

JAN 14 2019

**INTERLOCAL AGREEMENT FOR USE OF HIGHLINE WATER DISTRICT
PROPERTY**

This Agreement ("Agreement") is entered into between the City of Des Moines, a Washington municipal corporation ("City") and Highline Water District, a Washington municipal corporation ("District") (individually a "Party" and collectively the "Parties"), for the purpose of describing the terms and conditions under which the District grants to the City the use of certain District property for recreational purposes.

RECITALS

1. On November 15, 1995, the Parties entered into an interlocal agreement ("1995 Agreement") for the use of certain District Property located at the District's North Hill Water Storage Tank, 505 S 208th St, Des Moines, WA 98198, for City Parks and Recreation purposes.
2. During the term of the 1995 Agreement the City, with the District's permission, installed playground and associated equipment on the District's property.
3. The 1995 Agreement was terminated by the Parties on March 1, 2005.
4. The Parties entered into a new interlocal agreement on April 20, 2005 ("2005 Agreement") for the use of a portion of the District's North Hill Water Storage Tank property ("Property") by the City for parks and recreational purposes. The 2005 Agreement provided that the term of the 2005 Agreement was for two years expiring on April 20, 2007 and, by agreement of the Parties, was extended for one additional year to April 20, 2008. The Parties then entered into another interlocal agreement on June 11, 2008 ("2008 Agreement") for the use of a portion of the Property by the City for parks and recreational purposes. The 2008 Agreement was for five years expiring on June 10, 2013. The Parties then entered into another interlocal agreement on June 11, 2013 ("2013 Agreement") for the use of a portion of the Property by the City for parks and recreational purposes. The 2013 Agreement was for five years expiring on June 10, 2018.
5. The Parties desire to enter into a revised interlocal agreement defining the terms and conditions under which the City will be authorized to continue to use the District Property.
6. The Parties are authorized pursuant to Chapter 39.33, the Intergovernmental Disposition of Property Act, and Chapter 39.34, the Interlocal Cooperation Act, to enter into agreements for the use of municipal property on such terms and conditions as may be mutually agreed upon by the Parties.

AGREEMENT

Now, therefore, in consideration of the mutual promises contained herein the Parties agree as follows:

1. **Grant of Use, Property Description.** The District grants to the City the use of its property, as generally located at 505 S 208th St, Des Moines, WA 98198, but not including the District's existing North Hill Water Storage Tank, pump station and associated mains, meters and appurtenances, gate and fencing, and landscaping within the fenced area situated on the northwest portion of the Property, on the terms and conditions contained in this Agreement.
2. **Terms and Termination.** The term of this Agreement is for five (5) years commencing from the date of June 11, 2018 and terminating on June 10, 2023, provided, this Agreement shall be automatically extended for one additional five (5) year period unless either Party at least ninety (90) days prior to the termination date of the Agreement provides written notice to the other Party of its intent to terminate the Agreement at the end of its then current term. Either Party may terminate this Agreement, including any extensions, at any time without cause by giving written notice to the other in accordance with paragraph 11 of this Agreement of intent to so terminate, at least ninety (90) days prior to the intended effective date of termination.
3. **Use of Property.** The Property shall be used for parks and recreational purposes only. The City may authorize groups, clubs or organizations to use the Property for purposes authorized by this Agreement.
4. **Acceptance of Premises, Capital / Other Improvements.** The City accepts the Property subject to this Agreement in its present condition "as is, where is" with all faults and defects and may complete at its own cost and expense any additional capital or other improvements deemed necessary by the City required to make the Property usable and safe for park and recreational purposes. Such improvements and their completion shall be subject to review and prior written approval of the District.
5. **District Responsibilities.** The District shall be responsible for maintaining the District's North Hill Water Storage Tank, pump station and associated mains, meters and appurtenances, gate and fencing, and landscaping within the fenced area situated on the northwest portion of the Property.
6. **City Responsibilities.** The City shall be responsible for maintaining the park landscaping outside of the District's fenced North Hill Water Storage Tank situated on the Property including seasonal irrigation, mowing, plant maintenance and weed abatement, regular safety evaluations and as needed repair of park equipment. The City shall also be responsible for litter control, and garbage disposal, provided however, that the City may delegate such responsibilities to a community organization or other community volunteers but shall remain primarily responsible for such duties and responsibilities under this Agreement.
7. **Insurance.** The City shall provide insurance coverage related to the use of the Property as a public park in amounts and with coverage satisfactory to the District. The City shall obtain and keep in force during the term of the Agreement, Commercial General Liability insurance policies with insurance companies which

have an A.M. Best's rating of A: VII or better and who are approved by the Insurance Commissioner of the State of Washington pursuant to Title 48 RCW.

Prior to the execution of this Agreement, the City shall file with the District either a certified copy of all policies with endorsements attached, or a certificate of insurance with endorsements attached as are necessary to comply with these specifications. Failure of the City to fully comply with the requirements regarding insurance will be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement and of any and all District obligations, regarding same.

The insurance shall provide coverage for the City and shall specifically name the District and its elected and appointed officials, officers, employees, agents and volunteers as insureds under such coverage by endorsement to such insurance policies. The City shall provide the District with such endorsement at the time of the execution of this Agreement. The coverage so provided shall protect against claims from bodily injuries, including accidental death, as well as claims for property damage which may arise from any act or omission of the City, the City's employees, agents or by anyone directly or indirectly employed by either of them.

The insurance shall be maintained in full force and effect at the City's expense throughout the term of this Agreement.

The District shall be given at least thirty (30) days written notice of cancellation, nonrenewal, material reduction or modification of coverage. Such notice shall be by certified mail to the District.

The coverages provided by the City's insurance policies shall be primary to any insurance maintained by the District, except for losses attributable to the sole negligence of the District. Any insurance that might cover this Agreement which are maintained by the District shall be in excess of the City's insurance and shall not contribute with the City's insurances.

The General Aggregate provision of the City's insurance policies shall be amended to show that the General Aggregate Limit of the policies applies separately to this Agreement.

The City's insurance policies shall not contain deductibles or self-insured retentions in excess of \$10,000 unless approved by the District.

The City's insurance policies shall contain a provision that the District has no obligation to report events which might give rise to a claim until a claim has been filed with the District's Board of Commissioners.

Types and Limits of Insurance Required:

Commercial General Liability

- \$2,000,000 each occurrence Bodily Injury and Property Damage liability
- \$2,000,000 annual aggregate
- Employees and volunteers as Additional Insureds
- Premises and operations
- Broad form property damage including underground, explosion and collapse hazards (XCU)
- Products completed operations
- Blanket Agreement
- Subcontractors
- Personal injury with employee exclusion deleted
- Employers liability (Stop gap)

Automobile Liability

- \$2,000,000 per accident bodily injury and property damage liability, including
- Any owned automobile
- Hired automobiles
- Non-owned automobile

As an alternative to the above indicated Commercial General Liability and Umbrella Liability insurance policies the City may provide the District with an Owners and Citys Protective (OCP) policy with a limit of coverage of \$5,000,000. If the City provides an OCP policy, the City shall additionally provide the District with evidence that the City's Commercial General Liability policy has been endorsed adding the District, its elected and appointed officials, officers, employees, agents and volunteers as insureds for at least products completed operations coverage.

Providing of coverages in the stated amounts shall not be construed to relieve the City from liability in excess of such limits.

The City shall maintain Workers Compensation insurance and/or Longshore and Harbor Workers insurance (or Jones Act coverage for all employees eligible for same) as required by state or federal statute for all of the City's employees to be engaged in work on the Property under this Agreement and, in case any such work is sublet, the City shall require the contractor similarly to provide workers compensation insurance and/or longshore and harbor workers insurance (or Jones Act coverage) for

all of the contractor's employees to be engaged in such work. The City's Department of Labor & Industries account number shall be noted on the certificate of insurance. In the event any class of employees engaged in the work under this Agreement is not covered under Workers Compensation insurance or Longshore and Harbor Workers insurance (or Jones Act coverage) as required by state and federal statute, the City shall maintain and cause each contractor to maintain, Employers Liability insurance for limits of at least \$1,000,000 for each employee for disease or accident, and shall furnish the District with satisfactory evidence of such.

The City shall be solely and completely responsible for safety and safety conditions on the Property which is the subject of this Agreement, including the safety of all persons and property during performance of the work. Any observation by District employees in the review of the City's performance of this Agreement is not intended to include review of the adequacy of the City's work methods, equipment, bracing, scaffolding, or trenching, or safety measures on the Property. The City shall provide safe access for the District and its employees and agents to adequately observe the City's performance.

The City shall be solely and completely responsible to perform all work and furnish all materials in strict compliance with all applicable state, city, county and federal laws, regulations, ordinances, orders and codes. The City's attention is directed to the requirements of the Washington Industrial Safety and Health Act (WISHA), Chapter 49.17 RCW.

The coverage of the City's policy shall be sufficiently broad enough to insure the provisions of the indemnity and hold harmless provision set forth in Section 8 of this Agreement.

Nothing contained in these insurance requirements shall be construed as limiting the extent of the City's responsibility for payment of damages resulting from the City's operations under this Agreement.

The City's insurance requirements in Section 7, with the exception of the Jones Act coverage and the Longshore and Harbor Workers insurance requirements, shall be fulfilled by the City's membership in Washington Cities Insurance Authorities. Washington Cities Insurance Authority is a municipal insurance pool providing liability coverage.

8. Indemnification. City shall defend, indemnify and hold harmless the District, its elected and appointed officers, officials, employees, agents and volunteers from and against any and every claim and risk and all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind, on account of injury to or death of any and all persons and/or on account of all property damage of any kind, whether tangible or intangible, including loss of use resulting therefrom, in connection with this Agreement, or caused or occasioned in whole or in part by reason of the presence of the City or its employees, agents, contractors, licensees, and invitees, or their property, employees or agents, upon or in proximity to the Property, except only for those losses, claims or

damages resulting solely from the negligence of the District, its officers, officials, employees and agents, or arising out of the maintenance, ownership, or use of the North Hill Water Storage Tank, pump station and associated mains, meters and appurtenances, gates, fencing, and landscaping located within the fenced area, on the northwest portion of the Property.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the City and the District, its officials, officers, employees and agents, the City's liability hereunder shall be only to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes City's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

If a lawsuit arises in respect to this Agreement, the City shall appear and defend that lawsuit at its own cost and expense, and if judgment is rendered or settlement made requiring payment of damages by the District, its elected or appointed officers, officials, employees, agents and volunteers, the City shall pay the same..

9. Right of Entry. The District reserves the right to enter the Property at reasonable times, with or without notice to the City, for the purpose of maintenance of the District's North Hill Water Storage Tank, pump station and associated mains, meters and appurtenances gate and fencing, facilities and landscaping within the fenced area situated on the northwest portion of the Property and activities associated with the statutory purpose of the District.

10. Removal of Park Equipment. At the termination of this Agreement, the City agrees to remove all playground and park equipment and other improvements on the Property ("Equipment") if so requested by the District or so desired by the City. If following the termination of this Agreement the District requests the City to remove the Equipment and the City fails to do so within sixty (60) days of the date of the District's request, the District shall have the right, but not the obligation, to remove the Equipment and the City shall reimburse the District for all costs and fees incurred to remove the Equipment.

11. Notices. Any written notice given by either party to the other under the provisions of, or with respect to, this Agreement, shall be delivered in person, or by certified or registered mail to the following addresses:

CITY	DISTRICT
City Manager City of Des Moines 21630 – 11 th Ave. South Des Moines, WA 98198-6398	General Manager Highline Water District 23828 30 th Ave S Kent, WA 98032

Or to such other address as each party hereto may notify the other.

12. **Effective Date.** This Agreement shall be effective ("Effective Date") on the last date that the Agreement has been approved and signed by all of the Parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as evidenced by their signatures below:

Dated this 3rd day of May, 2018.

HIGHLINE WATER DISTRICT
By direction of its Board of Commissioners
taken by Resolution _____.

Matt Everett
Matt Everett
General Manager

Dated this 3rd day of January 2018.

CITY OF DES MOINES
By direction of the Des Moines City
Council taken 6/28/2018.

Michael Matthias
Michael Matthias
City Manager

APPROVED AS TO FORM this 30th day of
APRIL 2018.

John W. Milne
John W. Milne,
Attorney for Highline Water District

APPROVED AS TO FORM this 3 day
of January 2018.

Tim George
Tim George
City Attorney
City of Des Moines

ATTEST:
City Clerk
City Clerk
City of Des Moines