Program through the Connecting Washington revenue package. The Gateway Program is comprised of two projects: the State Route 167 Completion Project and the State Route 509 Completion Project. These projects provide essential connections to the ports of Tacoma and Seattle and will help ensure that people and goods move more reliably through the Puget Sound region.

WSDOT is the lead project sponsor and is responsible for the planning, design and construction of the Gateway Program, as well as for its overall financial management. The program has been guided from its beginning by a Joint SR 167/SR 509 Executive Committee (Executive Committee), comprised of elected and appointed representatives of local jurisdictions served by the Gateway Program (Algona, Auburn, Burien, Des Moines, Edgewood, Federal Way, Fife, Kent, Milton, Pacific, Puyallup, SeaTac, Sumner, Tacoma, King County, Pierce County, Port of Seattle, and Port of Tacoma) as well as Federal Highway Administration, Washington State Transportation Commission, Washington State Department of Transportation, Puget Sound Regional Council, Sound Transit, Pierce Transit, and the Freight Mobility Strategic Investment Board.

Funding for the Gateway Program has been approved to come from the state gas tax, tolls, local contributions, and potential federal and state grants. Total funding for the Gateway Program, from the 2015 Connecting Washington transportation funding package, is \$1.875 billion, which includes local contributions of \$130 million. The program has been funded over a 16-year

timeline. Based on the legislative funding plan, major construction for a first stage would occur from 2019 through 2025, and a second stage from 2026 through 2030. Local contributions will be needed to construct both stage one and stage two projects.

In the 2017 Legislative session new language was enacted (Engrossed Senate Bill 5096 § 306(20)(b)) requiring development of a Memorandum of Understanding (MOU) between the Local Agency Partners and WSDOT. The legislature directed that:

The secretary of transportation must develop a memorandum of understanding with local project stakeholders that identifies a schedule for stakeholders to provide local matching funds for the Puget Sound Gateway project. Criteria for eligibility of local match includes matching funds and equivalent in-kind contributions including, but not limited to, land donations. The memorandum of understanding must be finalized by July 1, 2018. The department must submit a copy of the memorandum of understanding to the transportation committees of the legislature and report regularly on the status.

To this end, the Executive Committee of the Gateway Program convened a Funding and Phasing Subcommittee (Subcommittee) to develop a MOU that summarizes their planned future commitments and planned timing of those commitments to contribute to the SR 167 and SR 509 projects.

The Subcommittee goals include:

- Support efforts to build the Gateway projects on or ahead of schedule
- Create successful local partnerships
- Obtain sufficient local funding to build the Puget Sound Gateway projects
- Time grant-funding projects to support the project delivery schedule

The construct of local funding participation, when authorized by the legislative bodies of the relevant agencies through a series of forthcoming interlocal agreements, is based on the following projections:

	SR 167	SR 509	TOTAL
Port contributions	\$30 million	\$30 million	\$60 million
Federal INFRA grant	\$10 million	\$10 million	\$20 million
Local agency partner match	\$10 million	\$10 million	\$20 million
Other Grants (PSRC, FMSIB, TIB)	\$20 million	\$10 million	\$30 million
Total	\$70 million	\$60 million	\$130 million

3. Local Funding Strategy

A key element of the local funding strategy is to identify projects within the Gateway Program that provide clear and measurable benefits to local jurisdictions. In the Gateway Program, these are called "Local Nexus Projects," are designed to:

- Create a positive business case for Local Agency Partners by focusing on the parts of the program that are most relevant and important to local jurisdictions
- Leverage the potential to access significant grant funding to support local funding assumptions

In support of the local funding strategy, Local Agency Partners shall:

- Participate, co-fund match, and submit grant applications with support from Subcommittee staff, as identified in Section 6 of this MOU
- Combine local monetary and in-kind contributions and project funds to ensure fully-funded applications, as identified in Section 6 of this MOU
- Support the grant effort and avoid competition with the local projects in the year of application

The following Local Nexus Projects have been identified within the north (SR 509) and south (SR 167) segments of the Gateway Program:

Gateway North (SR 509)	Gateway South (SR 167)
188 th South Ramps	Meridian West Ramps
SeaTac Access, with Ramps to 28 th /24 th Avenue South	54 th Avenue East Ramps
Veterans Drive Extension	Interurban Trail
Lake to Sound Trail	Valley Avenue West Ramps
	Port of Tacoma Access/SR 509 Spur
	70 th Avenue E Bridge Relocation

If Local Nexus, INFRA, and any other pending grant projects become fully funded, these projects will contribute substantially toward the Legislative requirement for local match. Funding commitments will be achieved via an interlocal agreement from each signing party up to the amounts presented in this MOU. Local Agency Partner signatories to this MOU understand that once the local contribution requirements set forth in ESB 5096 (\$130 million) is achieved, that Local Agency Partners will not be required to commit to additional funds beyond what is outlined in this MOU. If additional grant funding or additional funds from other sources are obtained that fulfill the \$130 million local contribution requirement, the Secretary of Transportation and the Executive Committee will review and determine to either reduce local agency partner match payments, or recommend expanding scope of the Gateway Program, and amend each signing party’s interlocal agreement accordingly.

4. Local Participation Policy

The Joint Executive Committee has agreed to a funding and phasing policy that structures local agency partner match requirements to be commensurate with the benefits accrued from the project at a local level. This policy states that:

All local agency partners accrue some benefit from the Puget Sound Gateway Program. Partners receiving fewer benefits, however, are not expected to contribute as much as partners who receive more benefits. Direct benefits are those that are most quantifiable, but there are other components of value that include indirect, strategic and policy/social benefits. Both direct and indirect benefits will be assessed as part of the consideration of local contributions, because they are more easily quantifiable than strategic and policy/social benefits.

All Local Agency Partner signatories of this MOU expect to seek approval of interlocal agreements to contribute a match to be applied to Local Nexus Projects at a level that reflects their respective anticipated level of benefit, as identified in Section 6 of this MOU.

5. Benefit Assessment Methodology

The proposed financial participation by each partner is based on a general, qualitative assessment of the net benefits expected to be received by full completion of the Gateway Program. The assessment includes the following metrics, based on available project data and transportation modeling outputs:

- **Direct transportation linkages.** The location of direct access points for new limited access highways or other transportation infrastructure that benefits the community.
- **Effects on local sales taxes.** The impacts of the projects to sales tax receipts, both in terms of one-time construction sales taxes for the project, and ongoing sales taxes from impacts to commercial uses.
- **Travel time savings.** Overall travel time savings for local car and truck traffic associated with the projects.
- **Traffic diversion from local streets.** The diversion of, or increase in, traffic on local arterials due to the project, with associated positive impacts to traffic safety and local road maintenance.
- **Effects on local employment.** The potential effects of improved accessibility are reviewed, particularly in the context of access to new or potential employment uses.
- **Effects on developable residential lands.** The potential impacts of changes in traffic flow and accessibility on residential land development, with a focus on areas within the jurisdiction that are available for redevelopment.
- **Effects on developable employment lands.** The potential impacts of changes in traffic flow and accessibility on the development or redevelopment of commercial and industrial lands.
- **Achievement of local policy goals.** The alignment of the WSDOT Gateway Program with local plans and policies.
- **Environmental and social benefits.** Environmental and social benefits specifically linked to these projects, including upgrades to pedestrian and cycling infrastructure, and wetlands and riparian restoration.

The approach and findings of the benefits assessments have been provided to the Local Agency Partners.

6. Local Jurisdiction Anticipated Contributions to the Program

Based on results from the benefit assessment described in Section 5, contributions for each of the Local Agency Partners were determined by project stage in the tables below. Following execution of this MOU, interlocal agreements will be drafted for subsequent approval. Anticipated contributions only become binding commitments when embedded in interlocal agreements, and the conditions therein are approved by the proposed funding entity. Interlocal agreements between WSDOT and the respective Local Agency Partner must be in place for a project prior to issuance of the Request for Proposals (RFP) for any proposed construction contract. The interlocal agreements will become binding commitments, within the statutory authority of the Local Agency Partner, and will define the schedule of local match payments expected over the duration of each construction project stage.

WSDOT will exercise due diligence to develop and construct each project on schedule within the Gateway Program to the best of its abilities. Local Agency Partners will participate in project development reviews and project meetings in support of the Gateway Program.

If grant pursuits identified in the Stage 1 and Stage 2 tables below are not achieved sufficient to meet the \$130 million local contribution, additional grants will be pursued from the funding programs listed or from other funding programs that may become available over the life of the Gateway Program. If Local Nexus Projects go to construction without planned grants, the Local Agency Partner match funds will still be provided by agreement with WSDOT. If it is determined that a Local Nexus Project cannot be fully funded, WSDOT will review options with the Executive Committee. If an official decision is determined by the Executive Committee and the Secretary of Transportation that the Local Nexus Project is not to be included in a construction project, the Local Agency Partner match may be withdrawn.

Stage 1 Grant Pursuits for Local Nexus Projects

Project	Estimated Construction Cost	Funding Program	Grant Target Amount	Target Due Mo/Year	Anticipated Construction Expenditure	Local Agency Partner Match	Partner Nexus
70 th Avenue E/Interurban Trail	\$32,245,600	FMSIB	\$5,000,000	Mar 2018	2019-2021	\$800,000 \$500,000 \$3,000,000	Fife Tacoma Port of Tacoma
		TIB	\$5,000,000	Aug 2018	2019-2021		
		State Capital & Transportation	\$1,400,000	Mar 2018	2019-2021		Fife
Veterans Drive/ SR516 Interchange	\$33,800,000	PSRC	\$4,500,000	Apr 2018	2021-2025	\$1,000,000	Kent
		TIB	\$5,000,000	Aug 2020	2021-2025	\$1,000,000	Kent
SeaTac Access	\$176,883,500	PSRC	\$4,500,000	Apr 2018	2021-2025	\$2,000,000 \$500,000	SeaTac (ROW in lieu) Des Moines

Port of Tacoma Access/509 Spur	\$323,042,000	PSRC	\$4,500,000	Apr 2018	2021-2025	\$1,500,000 \$3,000,000 \$800,000	Tacoma Port of Tacoma Fife
		FMSIB	\$5,000,000	Mar 2020	2021-2025		
All Gateway Program		INFRA	\$20,000,000*	Nov 2017	2019-2021		
SR 167 Stage 1		Port of Tacoma		Jan 2021	2021-2025	\$9,000,000	Port of Tacoma
SR 509 Stage 1		Port of Seattle		Jan 2021	2021-2025	\$15,000,000	Port of Seattle (expected in 2023-2025)
Total Stage 1			\$54,900,000			\$38,100,000	\$93,000,000

Stage 2 Future Grant Pursuits for Local Nexus Projects

Project	Estimated Construction Cost	Funding Program	Grant Target Amount	Target Due Mo/Year	Anticipated Construction Expenditure	Local Agency Partner Match	Partner Nexus
Meridian Avenue Interchange		TBD	\$3,000,000	2022	2026-2030	\$2,000,000	Puyallup
Valley Avenue Interchange		TBD	\$3,000,000	2022	2026-2030	\$2,000,000	Pierce County
188 th Street Interchange improvements		TBD	TBD	2023	2026-2030	TBD	SeaTac
SR 167 Stage 2		TBD	\$4,000,000	2022	2026-2030	\$500,000	Edgewood (ROW in lieu) Sumner
		Port of Tacoma				Jan 2026	2026-2030
SR 509 Stage 2		TBD	\$4,000,000	2024	2026-2030		
		Port of Seattle				Jan 2026	2026-2030
Total Stage 2			\$14,000,000			\$35,000,000	\$49,000,000
Total Stages 1 & 2			\$68,900,000			\$73,100,000	\$142,000,000

* – If no INFRA, apply for FHWA BUILD grant for Port of Tacoma Access (SR 509 Spur)

TBD – grant funding program pursuit to be determined in future

7. Terms and Termination

7.1. Amendments

This MOU shall be periodically reviewed and evaluated regarding the need for modifications or amendments by mutual determination of WSDOT and Local Agency Partners. Amendments to the MOU shall be required if program funding assumptions need to be adjusted that affect the ability to construct the identified Local Nexus Projects or the ability to achieve the \$130 million local contribution. Such amendments shall only be binding if they are in writing and signed by authorized personnel from all of the Local Agency Partners. Except as set forth in an amendment, the MOU will be unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict

between an amendment and the MOU or any earlier amendment, the terms of the most recent amendment will prevail.

If there is a conflict between subsequent interlocal agreements and the MOU or any earlier amendments, the terms of the interlocal agreements will prevail.

Changes that do not affect the ability to construct the identified Local Nexus Project or achieve the \$130 million local contribution shall be addressed through the interlocal agreement between WSDOT and the relevant Local Agency Partner.

7.2. Dispute Resolution

Should any signatory to this MOU object at any time to any actions proposed or the manner in which the terms of this MOU are implemented, the Executive Committee shall hear the dispute first and if the disputant(s) is/are not satisfied with the Committee's proposed decision, the Committee will send to the Secretary of Transportation its proposed solution and all documentation relevant to the dispute. The Secretary of Transportation shall provide the Executive Committee with his/her advice on how to resolve the dispute within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Executive Committee shall prepare a written response that considers any timely advice or comments regarding the dispute from the Secretary of Transportation, signatories and other interested parties, and provide them with a copy of this written response. WSDOT will then proceed according to this final decision.

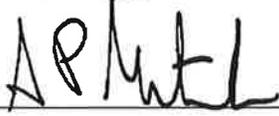
7.3 Conditions for Termination of Participation

Subject to legislative appropriation and all applicable laws, each signatory shall ensure that the Gateway Program is carried out in accordance with the terms of the MOU and subsequent interlocal agreements. A signatory may terminate its participation in this MOU if its terms cannot be met and by providing written notice to the Secretary of Transportation and the Executive Committee a minimum of 180 calendar days before a project issues an RFP that relies on that local agency partner funding. Prior to providing written notice terminating participation, however, the signatories shall consult with WSDOT to determine whether an amendment to the MOU might be feasible. If a signatory terminates its participation, WSDOT will then consult with the Executive Committee to determine if project scope elements need to be removed if contributions are not realized in accordance with this understanding.

8. Period of Agreement.

This MOU will commence on July 1, 2018 and will dissolve when the \$130 million of local contribution have been secured, or when the Local Nexus Projects have been constructed and are complete.

9. Signatories



Stephen P. Metruck
Executive Director
Port of Seattle

6/21/18

Date



John Wolfe
Chief Executive Officer
Port of Tacoma

5/30/18

Date



Dow Constantine
County Executive
King County

6/22/18

Date



Bruce Dammeier
County Executive
Pierce County

5/30/18

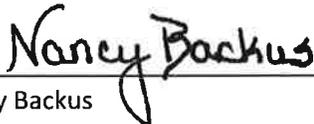
Date



David E. Hill
Mayor
City of Algona

6/25/18

Date



Nancy Backus
Mayor
City of Auburn

6/11/18

Date



Brian Wilson
City Manager
City of Burien

6/17/18

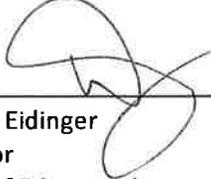
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Michael Matthias
City Manager
City of Des Moines

6/26/18

Date



Daryl Eidinger
Mayor
City of Edgewood

6/13/18

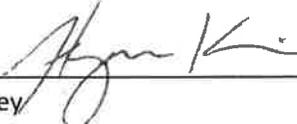
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Jim Ferrell
Mayor
City of Federal Way

6/20/18

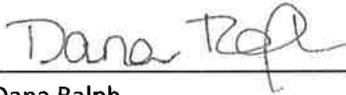
Date



Pat Hulcey
Councilmember
City of Fife

6/20/18

Date



Dana Ralph
Mayor
City of Kent

6/26/18

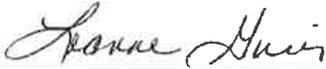
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Shanna Styron-Sherrell
Mayor
City of Milton

6/21/18

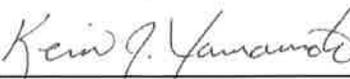
Date



Leanne Guier
Mayor
City of Pacific

6/21/18

Date



Kevin Yamamoto
City Manager
City of Puyallup

6/12/18

Date

*Appas Form:
Molly M. Pugh Baroto, Seatac*

Joseph Scorcio
City Manager
City of SeaTac

6/28/18

Date

William L. Pugh

William L. Pugh
Mayor
City of Sumner

6/8/18

Date

Elizabeth A. Pauli

Elizabeth A. Pauli
City Manager *Approved as to form*
City of Tacoma

6/27/18

Date

Roger Millar

Roger Millar
Secretary of Transportation
Washington State Department of Transportation

6/27/18

Date



City of Des Moines

ADMINISTRATION
21830 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



March 29, 2018

Craig Stone
Program Administrator – Puget Sound Gateway Program
Washington State Department of Transportation
310 Maple Park SE
Olympia, WA 98504

RE: SR 509 – Local Funding Commitment

Dear Mr. Stone:

The City of Des Moines supports the Puget Sound Gateway Program including the SR 509 Extension project in King County. We know that the City of Kent is applying for Surface Transportation Program grant funds through the PSRC for their Veterans Drive Extension project, and that WSDOT will also be applying for Surface Transportation Program grant funds through the PSRC for the SeaTac Access Project.

The Des Moines City Council voted at their March 22, 2018 meeting to commit a total of \$500,000 of matching funds for grant applications related to the SR 509 Extension Project. The City is willing to work with the project team(s) to determine where it would be most advantageous to use these matching funds, in order to provide the most leverage to the overall grant process. Des Moines wants to see both projects selected for grant funding, and the City is willing to partner on one or both of these projects, or other projects related to the SR 509 Project.

The financial commitment provided by Des Moines will go towards meeting the local contribution mandated by the Washington State Legislature when the Connecting Washington Transportation package was passed, and is intended to fully meet our match contribution, relative to the net benefits of the SR 509 project. I intend for the City's financial participation to be generally addressed in the Memorandum of Understanding (MOU) currently under review by the SR 509 Executive Committee, with more specific details to be covered by interlocal agreements to be developed at a later date.

Please let me know if you have any questions or need any other information.

Sincerely,

Michael Matthias
City Manager

cc: Dan Brewer, Chief Operations Officer
Brandon Carver, Public Works Director
Andrew Merges, Transportation Manager

The Waterland City



Puget Sound Gateway SR 509/SR167
 SR 509: 999 3rd Ave, Ste. 2200
 Seattle, WA 98104
 SR167: 5720 Capital Blvd SE
 Tumwater, WA 98501
 206-464-1220
 TTY: 1-800-833-6388
www.wsdot.wa.gov

December 15, 2019

Daniel J. Brewer, P.E., P.T.O.E.
 Chief Operations Officer
 City of Des Moines
 21630 11th Avenue South, Suite D
 Des Moines, WA 98198

RE: Puget Sound Gateway Terms of Understanding

Dear Mr. Brewer:

I am responding to your July 18, 2019 email message listing questions posed by your Council Transportation Committee regarding the Puget Sound Gateway Program (SR-509 completion). WSDOT and the City subsequently met on August 7, 2019 and discussed following up with Terms of Understanding. The City and WSDOT are currently finalizing The Puget Sound Gateway Local Funding Agreement GCB 3046 to implement the multi-agency Memorandum of Understanding adopted July 1, 2018. I hope to advance the successful adoption of the Local Funding Agreement while also addressing questions and concerns of your Council Transportation Committee through the following Terms of Understanding.

The Puget Sound Gateway Program (PROGRAM) consists of multiple project stages to complete the SR 167 Corridor in Pierce County and the SR 509 Corridor in King County. These Terms of Understanding pertain only to the SR 509 Completion in King County. The SR 509 portion of the PROGRAM consists of three construction stages:

- Stage 1a, the SR 99/SR 509 bridge now under construction in partnership with Sound Transit,
- Stage 1b, the limited access freeway and ramps connecting I 5 to the 28th/24th Avenue South corridor and auxiliary lanes on I 5 along with modifications to the SR 516 Interchange, and
- Stage 2, the limited access freeway and interchanges from 28th/24th Avenue South to South 188th Street.

Responses to City Council Transportation Committee Questions:

1. Disposition of existing SR 509 / SR 516.

When the SR 509 freeway connection to I-5 is complete in late-2028, sections of the existing SR 509 roadway within the cities of Burien, Normandy Park, Des Moines, and Federal Way either need to be turned back to the local jurisdictions or re-designated as part of the State of Washington highway system. The decision-making process for the turnback

or re-designation will be conducted in consultation and partnership with the affected cities to ensure transparency and consideration of their related questions and concerns. This decision-making process will take into account existing state codes (RCW 47.24.010), policies and precedents, as they apply to SR 509. The determination of the future jurisdiction of existing SR 509 will occur during the initiation of the SR 509 Stage 2 construction contract, which is expected to begin in early 2024 and will complete the new freeway connection to I-5 by late-2028. WSDOT will coordinate with the affected cities before construction to ensure full consideration of all issues affecting final decision-making.

2. Sales tax revenue.

Section 1-07.2 of the SR 509 Stage 1b Design-Build (D-B) contract will include requirements for the State's contractor to follow state sales tax payment rules, and to include all applicable taxes in their fixed price bid. The Washington State Department of Revenue then distributes those tax proceeds to the cities where SR 509 work is being performed. WSDOT's preliminary estimate indicates approximately Two Hundred Sixty Seven Thousand Dollars (\$267,000) in sales tax proceeds will be distributed to the City of Des Moines. The actual amount of sales tax will be based on the design-build contractor's final design and could be slightly higher or lower depending on the details of their specific plan within city limits.

3. Completion of Full Phase 1 Scope.

WSDOT plans to construct the entire corridor according to the scope as agreed to by the Puget Sound Gateway Executive Committee in May 2018 and funded by the State Legislature. The approved description of SR 509 work reflects the State's commitment to build a 4-lane limited access freeway between South 188th Street and a new I-5/SR 509 interchange, with an intermediate access point at 28th/24th Avenue South. WSDOT intends to pursue all potential federal, state and local funding sources to ensure full funding for this scope. This approach includes tolling of the new freeway segment, which was authorized in the 2019 State Legislative Transportation budget.

4. Timing of Payments.

WSDOT has flexibility on the timing the \$500,000 contribution by the City of Des Moines. We understand the City Council wants the payment linked to project milestones and we propose to use the issuance of the Notice to Proceed on SR 509 Completion, Stage 2 at the project milestone. This milestone provides additional reliability of completion of the entire corridor. We wish to reserve flexibility concerning the specific use of those funds on any portion of SR 509 Completion then under construction so the funds can be used as match to grants for any part of the corridor if necessary.

5. Noise Mitigation.

WSDOT is sensitive to the concerns of the Des Moines City Council regarding cumulative noise impacts from highway, rail and airport sources in the community. WSDOT is both committed and required to mitigate for highway noise tied to our improvement projects, within applicable state and federal noise policies. WSDOT and Sound Transit signed a Letter of Understanding on October 28, 2019 to guide our cooperation on noise mitigation for the Sound Transit Federal Way Link Extension (FWLE) project and SR 509 Stage 1b project, which overlap and are proceeding in parallel. WSDOT is committed to ensuring that the mitigation required within our construction contract has taken into account the final proposed mitigation design within the FWLE project, so that full complementary rail and highway noise mitigation is provided along the I-5 corridor area of project overlap.

With respect to all SR 509 noise mitigation efforts, WSDOT commits to sharing noise analysis methodology and all draft analysis findings with the City of Des Moines and other appropriate local jurisdictions, if requested, as well as with the Port of Seattle and Sound Transit in the context of assessing more global affects to ensure that WSDOT's proposed highway noise mitigation is effective and provides discernable benefit. WSDOT will request comments on the noise analysis from the City of Des Moines and other appropriate local jurisdictions and will endeavor to revolve all comments to the satisfaction of all parties.

6. Permitting.

WSDOT is committed to obtain all necessary permits for the SR 509 Completion Project. The Stage 1b construction contract has a very limited scope of work inside City of Des Moines right-of-way, including striping and curbing on SR 516, and grading, paving, and striping on 216th Street. For the work in the City of Des Moines right of way, WSDOT will obtain Type B or Type C Right of Way Use Permits. (Note – The City of Des Moines grading permit is used on construction covered by a Master Development or Building permit).

WSDOT's Design-Builder will also obtain Noise Variances for the night work that affects the City of Des Moines.

Based on 2003 Environmental Impact Statement and Record of Decision for the Puget Sound Gateway Program, and Washington State Law, an Essential Public Facility permit for the SR 509 and I-5 work within Des Moines city limits is not required.

WSDOT will file property purchase deeds with King County. WSDOT will provide King County access to the final SR 509 and I-5 right of way plans. Necessary revisions to the

approved Right-Of-Way plans, title, etc., due to the FWLE/SR 509 Land Exchange process will start in 2020.

7. Construction Impacts.

WSDOT is committed to being an inclusive partner ahead of and during every phase of SR 509 and I-5 construction. This includes sharing relevant draft contractual language ahead of the design-build contract procurement process with City of Des Moines staff who have agreed to our confidentiality requirements. This also includes sharing (again, under confidentiality requirements) Alternative Technical Concepts (ATC's) that design-builders may propose to alter the WSDOT base contractual design concept and requirements for elements within or adjacent to the City of Des Moines.

Finally, once a construction contract is awarded and the design-builder mobilizes for the final design effort leading into construction, WSDOT commits to inviting City of Des Moines staff to participate in all relevant task force meetings, as well as providing WSDOT construction staff contacts in the case of questions or issues requiring coordination.

It is WSDOT's goal to be transparent and invite City of Des Moines staff to participate in all relevant aspects of delivering the SR 509 project, in order to minimize negative impacts while maximizing positive opportunities.

Sincerely,

<NamePlaceholder (Upper/Lower Case)>

<TitlePlaceholder (Upper/Lower Case)>

<XX:xx>

Enclosure <enclosurePlaceholder>

cc: <ListPlaceholder>

**Washington State Department of Transportation
(WSDOT) and the Cities of Des Moines, SeaTac,
Kent, and King County Metro**

MEMORANDUM OF UNDERSTANDING (MOU)

For

**DESIGN and CONSTRUCTION of the SR 509
Completion Project: SR 516 Interchange
Reconstruction**

This MOU documents agreement between the cities of Des Moines, SeaTac, Kent, and King County Metro (the LOCAL AGENCIES), and the Washington State Department of Transportation (WSDOT/STATE), hereafter known as the “Parties” or individually as the “Party”, on the SR 516 Interchange Reconstruction Project (the PROJECT) in Kent and Des Moines, Washington.

WSDOT will construct the PROJECT improvements as described in this MOU and shown in Exhibit A.

1. Background

The Parties have had ongoing discussions that resulted in design decisions by WSDOT/STATE for elements within the PROJECT. Those decisions and elements are incorporated into this MOU and are identified in Exhibit A, attached hereto and by this reference made part of this MOU. It is anticipated by the Parties that these decisions and elements will be incorporated into designs, contracts and/or other related agreements, supplements, and/or amendments, for this PROJECT.

2. Basis of Understanding

The LOCAL AGENCIES and WSDOT/STATE agree the Project shall include the following elements:

- Modify and construct new ramp connections to SR 516 in order to accommodate proposed Veterans Dr.
- Widen SR 516 between the ramp terminals.
- Construct 10' sidewalk on the south side of SR 516 between Military Rd. and FWLE improvements near 30th Ave. S. City of Kent responsible for the cost of sidewalk above 5' in width.
- Construct 10' Multi-Use Path with shoulders on the north side of SR 516 between Military Rd. and 30th Ave. S.
- Extend sidewalk and new bus passenger facility east of Military Rd. along SR 516 EB.
- Re-establish pedestrian connection between the Kent Des Moines Park and Ride and the new multi-use path on the north side of SR 516.
- Install infrastructure for reverse queue jumps in bus pullouts along SR 516
- Construct six new 130' bus stops with concrete pads for shelters. The bus stops detailed below are identified in Exhibit A.
 - 1) EB SR 516 farside of Military Rd. – 327.5' long (60' ingress, 130' zone, 27.5' zone extension, 110' egress)

- 2) SB Military Rd. farside of SR 516 – In-Lane Stop – No Pullout – 130’ zone
- 3) 4I-5 NB On-Ramp - In-Lane Stop – No Pullout – 130’ zone
- 4) WB SR 516 farside NB I-5 On-Ramp – 230’ long (60’ ingress, 130’ zone, 40’ egress)
- 5) EB SR 516 farside SB I-5 On-Ramp - 230’ long (60’ ingress, 130’ zone, 40’ egress)
- 6) I-5 SB On-Ramp - 190’ long (60’ ingress, 130’ zone)

The work associated elements will include new pavement as well as pavement overlay within the limits of the improvements.

The City of Kent will be invited to attend Task Force Meetings regarding Maintenance of Traffic, signals, and roadway.

WSDOT/STATE and the appropriate cities will negotiate maintenance agreements in a separate document.

Activation of reverse queue jumps subject to King County Metro operations traffic analysis after the PROJECT opens.

3. Endorsement

IN WITNESS WHEREOF, the undersigned Parties have executed this MOU as of the last date written.

CITY OF KENT

CITY OF SEATAC

By: _____

By: _____

Date _____

Date _____

KING COUNTY METRO

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____

By: Craig Stone
Puget Sound Gateway Program Administrator

Date _____

Date _____

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Interlocal Agreement - Valley Special Weapons and Tactics Team

FOR AGENDA OF: March 12, 2020

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: March 5, 2020

- 1. Addendum 1 to the ILA
- 2. ILA Between Auburn, Federal Way, Kent, Renton, Tukwila and the Port of Seattle for the Creation of the Valley Special Weapons and Tactics Team

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- Legal *tg*
- Finance _____
- Courts _____
- Police *mf*

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

Purpose and Recommendation

The purpose of this agenda item is for the Council to consider approval of Addendum 1 to the Interlocal Agreement between Auburn, Federal Way, Kent, Renton, Tukwila and the Port of Seattle for the Creation of the Valley Special Weapons and Tactics Team. Approval of the Addendum will allow the City of Des Moines to join this team. The following motion will appear on the Consent Calendar.

Suggested Motion

Motion 1: "I move to approve Addendum 1 to the ILA between Auburn, Federal Way, Kent, Renton, Tukwila and the Port of Seattle authorizing the City of Des Moines to join the Valley Special Weapons and Tactics Team, and to authorize the City Manager to sign the Addendum substantially in the form as attached."

Background

In 2010, the municipalities of Auburn, Federal Way, Kent, Renton, Tukwila, and the Port of Seattle executed an Interlocal Agreement (ILA) for the purpose of establishing and maintaining a multi-jurisdictional SWAT Team to respond to high risk criminal occurrences. The SWAT team is a partnership among jurisdictions and was created to address the number of increasing violent criminal confrontations due to, among other reasons, increased gang activity; increased drug abuse, distribution and manufacturing; increased urbanization; and increased population densities.

Discussion

The ability to safely control, contain, and resolve high risk criminal incidents such as civil disobedience, barricaded subjects, hostage situations, gang member arrests, high risk felony arrests and narcotic or high risk search warrants is a strain to the resources of individual police departments.

A multi-jurisdictional effort to handle specific high risk criminal incidents, as well as incidents involving weapons of mass destruction, results in more effective pooling of personnel, improved utilization of municipal funds, reduced duplication of equipment, improved training, development of specialized expertise, and increased utilization/application of a combined special response team.

The City of Des Moines has required the use of the SWAT team in the past although the City has not been a member. The Police Department is seeking formal entry into the team and has been granted approval by the Executive Board pending approval of this Addendum.

Alternatives

Not approve the Addendum and therefore not become a member.

Financial Impact

The police department has \$20,000 in the budget to cover participation in SWAT. If the Des Moines Police Department were not a member of Valley SWAT, the City likely would be charged for emergency SWAT services. In the case of a very significant incident, not being a part of SWAT could cost the city significantly more than that of being part of the team.

Recommendation

The Police Department recommends approval of the Addendum.

**ADDENDUM 1: TO THE
INTERLOCAL COOPERATIVE AGREEMENT BETWEEN AUBURN,
FEDERAL WAY, KENT, RENTON, TUKWILA, AND THE PORT OF SEATTLE, FOR
THE CREATION OF THE VALLEY SPECIAL WEAPONS AND TACTICS TEAM**

WHEREAS, the document dated August 19, 2010 entitled “Interlocal Cooperative Agreement (ILA) between Auburn, Federal Way, Kent, Renton, Tukwila, and the Port of Seattle, for creation of the Valley Special Weapons and Tactics (SWAT) Team” was executed by the participating jurisdictions for the purpose of establishing and maintaining a multi-jurisdictional SWAT Team to respond to high risk criminal occurrences, and

WHEREAS, pursuant to Section IV of the Agreement, the future admission of a jurisdiction as a member of the SWAT Team may be accomplished by an addendum to the agreement, and

WHEREAS, the City of Des Moines has petitioned the Executive Board for membership and has received unanimous approval subject to approval of this Addendum;

NOW, THEREFORE, in consideration of the foregoing, THE PARTIES HERETO AGREE as follows:

Pursuant to the approval and execution of this Addendum, the City of Des Moines will be admitted as a member of the Valley SWAT Team subject to the terms of the existing Valley SWAT Team Interlocal Agreement.

Except as modified hereby, all other terms and conditions of the Valley SWAT Team Interlocal Agreement remain in full force and effect.

This Addendum shall be executed on behalf of the City of Des Moines and each participating jurisdiction by its authorized representative pursuant to an appropriate resolution or ordinance of the governing body of the City of Des Moines and each participating jurisdiction. This Addendum shall be deemed effective upon the last date of execution by the last authorized representative. This Addendum may be executed by counterparts and be valid as if each representative had signed the original document.

By signing below, the signor certifies that he or she has the authority to sign this Addendum on behalf of the jurisdiction, and the jurisdiction agrees to the terms of this Addendum.

Chief Executive Officer, Port of Seattle Date

Port Counsel, Port of Seattle Date

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CAG-10-160

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN AUBURN,
FEDERAL WAY, KENT, RENTON, TUKWILA, AND THE PORT OF
SEATTLE, FOR CREATION OF THE**

**VALLEY SPECIAL WEAPONS AND TACTICS
TEAM**

I. PARTIES

The parties to this Agreement are the Port of Seattle and the municipalities of Auburn, Federal Way, Kent, Renton, and Tukwila, each of which is a municipal corporation operating under the laws of the State of Washington.

II. AUTHORITY

This Agreement is entered into pursuant to Chapters 10.93, 39.34, and 53.08 of the Revised Code of Washington.

III. PURPOSE

The parties hereto desire to establish and maintain a multi-jurisdictional SWAT Team to effectively respond to high risk criminal occurrences as described below.

IV. FORMATION.

There is hereby created a multi-jurisdictional Team to be hereafter known as the "Valley Special Weapons and Tactics Team" ("VSWAT"), the members of which shall be the Port of Seattle, and the cities of Auburn, Federal Way, Kent, Renton, and Tukwila. The SWAT Team has been in existence for some time, and this Agreement is being re-entered into in order to remove the City of Des Moines as a SWAT Team member. The future admission or elimination of a jurisdiction as a member of the SWAT Team may be accomplished by an addendum to this agreement.

V. STATEMENT OF PROBLEM

King County and the municipalities within the Puget Sound area have experienced increasingly violent criminal confrontations due to, among other reasons, increased gang activity; increased drug abuse, distribution, and manufacturing; increased urbanization; and increased population densities. The ability to safely control, contain, and resolve high risk criminal incidents such as civil disobedience, barricaded subjects, hostage situations, gang member arrests, high-risk felony arrests, and narcotic or high risk search warrants has strained the resources of the members' individual police departments.

Law enforcement efforts directed at dealing with these high risk criminal incidents have, for the most part, been conducted by law enforcement agencies working independently. A multi-jurisdictional effort to handle specific high risk criminal incidents, as well as incidents involving weapons of mass destruction, results in more effective pooling of personnel, improved utilization of municipal funds, reduced duplication of equipment, improved training, development of specialized expertise, and increased utilization/application of a combined special response team. This results in improved services for the citizens of all participating jurisdictions, increased safety for officers and the community, and improved cost effectiveness.

VI. TEAM OBJECTIVES

The individual specialty units from each participating jurisdiction will be consolidated and combined to form the VSWAT Team. The SWAT Team shall service each participating jurisdiction. The VSWAT Team may also be available to outside law enforcement agencies as provided by chapter 10.93 RCW.

The objective of the VSWAT Team is to respond to specific high risk criminal incidents in a manner that provides for the effective use of personnel, equipment, funds, and training. The VSWAT Team shall respond as requested by any of the participating jurisdictions and provide a coordinated response to high-risk incidents. As special needs arise, it may be necessary to request from other law enforcement agencies assistance and/or personnel, at the discretion of the VSWAT Team Incident Commander and/or the VSWAT Team Tactical Commander.

VII. DURATION AND TERMINATION

The minimum term of this Agreement shall be one (1) year, effective upon its adoption. This Agreement shall automatically extend for consecutive one (1) year terms without action of the legislative bodies of the participating jurisdictions, unless and until terminated pursuant to the terms of this Agreement.

A jurisdiction may withdraw its participation in the VSWAT Team by providing written notice of its withdrawal, and serving such notice upon each Executive Board member of the remaining jurisdictions. A notice of withdrawal shall become effective ninety (90) days after service of the notice on all participating members.

The VSWAT Team may be terminated by a majority vote of the Executive Board. Any vote for termination shall occur only when the police chief of each participating jurisdiction is present at the meeting in which such vote is taken.

VIII. GOVERNANCE

The affairs of the Team shall be governed by an Executive Board ("Board"), whose members are composed of the police chief, or his/her designee, from each participating jurisdiction. Each member of the Board shall have an equal vote and voice on all Board decisions. All Board decisions shall be made by a majority vote of the Board.

members, or their designees, appearing at the meeting in which the decision is made. A majority of Board members, or their designees, must be present at each meeting for any actions taken to be valid. A presiding officer shall be elected by the Board together with such other officers as a majority of the Board may decide.

The Board shall meet monthly, unless otherwise determined by the Board. The presiding officer, or any Board member, may call extra meetings as deemed appropriate. The presiding officer shall provide no less than forty-eight (48) hours notice of all meetings to all members of the Board; PROVIDED, however, that in emergency situations, the presiding officer may conduct a telephonic meeting or a poll of individual Board members to resolve any issues related to such emergency.

The policies, regulations, and operational procedures in effect pursuant to the previous interlocal agreement shall be in effect without action of the Board and until such time as they are subsequently altered by the Board. The VSWAT Team written policies, regulations, and operational procedures shall apply to all VSWAT Team operations. Thus, to the extent that the written policies, regulations, and operational procedures of the VSWAT Team conflict with the policies, regulations, and operational procedures of the individual jurisdictions, the VSWAT Team written policies, regulations, and procedures shall prevail.

IX. STAFF

A Tactical Commander, which shall be a command level officer, shall be appointed annually by the Board to act as the principal liaison and facilitator between the Board and the members of the VSWAT Team. The Tactical Commander shall operate under the direction of the presiding officer of the Board. The Tactical Commander shall be responsible for informing the Board on all matters relating to the function, expenditures, accomplishments, training, number of calls that the VSWAT Team responds to, problems of the VSWAT Team, and any other matter as requested by the Board. The Tactical Commander may be removed by action of the Board at anytime and for any reason, with or without cause.

The Tactical Commander shall prepare monthly written reports to the Board on the actions, progress, and finances of the VSWAT Team. In addition, the Tactical Commander shall be responsible for presenting rules, procedures, regulations, and revisions thereto for Board approval.

Each jurisdiction shall contribute six (6) full-time commissioned officers, which shall include at least one (1) Sergeant or other first level supervisor, to be assigned to the VSWAT Team. Board approval must be obtained for the jurisdiction to assign less than this staffing requirement. The personnel assigned to the VSWAT Team shall be considered employees of the contributing jurisdiction. The contributing jurisdiction shall be solely and exclusively responsible for the compensation and benefits for the personnel it contributes to the VSWAT Team. All rights, duties, and obligations of the employer and the employee shall remain with the contributing jurisdiction. Each jurisdiction shall be responsible for ensuring compliance with all applicable laws with

regard to employees and with provisions of any applicable collective bargaining agreements and civil service rules and regulations.

The Board may appoint the finance department of a participating jurisdiction to manage the finances of the VSWAT Team. Before appointing the finance department of a particular jurisdiction to manage the finances of the VSWAT Team, the Board shall consult with the finance department of the jurisdiction and obtain its approval. The duty of managing the finances of the VSWAT Team shall be rotated to other participating jurisdictions at the discretion of the Board.

The Board may, at its discretion, appoint one (1) or more legal advisors to advise the Board on legal issues affecting the VSWAT Team. The legal advisor(s) shall, when appropriate or when requested by the Board, consult with the legal representatives of all participating jurisdictions before rendering legal advice.

X. COMMAND AND CONTROL

During field activation of the VSWAT Team, an Incident Commander, VSWAT Team Tactical Commander, and VSWAT Team Team Leader(s) will be designated. The duties and procedures to be utilized by the Incident Commander, the VSWAT Team Tactical Commander, and the VSWAT Team Team Leader(s) shall be set forth in the standard operating procedures approved by the Board. The standard operating procedures approved by the board may designate other personnel to be utilized during an incident.

XI. EQUIPMENT, TRAINING, AND BUDGET

Each participating jurisdiction shall acquire the equipment of its participating VSWAT Team members. Each participating jurisdiction shall provide sufficient funds to update, replace, repair, and maintain the equipment and supplies utilized by its participating VSWAT Team members. Each participating jurisdiction shall provide sufficient funds to provide for training of its participating VSWAT Team members.

The equipment, supplies, and training provided by each jurisdiction to its personnel participating in the VSWAT Team shall, unless otherwise determined by the Board, be equal to those provided by the other participating jurisdictions.

Each member jurisdiction shall maintain an independent budget system to account for funds allocated and expended by its participating VSWAT Team members.

The Board must approve any joint capital expenditure for VSWAT Team equipment.

XII. DISTRIBUTION OF ASSETS UPON TERMINATION

Termination shall be in accordance with those procedures set forth in prior sections. Each participating jurisdiction shall retain sole ownership of equipment purchased and provided to its participating VSWAT Team members.

Any assets acquired with joint funds of the VSWAT Team shall be equally divided among the participating Jurisdictions at the asset's fair market value upon termination. The value of the assets of the VSWAT Team shall be determined by using commonly accepted methods of valuation. If two (2) or more participating jurisdictions desire an asset, the final decision shall be made by arbitration (described below). Any property not claimed shall be declared surplus by the Board and disposed of pursuant to state law for the disposition of surplus property. The proceeds from the sale or disposition of any VSWAT Team property, after payment of any and all costs of sale or debts of the agency, shall be equally distributed to those jurisdictions participating in the VSWAT Team at the time of dissolution in proportion to the jurisdiction's percentage participation in the VSWAT Team as of the date of dissolution. In the event that one (1) or more jurisdictions terminate their participation in the VSWAT Team, but the VSWAT Team continues to exist, the jurisdiction terminating participation shall be deemed to have waived any right or title to any property owned by the VSWAT Team or to share in the proceeds at the time of dissolution.

Arbitration pursuant to this section shall occur as follows:

- A. The jurisdictions interested in an asset shall select one (1) person (Arbitrator) to determine which agency will receive the property. If the jurisdictions cannot agree to an Arbitrator, the chiefs of the jurisdictions participating in the VSWAT Team upon dissolution shall meet to determine who the Arbitrator will be. The Arbitrator may be any person not employed by the jurisdictions that desire the property.
- B. During a meeting with the Arbitrator, each jurisdiction interested in the property shall be permitted to make an oral and/or written presentation to the Arbitrator in support of its position.
- C. At the conclusion of the presentation, the Arbitrator shall determine which jurisdiction is to receive the property. The decision of the Arbitrator shall be final and shall not be the subject of appeal or review.

XIII. LIABILITY, HOLD HARMLESS, AND INDEMNIFICATION

It is the intent of the participating jurisdictions to provide services of the VSWAT Team without the threat of being subject to liability to one another and to fully cooperate in the defense of any claims or lawsuits arising out of or connected with VSWAT Team actions that are brought against the jurisdictions. To this end, the participating jurisdictions agree to equally share responsibility and liability for the acts or omissions of their participating personnel when acting in furtherance of this Agreement. In the event that an action is brought against any of the participating jurisdictions, each jurisdiction shall be responsible for an equal share of any award for or settlement of claims of damages, fines, fees, or costs, regardless of which jurisdiction or employee the action is taken against or which jurisdiction or employee is ultimately responsible for the conduct. The jurisdictions shall share equally regardless of the number of jurisdictions named in the lawsuit or claim or the number of officers from each

jurisdiction named in the lawsuit or claim. This section shall be subject to the conditions and limitations set forth in subsections A through G below.

- A. Jurisdiction Not Involved In VSWAT Team Response. In the event that a jurisdiction or its personnel were not involved in the VSWAT Team response to the incident that gives rise to a claim or lawsuit, and judgment on the claim or lawsuit does not, in any manner, implicate the acts of a particular jurisdiction or its personnel, such jurisdiction shall not be required to share responsibility for the payment of the judgment or award.
- B. Intentionally Wrongful Conduct Beyond the Scope of Employment. Nothing herein shall require, or be interpreted to require indemnification or sharing in the payment of any judgment against any VSWAT Team personnel for intentionally wrongful conduct that is outside of the scope of employment of any individual or for any judgment of punitive damages against any individual or jurisdiction. Payment of any award for punitive damages shall be the sole responsibility of the person or jurisdiction that employs the person against whom such award is rendered.
- C. Collective Representation and Defense. The jurisdictions may retain joint legal counsel to collectively represent and defend the jurisdictions in any legal action. Those jurisdictions retaining joint counsel shall share equally the costs of such representation or defense.

In the event a jurisdiction does not agree to joint representation, the jurisdiction shall be solely responsible for all attorneys fees accrued by its individual representation or defense.

The jurisdictions and their respective defense counsel shall make a good faith attempt to cooperate with other participating jurisdictions by, including but not limited to, providing all documentation requested, and making VSWAT Team members available for depositions, discovery, settlement conferences, strategy meetings, and trial.

- D. Removal From Lawsuit. In the event a jurisdiction or employee is successful in withdrawing or removing the jurisdiction or employee from a lawsuit by summary judgment, qualified immunity, or otherwise, the jurisdiction shall nonetheless be required to pay its equal share of any award for or settlement of the lawsuit; PROVIDED, however, that in the event a jurisdiction or employee is removed from the lawsuit and subsection (A) of this section is satisfied, the jurisdiction shall not be required to pay any share of the award or settlement.
- E. Settlement Process. It is the intent of this Agreement that the jurisdictions act in good faith on behalf of each other in conducting settlement negotiations on liability claims or lawsuits so that, whenever possible, all parties agree with the settlement or, in the alternative, agree to proceed to trial. In the event a claim or lawsuit requires the sharing of liability, no

Individual jurisdiction shall be authorized to enter into a settlement agreement with a claimant or plaintiff unless all jurisdictions agree with the terms of the settlement. Any settlement made by an individual jurisdiction without the agreement of the remaining jurisdictions, when required, shall not relieve the settling jurisdiction from paying an equal share of any final settlement or award.

- F. Defense Waiver. This section shall not be interpreted to waive any defense arising out of RCW Title 51.
- G. Insurance. The failure of any insurance carrier or self-insured pooling organization to agree to or follow the terms of this section shall not relieve any individual jurisdiction from its obligations under this Agreement.

XIV. NOTICE OF CLAIMS, LAWSUITS, AND SETTLEMENTS

In the event a claim is filed or lawsuit is brought against a participating jurisdiction or its employees for actions arising out of their conduct in support of VSWAT Team operations, the jurisdiction shall promptly notify the other jurisdictions that the claim or lawsuit has been initiated. Any documentation, including the claim or legal complaints, shall promptly be provided to each participating jurisdiction.

Any jurisdiction or member who believes or knows that another jurisdiction would be liable for a claim, settlement, or judgment that arises from a VSWAT Team action or operation, shall have the burden of notifying each participating jurisdiction of all claims, lawsuits, settlements, or demands made to that jurisdiction. In the event a participating jurisdiction has a right, pursuant to section XIII of this Agreement, to be defended and held harmless by another participating jurisdiction, the jurisdiction having the right to be defended and held harmless shall promptly tender the defense of such claim or lawsuit to the jurisdiction that must defend and hold the other harmless.

XV. PROCESSING OF CLAIMS.

A. Designation of Lead Jurisdiction.

There shall be a lead jurisdiction for processing a claim that is filed with and against cities for alleged damages and injuries that occur as a result of VSWAT Team activities. The lead jurisdiction shall be the jurisdiction within which the VSWAT Team response occurred; PROVIDED, that in the event the jurisdiction within which the VSWAT Team response occurred did not participate in the VSWAT Team response, the lead jurisdiction shall be the jurisdiction within which the incident that required the VSWAT Team response originated. In the event that a jurisdiction that was not involved in the VSWAT Team response receives the claim, that jurisdiction shall notify the other jurisdictions in accordance with Section XIV of this Agreement, and shall use its best efforts to determine who is the appropriate lead jurisdiction.

B. Assistance of Tactical Commander.

The VSWAT Team Tactical Commander shall assist the lead jurisdiction in responding to a claim. The VSWAT Team Tactical Commander shall be responsible for gathering all records relating to the VSWAT Team response. These records shall include, but are not limited to, incident reports, notes, transcripts, photos, evidence logs, recorded statements, documents from emergency dispatch centers, and warrants from all jurisdictions that participated in the VSWAT Team response. The Tactical Commander shall also provide a list of personnel who participated in the response and their contact information. The Tactical Commander shall deliver all copies of the records to the lead jurisdiction promptly upon request.

C. Claims of \$5,000 or Less.

i. Lead Jurisdiction Responsibilities.

The lead jurisdiction shall be responsible for working with the Tactical Commander to gather records relating to the VSWAT Team response. The lead jurisdiction shall provide records to its insurance provider and shall assist its insurance provider in assessing liability for acts associated with the claim. The lead jurisdiction shall notify the other jurisdictions of any determinations as to liability. In determining whether a claim should be paid, the lead jurisdiction and its insurance provider shall, at a minimum, consider the potential legal defenses to the claim and the costs of defending the claim.

ii. Liability Determination – Apportionment of Damages.

The lead jurisdiction, with the assistance of its insurance provider and risk manager, shall determine whether the VSWAT Team is liable for damages set forth in a claim, and whether the payment of the claim would be in the best interest of the jurisdictions and/or the VSWAT Team. In the event the lead jurisdiction determines that payment of a claim is appropriate, such determination shall be final and binding upon other jurisdictions and payment shall be apportioned equally among all jurisdictions that participated in the VSWAT Team response. The insurance provider for the lead jurisdiction shall provide full payment to the claimant, and each jurisdiction that participated in the response shall reimburse the insurance provider for its equal share of such payment.

Prior to the payment of any claim, and as a condition of such payment, the insurance provider providing payment shall obtain from the claimant a complete and total release of liability on behalf of all jurisdictions participating in the VSWAT Team and each and every officer, agent, or volunteer of those participating jurisdictions.

In the event the lead jurisdiction determines that the VSWAT Team is not liable for damages set forth in a claim or that the payment of the claim would not be in the best interest of the jurisdictions and/or the VSWAT Team, the lead jurisdiction shall notify the other jurisdictions of the determination, and such determination shall be binding on the other jurisdictions; PROVIDED, that another jurisdiction that determines that payment is appropriate may pay such claim in full, and shall not seek reimbursement from the other participating jurisdictions.

III. Letter From Insurance Adjusters.

In the event a lead jurisdiction, in conjunction with its insurance provider, determines that payment of a claim is appropriate, the insurance provider shall provide each of the participating jurisdictions with a letter stating the determination and the bases for such determination.

D. Claims over \$5,000.

I. Lead Jurisdiction Responsibilities.

The lead jurisdiction shall schedule a meeting with all jurisdictions participating in the VSWAT Team to discuss the claim and to determine the appropriate manner in which to respond and/or defend the claim. The Board and persons listed in Section XVII of this Agreement shall be notified of the meeting.

XVI. PROCESSING OF LAWSUITS.

A. Notification to Other Jurisdictions.

In the event a jurisdiction is served with a lawsuit, that jurisdiction shall provide notice and documentation of the lawsuit to each of the other jurisdictions in accordance with Section XIV of this Agreement.

B. Coordination of Initial Meeting.

The jurisdiction that initially receives a lawsuit shall schedule a meeting with all of the jurisdictions participating in the VSWAT Team to discuss the lawsuit and to determine the appropriate manner within which to respond and/or defend the lawsuit. The Board and persons listed in Section XVII of this Agreement shall be notified of the meeting.

XVII. NOTIFICATION OF CLAIMS AND LAWSUITS.

Section XIV of this Agreement requires that the jurisdiction receiving a claim or lawsuit notify the other jurisdictions of the claim or lawsuit and provide documentation of that claim or lawsuit to the other jurisdictions. Nothing in this Agreement shall be deemed a waiver by any participating jurisdiction of the

requirements set forth in Chapter 4.96 RCW, and the fact that a participating jurisdiction provides notice or copies of a claim to another jurisdiction shall not be deemed compliance with the requirement that a party who files suit against a jurisdiction first file a claim with the jurisdiction in accordance with Chapter 4.96 RCW. Moreover, nothing in this Agreement shall be deemed acceptance of service of a lawsuit, and the fact that a participating jurisdiction provides notice or copies of a lawsuit to another jurisdiction shall not be deemed adequate service of such lawsuit in accordance with the State or Federal Rules of Civil Procedure or the Revised Code of Washington.

For the purposes of implementing Section XIV of this Agreement, the following persons from each jurisdiction shall receive any required notification or documentation:

<p><u>Auburn:</u></p> <p>Auburn City Attorney 25 West Main Street Auburn, WA 98001 (253) 931-3030</p>	<p><u>Kent:</u></p> <p>Kent City Attorney 220 4th Avenue South Kent, WA 98032 (253) 856-5781</p>
<p>Auburn Police Chief 340 East Main Street, Suite 201 Auburn, WA 98002 (253) 931-3080</p>	<p>Kent Risk Manager 220 4th Avenue South Kent, WA 98032 (253) 856-5285</p>
<p>Auburn Human Resources Director/Risk Manager 25 West Main Street Auburn, WA 98001 (253) 931-3040</p>	<p>Kent City Clerk 220 4th Avenue South Kent, WA 98032 (253) 856-5728</p>
<p>Auburn City Clerk 25 West Main Street Auburn, WA 98001 (253) 931-3039</p>	<p>Kent Police Chief 220 4th Avenue South Kent, WA 98032 (253) 856-5888</p>
<p><u>Port of Seattle:</u></p> <p>Port of Seattle Claims Manager P.O. Box 68727 Seattle, WA 98168</p>	<p><u>Federal Way:</u></p> <p>Federal Way City Clerk 33325 -- 8th Avenue South Federal Way, WA 98003</p>
<p><u>Tukwila:</u></p> <p>City Clerk</p>	<p>Federal Way City Attorney 33325 -- 8th Avenue South Federal Way, WA 98003</p>

City of Tukwila 6200 Southcenter Blvd. Tukwila, WA 98188	
<u>WCIA:</u> Claims Manager WCIA P.O. Box 1165 Renton, WA 98057	<u>Renton:</u> Renton Risk Manager 1056 So. Grady Way Renton, WA 98057
<u>CIAW:</u> Director of Claims Canfield & Associates, Inc. 451 Diamond Drive Ephrata, WA 98823	

XVIII. COMPLIANCE WITH THE LAW

The VSWAT Team and all its members shall comply with all federal, state, and local laws that apply to the VSWAT Team.

XIX. ALTERATIONS

This Agreement may be modified, amended, or altered by agreement of all participating jurisdictions and such alteration, amendment, or modification shall be effective when reduced to writing and executed in a manner consistent with paragraph XXIII of this Agreement.

XX. RECORDS

Each jurisdiction shall maintain training records related to the VSWAT Team for a minimum of seven (7) years. A copy of these records will be forwarded and maintained with the designated VSWAT Team Training Coordinator. All records shall be available for full inspection and copying by each participating jurisdiction.

XXI. FILING

Upon execution hereof, this Agreement shall be filed with the city clerks of the respective participating municipalities, and such other governmental agencies as may be required by law.

XXII. SEVERABILITY

If any part, paragraph, section, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part, or provision of this Agreement.

XXIII. MUNICIPAL AUTHORIZATIONS

This Agreement shall be executed on behalf of each participating jurisdiction by its duly authorized representative and pursuant to an appropriate resolution or ordinance of the governing body of each participating jurisdiction. This Agreement shall be deemed effective upon the last date of execution by the last so authorized representative. This Agreement may be executed by counterparts and be valid as if each authorized representative had signed the original document.

By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the jurisdiction, and the jurisdiction agrees to the terms of this Agreement.

Mayor, City of Auburn Date City Attorney, City of Auburn Date

City Clerk, City of Auburn Date

Mayor, City of Renton Date City Attorney, City of Renton Date

City Clerk, City of Renton Date

Mayor, City of Tukwila Date City Attorney, City of Tukwila Date

City Clerk, City of Tukwila Date

Suzette Come 5/29/14 _____ 5/20/14
Mayor, City of Kent Date City Attorney, City of Kent Date

Donald M. Mason, MMC 5/27/14
City Clerk, City of Kent Date

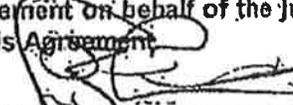
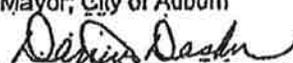
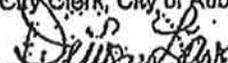
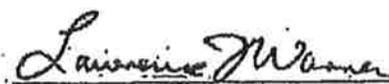
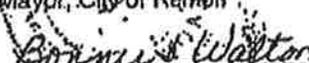
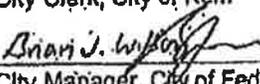
Anan J. Winters 10/14/2010 _____ 10/13/10
City Manager, City of Federal Way Date City Attorney, City of Federal Way Date

If any part, paragraph, section, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part, or provision of this Agreement.

XXIII. MUNICIPAL AUTHORIZATIONS

This Agreement shall be executed on behalf of each participating jurisdiction by its duly authorized representative and pursuant to an appropriate resolution or ordinance of the governing body of each participating jurisdiction. This Agreement shall be deemed effective upon the last date of execution by the last so authorized representative. This Agreement may be executed by counterparts and be valid as if each authorized representative had signed the original document.

By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the jurisdiction, and the jurisdiction agrees to the terms of this Agreement.

 _____ Mayor, City of Auburn	2/14/12 Date	 _____ City Attorney, City of Auburn	2/14/12 Date
 _____ City Clerk, City of Auburn	2/14/12 Date		
 _____ Mayor, City of Renton	12/2/10 Date	 _____ City Attorney, City of Renton	Date
 _____ City Clerk, City of Renton	12/2/2010 Date		
_____ Mayor, City of Tukwila	Date	_____ City Attorney, City of Tukwila	Date
_____ City Clerk, City of Tukwila	Date		
_____ Mayor, City of Kent	Date	_____ City Attorney, City of Kent	Date
_____ City Clerk, City of Kent	Date		
 _____ City Manager, City of Federal Way	10/14/2010 Date	 _____ City Attorney, City of Federal Way	10/13/10 Date

Carol Manilly 10/15/10
City Clerk, City of Federal Way Date

Chief Executive Officer, Port of Seattle Date Port Counsel, Port of Seattle Date

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing to consider Draft Ordinance 19-112 relating to code clean-up items to correct omissions, errors, and inconsistencies and to clarify City Council intent.

ATTACHMENTS:

1. Draft Ordinance No. 19-112 Amending chapters 18.01, 18.15, 18.20, 18.30, 18.52, 18.60, 18.190, 18.200, 18.210, and 18.250 DMMC.

FOR AGENDA OF: March 12, 2020

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: March 5, 2020

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: *DSB*

- Legal *TO*
 Finance _____
 Courts _____
 Police _____

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

Purpose and Recommendation

The purpose of this Agenda Item is for the City Council to hold a public hearing for the consideration of Draft Ordinance No. 19-112 (Attachment 1) that would amend chapters 18.01, 18.15, 18.20, 18.30, 18.52, 18.60, 18.190, 18.200, 18.210, and 18.250 Des Moines Municipal Code (DMMC) to correct omissions, errors, and inconsistencies and to clarify City Council intent.

Suggested Motion

Motion 1: “I move to suspend Rule 26(a) in order to enact Draft Ordinance 19-112 on first reading.”

Motion 2: “I move to enact Draft Ordinance No. 19-112 amending chapters 18.01, 18.15, 18.20, 18.30, 18.52, 18.60, 18.190, 18.200, 18.210, and 18.250 DMMC to correct omissions, errors, and inconsistencies and to clarify City Council intent.”

Background

The Community Development Department keeps an on-going list of small DMMC code maintenance issues and potential changes to Title 18, and periodically brings these to the City Council for consideration. Some of these issues were items that were unintentionally omitted when the development regulations were re-codified by Ordinance 1591 in 2014 or where inconsistencies between code sections were inadvertently created by Ordinance 1591 or when other Title 18 ordinances were passed. In some cases the change would clarify the City Council's intent. In other cases State law has changed necessitating a change in the DMMC.

Discussion

The proposed ordinance amends the Des Moines Municipal Code Chapters 18.01, 18.15, 18.20, 18.30, 18.52, 18.60, 18.190, 18.200, 18.210, and 18.250 DMMC to correct omissions, errors, and inconsistencies, and to clarify City Council intent. These amendments are summarized as follows:

Section 1 adds a definition originally contained in the DMMC before Title 18 was re-codified. It was thought at the time that these definitions had a common and generally understood meaning, but some definitions contained language necessary for application of related code sections.

Section 2 adds Title 16 DMMC to the code sections subject to chapter 18.15 DMMC, Nonconforming Buildings and Uses. This was an inadvertent omission when codes pertaining to environmentally critical areas were moved from Title 18 to Title 16 DMMC.

Section 3 corrects the project approval type classification for modifications of parking provisions, modification of landscaping requirements, environmentally critical area development exceptions and exemptions from shoreline substantial development permits for consistency with previous codes changes.

Section 4 adds language identical to Type II and Type III land use actions clarifying that a notice of application is required. An error in the code citation for the appeal process is corrected.

Section 5 corrects the code citation for the appeal process for a Type V land use action.

Section 6 corrects the code citation for the appeal process for a Type VI land use action.

Section 7 removes the requirement to set the date for the public hearing by motion for textual changes to zoning code or area-wide rezones. This is not required by State law.

Section 8 adds language to DMMC 18.52.010A Residential Use Chart, Footnote [15] pertaining to townhouse development, to direct readers to the applicable design requirement code sections.

Section 9 removes footnote [26] pertaining to mixed use from Offices, business and professional in the Commercial Use Chart in DMMC 18.52.010B.

Section 10 corrects the lot threshold for a subdivision for consistency with chapter 17.10 DMMC.

Section 11 provides additional clarification on the intent to limit fire or parapet walls to the minimum required for compliance with the building code when extending beyond the maximum height limit.

Section 12 provides additional clarification for calculating allowable signage in the Downtown Commercial Zone.

Section 13 adds language to DMMC 18.210.170 regarding driveway surfaces for consistency with the City's adopted drainage standards.

Section 14 corrects the list of zones in which a state-licensed marijuana retailer may operate to reflect changes to the City's zoning map. No changes to the applicable areas are proposed.

Alternatives

The City Council may:

1. Enact the proposed Draft Ordinance No. 19-112 as written.
2. Enact Draft Ordinance No. 19-112 with amendments
3. Pass enactment of Draft Ordinance No. 19-112 to a second reading.
4. Decline to enact Draft Ordinance 19-112.

Financial Impact

There will be no fiscal impact to the City related to these changes.

Recommendation

Administration and staff recommend enactment of Draft Ordinance No. 19-112.

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CITY ATTORNEY'S FIRST DRAFT 03/12/2020**DRAFT ORDINANCE NO. 19-112**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the Zoning Code and City land use and development regulations, and amending chapters 18.01, 18.15, 18.20, 18.30, 18.52, 18.60, 18.190, 18.200, 18.210, and 18.250 DMMC to correct omissions, errors, and inconsistencies and to clarify City Council intent.

WHEREAS, by June 30, 2015 and every eight years thereafter, RCW 36.70A.130(1) requires the City of Des Moines to take legislative action to review and, if needed, revise its development regulations. Nothing precludes the City from doing so earlier per RCW 36.70A.130(6), and

WHEREAS, the Chief Strategic Officer, acting as the SEPA responsible official, reviewed this proposed non-project action and determined that the proposed textual code amendments result in no substantive changes respecting use or modification of the environment and are therefore categorically exempt from threshold determination and EIS requirements in accordance with WA 197-11-800 (19) (b) and chapter 16.05 DMMC, and

WHEREAS, the City Council set the date for the public hearing by motion on February 13, 2020, fixing the public hearing for March 12, 2020 as required by DMMC 18.30.070, 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, notice of the public hearing was issued on February 26, 2020 in accordance with the DMMC, and

WHEREAS, a public hearing was held on March 12, 2020 where all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the Title 18 DMMC amendments contained in this Ordinance comply with the

03/12/2020

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requirements of chapter 36.70A RCW and are appropriate and necessary; now therefore,

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

Sec. 1. DMMC 18.01.050, *Definitions*, 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 3 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 as amended by section 3 of Ordinance No. 1714 as amended by section 2 of Ordinance No. 1719, shall be amended to add the following definition:

Garage, private. "Private garage" means an accessory building or an accessory portion of the main building, enclosed on not less than three sides and designed or used only for the shelter or storage of vehicles owned or operated only by the occupants of the main building or buildings.

Sec. 2. DMMC 18.15.020, *Nonconforming Buildings and Uses, Application*, and section 38 of Ordinance No. 1591 as amended by section 3 of Ordinance No. 1655 as amended by section 1 of Ordinance No. 1695, are amended to read as follows:

18.15.020 Application.

(1) The foregoing regulations set forth in this Title and Title 16 DMMC shall be subject to the general provisions, conditions, and exceptions contained in this chapter.

(2) The provisions of this chapter shall apply to buildings, structures, land, and uses which become nonconforming as a result of the application of this Title and Title 16 DMMC to them, from classification or reclassification of the property

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under this Title or any subsequent amendments thereto, or from governmental acquisition of property for right-of-way expansion or essential public facility construction. If a use originally authorized by a variance, conditional use permit, or other valid use permit prior to August 3, 1964, is located within a zone in which such use is not permitted by the terms of this Title, such use shall be a nonconforming use. Uses validly established prior to August 3, 1964, shall not be deemed nonconforming only because of failure to secure a conditional use permit required under this Title.

(3) If a building, structure or land becomes nonconforming solely because of governmental acquisition of a portion of the property for an essential public transportation facility, the property shall be a legal nonconforming lot and the building, structure or use may continue.

Sec. 3. DMMC 18.20.080, and those parts of section 58 of Ordinance No. 1591 as amended by section 2 of Ordinance No. 1628, as amended by section 6 of Ordinance No. 1655 shown below, are each amended to read as follows:

18.20.080 Project review.

(1) Specific types of project approval are categorized as is set forth in 18.20.080A Project Review Chart below.

18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Type I - Administrative land use decisions made without legal requirement for public comment	Planning, Building and Public Works Director	DMMC 18.20.150 and 18.20.160
...		

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18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Modification of same	Planning, Building and Public Works Director	DMMC 18.195.420
<u>Exemptions from shoreline substantial development permit</u>	<u>Planning, Building and Public Works Director</u>	<u>DMMC 16.20.010</u>
<u>Environmentally critical area development exception</u>	<u>Planning, Building and Public Works Director</u>	<u>DMMC 16.10.300</u>
<u>Modification of parking provisions</u>	<u>City Manager</u>	<u>DMMC 18.210.070</u>
Type II - Administrative land use decisions made after legally required opportunity for public comment	Planning, Building and Public Works Director	DMMC 18.20.170
...		
Exemptions from shoreline substantial development permit	Planning, Building and Public Works Director	DMMC 16.20.010
Environmentally critical area development exception	Planning, Building and Public Works Director	DMMC 16.10.300
<u>Modification of landscaping requirement(s)</u>	<u>Planning, Building and Public Works Director</u>	<u>DMMC 18.195.420</u>

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18.20.080A Project Review Chart

	Decision Maker	Applicable Code Section
Type III - Quasi-judicial and other decisions by the Hearing Examiner made after legally required opportunity for public comment	Hearing Examiner	DMMC 18.20.180
...		
Modification of parking provisions by Hearing Examiner	Hearing Examiner	DMMC 18.210.070

Sec. 4. DMMC 18.20.190, *Review process for Type IV land use action*, and section 69 of Ordinance No. 1591, shall be amended to read as follows:

18.20.190 Review process for Type IV land use action.

A notice of application is required for a Type IV action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the City Council may approve, approve with conditions, or deny a Type IV land use action upon compliance with the procedural requirements of chapter 18.240 DMMC, Hearing Examiner.

(2) The City Council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington for King County as specified by DMMC ~~18.20.280~~ 18.20.290 (appeal from decision of the City Council).

Sec. 5. DMMC 18.20.200, *Review process for Type V land use action*, and section 70 of Ordinance No. 1591, shall be amended to read as follows:

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18.15.200 Review process for Type V land use action.

(1) The City Council may approve with conditions, or deny a Type V land use action without public notice other than the notice requirements for public meetings.

(2) The decision of the City Council shall be effective on the date final action is taken during a public meeting. If no other effective date is identified in the City Council action, or as otherwise provided by law.

(3) The City Council's decision regarding a Type V land use action is appealable to the Superior Court of Washington for King County as specified by DMMC ~~18.20.280~~ 18.20.290 (appeal from decision of the City Council).

Sec. 6. DMMC 18.20.210, *Review process for Type VI land use action*, and section 71 of Ordinance No. 1591, shall be amended to read as follows:

18.15.210 Review process for Type VI land use action.

(1) For textual code amendments, the Planning, Building and Public Works Director may schedule a public hearing before the City Council as provided in DMMC 18.30.100.

(2) Upon conclusion of the 15-day comment period, the City Council may approve, approve with conditions, or deny a Type VI land use action upon compliance with the procedural requirements of chapter 18.30 DMMC. Amendments to the Zoning Code, Map and Planned Unit Developments.

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(2) Except for matters subject to review by the Central Puget Sound Growth Management Hearings Board as provided by RCW 36.70A.280 as presently constituted or as may be subsequently amended, the City Council's decision regarding a Type VI land use action is appealable to the Superior Court of Washington for King County as specified by DMMC ~~18.20.280~~ 18.20.290 (appeal from decision of the City Council).

Sec. 7. DMMC 18.30.100, *Textual changes to zoning code or area-wide rezones*, and section 104 of Ordinance No. 1591, shall be amended to read as follows:

18.30.100 Textual changes to zoning code or area-wide rezones.

Amendments to this Title that constitute a textual change or an area-wide rezone are made in the following manner:

(1) As used in this section, unless the context or subject matter clearly requires otherwise, "textual change" means a change or amendment to this Title except:

(a) Amendments changing the zone of a particular parcel of property (commonly known as a rezone); or

(b) Actions relating to adoption or amendment to the Comprehensive Plan.

(2) No textual change is made without at least one public hearing before the City Council.

(3) ~~The City Council shall set a date for the public hearing by motion.~~ Notice of the public hearing shall generally conform with DMMC 17.45.070, Notice. Continued

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hearings may be held at the discretion of the City Council but no additional notice is required.

Sec. 8. DMMC 18.52.010A, and those parts of the Residential Use Chart and Limitation 15, and section 132 of Ordinance No. 1591 as amended by section 7 of Ordinance No. 1655 as amended by section 2 of Ordinance No. 1697, shall be amended to read as follows:

Use is: P: Permitted	SFR	RA- 3600	RM- 2400	RM- 1800	RM- 900	RM- 900A	RM- 900B	R-SE	R- SR> 3500 0	R-SR< 35000	PR-R
P/L: Permitted but with special limit- ations											
CUP: Condition al use review required											
UUP: Unclassif ied use review required											
Townhouse development		P/L _[15]	P/L _[15]	P/L _[15]	P/L _[15]						

15. Townhouse Development. This regulation applies to all parts of Table 18.52.010A that have a [15].

Townhouse developments shall be permitted in the RA-3,600 Zone and Multifamily Zones as noted in the table above with no more than one townhouse dwelling per lot. Townhouse developments shall comply with DMMC 18.60.070, General site design requirements, and DMMC 18.60.080, General building design requirements.

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Sec. 9. DMMC 18.52.010B, and those parts of the Commercial Use Chart, and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance 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 as amended by section 1 of Ordinance No. 1701 as amended by section 2 of Ordinance No. 1714 as amended by section 1 of Ordinance No. 1719, shall be amended to read as follows:

Use is: P: Permitted	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
P/L: Permitted, but with special limitations									
CUP: Conditional use review required									
UUP: Unclassified use review required									

Offices, business and professional	P/L[3]	P/L[6.1]	P		P/L[26]	P	P	P	P
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Sec. 10. DMMC 18.60.050, *Application and review process for townhouse developments*, and section 152 of Ordinance No. 1591 shall be amended to read as follows:

18.60.050 Application and review process for townhouse developments.

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(1) A subdivision or short subdivision shall be required for all townhouse developments so that individual townhouse dwellings are located on separate lots.

(2) Townhouse developments containing nine or fewer lots shall comply with the applicable provisions of this Title and chapter 17.05 DMMC, Short Subdivisions, or chapter 17.15 DMMC, Modified Subdivisions and Short Subdivisions.

(3) Townhouse developments containing ~~five~~ ten or more lots shall comply with the applicable provisions of this Title and chapter 17.10 DMMC, Subdivisions, or chapter 17.05 DMMC, Short Subdivisions, or chapter 18.230 DMMC, Planned Unit Developments.

(4) In addition to the application materials specified by chapter 17.40 DMMC, Miscellaneous Provisions, applications for townhouse developments shall include the following:

(a) Site plan depicting site and lot boundaries, abutting streets, interior public and private streets, and off-street parking areas, sidewalks, open spaces, recreation facilities, solid waste collection areas, drainage systems, and building locations and setbacks.

(b) Landscaping plan.

(c) Typical building elevations including the exterior architectural design features and materials.

(d) Proposed topography indicated by contours at two-foot intervals. If the proposed townhouse development has slopes that exceed 15

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percent, five-foot contour intervals may be used in those areas.

Sec. 11. DMMC 18.190.070, *Height of structures and roof structures*, and section 387 of Ordinance No. 1591, shall be amended to read as follows:

18.190.070 Height of structures and roof structures.

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, or similar equipment required to operate and maintain the building, ~~fire or parapet walls~~ fire walls, parapet walls and guards not taller than the minimum required for compliance with the Washington State Building Code, skylights, flagpoles, chimneys, smokestacks, church steeples and belfries, utility line towers and poles, and similar structures may be erected above the height limits of this Title; provided, however, no penthouse or roof structure or any other space above the height limit prescribed for the zone in which the building or structure is located shall be allowed for the purpose of providing additional floor space; provided further, that rooftop gardens and patios are not classified as additional floor space for the purpose of this section.

Sec. 12. DMMC 18.200.310, *Marina District*, and section 491 of Ordinance No. 1591, shall be amended to read as follows:

18.200.310 Marina District.

The following signs are permitted on commercially zoned properties within the Marina District as established by the Des Moines Comprehensive Plan:

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(1) Each public commercial parking lot may have one sign per street frontage not exceeding 24 square feet in sign area.

(2) Reader board signs and changeable message center signs are permitted as per the requirements established in DMMC 18.200.230.

(3) Projecting signs may not project further than six feet from the surface of the building. A right-of-way use permit shall be required for signs projecting over the public right-of-way.

(4) Freestanding signs may not exceed 15 feet in height as measured from the sidewalk grade, and shall not be located on or above, nor project over the public right-of-way.

(5) No more than one freestanding sign is permitted for properties with less than 300 feet of street frontage. Multiple business properties or multi-building complexes with over 300 feet of street frontage and more than one vehicular access are allowed one additional freestanding sign; provided, that the total allowable sign area is not exceeded and the signs are over 100 feet apart.

(6) Each single business property is permitted a total sign area not to exceed two square feet per lineal foot of street frontage, up to a maximum of 200 square feet. Freestanding signs may not exceed 50 square feet.

(7) Each multiple business property or multi-building complex is permitted one freestanding sign not to exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet. Each business within shall be permitted a wall sign not to exceed one square foot per lineal foot of tenant street frontage; provided, however, that each

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business must be guaranteed a minimum of at least 24 square feet regardless of tenant street frontage.

(8) Gasoline price signs shall not be located in, nor project over, the public right-of-way, and shall not be handwritten. Such signs may be freestanding or attached to canopy columns. The area of the price sign shall not count towards the allowed total wall or freestanding signage.

(9) Temporary signs shall be permitted as provided in DMMC 18.200.070.

Sec. 13. DMMC 18.210.170, *Surface*, and section 521 of Ordinance No. 1591, shall be amended to read as follows:

18.210.170 Surface.

(1) The surface of any required off-street parking or loading facility and accessory accessways (driveways) shall be paved with asphalt or concrete to a standard comparable to the standard for the public street providing access thereto and shall be graded and drained as to dispose of all surface water, but shall not drain across sidewalks. Modifications for wheel strip driveways and permeable pavements pursuant to the City's adopted drainage standards may be considered.

(2) Paved parking areas except in Single-Family Zones shall use paint or similar devices to delineate car stalls and direction of traffic.

(3) Pedestrian walks, used for the use of foot traffic only, shall be curbed or raised six inches above the lot surface. All pedestrian walks shall be conspicuously delineated.

(4) Wheel stops shall be required to protect landscaping and to prevent vehicles from striking

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buildings, overhanging walkways, property lines, or other limits of a parking facility. Wheel stops shall be installed a minimum of two feet from the end of parking stalls, except in Single-Family Residential Zones.

Sec. 14. DMMC 18.250.070, *Recreational marijuana regulations for retailers*, and section 651 of Ordinance No. 1591 as amended by section 18 of Ordinance No. 1601, shall be amended to read as follows:

18.250.070 Recreational marijuana regulations for retailers.

State-licensed marijuana retailers may locate in the City pursuant to the following restrictions:

(1) Marijuana retailers must comply with all requirements of chapter 69.50 RCW, chapter 314-55 WAC, and other applicable Washington laws.

(2) Persons may conduct business within the City as a state-licensed marijuana retailer if located within the Transit Community (T-C), ~~Highway Commercial (H-C) and Community Commercial (C-C)~~ and Woodmont Commercial (W-C) Zones generally located along Pacific Highway South south of Kent-Des Moines Road.

(3) Marijuana retailers shall not locate in a building in which nonconforming retail uses have been established in any location or zone other than those referenced in subsection (2) of this section.

(4) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.

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Sec. 15. 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. 16. Effective date. This Ordinance shall take effect and be in full force five (5) days after its final approval by the Des Moines City Council in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

3/12/20
Draft Ordinance No. 19-112

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Consideration of future City of Des Moines participation in StART (Sea-Tac Airport Stakeholder Roundtable)

FOR AGENDA OF: March 12, 2020

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: March 6, 2020

ATTACHMENTS:

1. Powerpoint presented to City Council at February 27th, 2020 meeting.

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- Legal _____
- Finance _____
- Courts _____
- Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to review the StART process and for City Council to determine the City's relationship to StART moving forward.

Suggested Motion

MOTION:

Background: Last summer, 2019 the City Council approved a motion temporarily suspending participation in the StART Committee as a result of the Port of Seattle Commission moving forward with design and expenditures associated with the Sustainable Airport Master Plan and that this Port action was conducted outside the parameters of the SAMP environmental review. The cities of Burien and Federal Way also temporarily suspended participation on the StART.

This item will review the current status of discussions with the other cities and the Airport in regards to potentially returning to the StART process.

Alternatives: City Council will consider the viability of returning to StART or of not returning at this time.

Financial Impact: No financial impact other than dedication of staff time to this process if City Council approves a motion to return to StART.

Recommendation/Conclusion: City Manager recommends moving forward to rejoin StART. It was appropriate to temporarily suspend participation last summer and it is appropriate at this time, based on a number of changes/improvements to the StART process, to move forward and rejoin StART.

UPDATE ON AVIATION ISSUES

- ▶ Temporary withdrawal from the Sea-Tac Aviation Round Table (StART).
- ▶ In July, 2019, the Port Commission passed design work for several projects associated with the Sustainable Airport Master Plan.
- ▶ Several Cities, including Burien, Des Moines and Federal Way felt this action undermined our Cities' trust in the StART process and therefore we temporarily suspended participation in the StART.
- ▶ In fact, actions taken by the Port, out of context with the SAMP, are part of a larger issue our City has formally commented on of the Port dividing up the SAMP and not identifying cumulative impacts.

PROCESS

- ▶ In September, 2019, Cities of Burien, Des Moines and Federal Way held a joint Aviation Advisory Committee meeting to review the Cities status with regards to StART.
- ▶ In November a follow up joint meeting was held and identified outstanding issues associated with the StART.
- ▶ In December a meeting was held at the Port with the Mayors, City Managers, several Port Commissioners, Port Executive Director Metruck and Aviation Director Lance Lyttle to discuss the Cities concerns.
- ▶ A follow up meeting was held in January, 2020, between City Managers and Aviation Director Lyttle to once again review any opportunities for progress coming from the StART.

SUMMARY

- ▶ This briefing tonight will serve as the foundation to a more extensive discussion I would like to hold with Council on March 12th, at which time City Council can review appropriate action relative to the possibility of rejoining the StART process.
- ▶ Other Cities, including Burien and Federal Way are holding similar briefings with their City Council's to determine their Cities appropriate action.

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Council Committee Work Plans

FOR AGENDA OF 3/12/2020

ATTACHMENTS:

DEPT. OF ORIGIN: Marina

- 1. Economic Development
- 2. Environment
- 3. Municipal Facilities
- 4. Public Safety and Emergency Management
- 5. Transportation

DATE SUBMITTED: 3/5/2020

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: DSB

- Legal AG
- Finance BAW
- Courts _____
- Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is for Council to approve and remand the 2020 committee work plans to the various City Council Committees.

Suggested Motion: "I move to approve the Draft 2020 Committee work plans, and remand those plans to the various committees."

Background & Discussion

The Mayor has completed committee assignments for 2020-2021. Administration has prepared recommended Committee Work plans for 2020 which are included in Attachments 1 through 5.

Alternatives

Council may propose modifications to the work programs.

Recommendation

Staff recommends that Council approve the proposed motion.

DRAFT
Economic Development Committee
2020 Work Plan

Tier 1 Items

Regulatory Requirements

- Flood prevention ordinance – briefing only (Environment primary committee)

Applications

- Woodmont Commercial zone - revision request application (last discussed with EDC/Council in 2018)

Economic Development

- Marina re-development associated policy and code work – scope to be determined
- Building heights in the area of the QFC site (gateway)

Other

- Buildable Lands/Growth Targets and 2020 Census support
- Nuisance abatement – on-going
- Annual comprehensive plan amendment
 - PR-13.3.5 modify to include Midway Park expansion
 - Others revisions as needed

Tier 2 Items

Code Maintenance

- Ongoing Clean-up items as time allows
 - Titles 18, 14, 16 and 17 - policy discussion on proposed amendments

Possible additional items

- Port of Seattle development agreement, Master Plan and SEPA review – DMCBP-West
- Review Business Park zoning/development feasibility on the south side of South 216th Street
- Transit oriented development, Pacific Ridge and KDM Midway Station area
- Pacific Ridge, review zoning/comp plan/planned action – south end (PR-R to PR-C?)
- Parking Code
 - Parking requirements, modifications, lighting requirements (per CPTED/Pacific Ridge Design Guidelines)
 - Parking code modifications may follow from Marina re-development work
- Impact Fees (last discussed with Committee 2019)
 - School
 - Park
 - Fire Impact Fees
- CPTED (Crime Prevention through Environmental Design) – potentially extend beyond Marina District and Pacific Ridge (briefly discussed with FEDC)

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**Draft
Environment Committee
2020 Work Plan**

April

Work Plan Discussion
Code Update for Wetland Criteria and Flood Control Map

May

NPDES Program Update
Stormfest

June

WRIA 9 Salmon Habitat Plan Update

July

SWM Comprehensive Plan Update
Draft 2021-2026 SWM CIP Budget

August**September**

CIP Project Updates
SWM 2021 Operating and Capital Budget

October

Public Works Yard Groundwater Remediation Update
CMP Pipe Replacement Program

November

CIP Project Updates

December

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**Draft
Municipal Facilities Committee
2020 Work Plan**

March

Work Plan Discussion
Playground Projects Update

April

CIP Project Updates
Beach Park Buildings Discussion

May

Review Status of Marina Redevelopment

June

City Facility Rental Trends and Event Usage
CIP Project Updates

July

Draft 2021-2026 MCI CIP Budget

August**September**

CIP Project Updates

October**November**

CIP Project Updates

December

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**Public Safety and Emergency Management
2020 Work Plan**

	Police	Emergency Management
May	Law Enforcement Training and Community Safety Act	COVID-19
June	In Car Cameras	Joint Police/Fire EOC Status
July	Traffic Safety	
August	Marine Unit	Ham Radio Operators
September	Unmanned Ariel Vehicles	FEMA Overview
October	Peer Support	Hazard Mitigation Plan
November	Animal Control	Cold Weather Shelters
December	Special Investigations	

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**Draft
Transportation Committee
2020 Work Plan**

April

Work Plan Discussion
CIP Project Updates

May

Draft Transportation Improvement Plan
2020 CIP Grant Opportunity Overview
I-976 Initiative Discussion

June

Final Transportation Improvement Plan
Sound Transit Update

July

Draft 2021-2026 Transportation CIP Budget
CIP Project Updates

August**September**

Sound Transit Update
CIP Project Updates

October

City Street Light Discussion

November

CIP Project Updates

December

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