

**INTERLOCAL AGREEMENT BETWEEN KING COUNTY FIRE PROTECTION
DISTRICT NO. 39 AND THE CITY OF DES MOINES REGARDING EMERGENCY
MANAGEMENT SERVICES AND OPERATIONS**

This Agreement is made and entered into effective November 26TH 2020, by and between King County Fire Protection District No. 39, (District) a special taxing district, municipal corporation and political subdivision under RCW 52.12.011, and the City of Des Moines, a municipal corporation, political subdivision and code city, (City). Both entities are duly organized and operating under and through the laws of the State of Washington. The District and the City collectively may be referred to as the "Parties" or singularly as a "Party."

WHEREAS, the Parties see fit, pursuant to their respective authorities conferred by law, to enter into this Agreement for cooperative action pursuant to RCW 39.34.030 and RCW 38.52.070.

Now, therefore, in exchange for the mutual promises contained herein, the Parties agree as follows:

Section 1. Purpose and Authority. The City and the District desire to contract with one another through an Interlocal Cooperative Agreement for the following:

- A. Joint operation of the City's Emergency Operations Center/Area Command Center (EOC/ACC);
- B. Sharing the cost of joint emergency management in accordance with the state emergency management plan, pursuant to RCW 38.52.070;
- C. Exchanging resources on a case-by case basis, for purposes of emergency management. This Agreement is based upon the authority of RCW 39.34.030 and RCW 52.12.031(3), which allows public agencies to cooperate and jointly exercise their powers in ways that provide the most efficient use of resources. The Parties agree that this Agreement should be liberally construed to effectuate the purpose of this Agreement.

Section 2. Scope of Agreement. The City and the District agree as follows:

- A. Exchange of Resources: Both Parties recognize the mutual benefits with providing more efficient use of resources by giving each other access to specialized labor, equipment, and materials as described in this Agreement, for purposes of emergency management.

The exchange of resources is limited to 1) availability and on a reimbursable basis for labor, construction, maintenance, repair, outfitting, or emergency mitigation; and 2) resources that are not otherwise readily available to the receiving Party on a normal basis. Both Parties agree and understand that the needs of the resource owner take precedence over the requesting Party's needs and that any work contemplated in this Agreement is not intended to supplant or otherwise divert City or District employees from duties owed to their respective employers.

- B. Requests for Services: Each request for service under this Agreement must include a scope of work agreement that specifies the expected deliverable. Requests must include: the type of service required, the amounts and types of labor, equipment, and material required, the location of the work, the estimated cost of the work, and any other information pertinent to the request. Upon receipt of the request, the Party receiving the request will indicate its acceptance or rejection of the request, authorize approved requests, and assure that both Parties are provided a final copy for their records. If a Party fails to indicate acceptance or rejection of the request within 30 calendar days of receipt, the request will be deemed rejected. In the case of an emergency, the resource request and its approval may be executed verbally between authorized individuals but must be documented in writing as soon thereafter as is practical.
- C. The District shall furnish to the City reasonable office space in District Station 67 for purposes of the City and the District's joint operations of an Emergency Operations Center/Area Command Center (hereinafter "EOC/ACC").
- D. In-Kind Services: The Parties further agree that at times, the labor, equipment, and materials may be furnished by one Party to the other Party in exchange for labor, equipment, and material furnished by the other, or in recognition of the benefit to the Party and/or constituents of said Party. Such in-kind exchange or benefit constitutes reimbursement as required in this Agreement and must be documented in writing and agreed to by both Parties.

Section 3. City and District to Jointly Operate an EOC.

I. City Obligations. The City will:

- A. Barring a natural disaster or other event that renders the EOC/ACC facility unusable, provide equipment and personnel for a joint operational EOC/ACC facility;
- B. Provide personnel trained in EOC/ACC operations and specific positions to help operate the EOC;
- C. Call the EOC/ACC into operation when its resources are overwhelmed or anticipate that they will be overwhelmed and additional help is needed to most effectively serve the public;
- D. Operate the EOC/ACC and activate the EOC/ACC in accordance with the Washington State Emergency Management Plan;
- E. Pay the District a flat rate of five hundred dollars (\$500) per year for use of office space at Station 67 as needed for the operation of the EOC/ACC;

- F. Coordinate with the District for services provided during a disaster declared pursuant to the federal Stafford Act or pursuant to an emergency declaration;
- G. Delegate to the District, when necessary, the City's powers under RCW 38.52; and
- H. Develop a communication plan for notifying significant population segments of life safety information during an emergency.

II. District Obligations

- A. Barring a fire emergency that requires direct staff attention, provide personnel trained in EOC/ACC operations and specific positions to help operate the EOC/ACC in the event of its activation; and
- B. Call the EOC/ACC into operation when District resources are overwhelmed or anticipate that they will be overwhelmed and additional help is needed to most effectively serve the public.

III. Joint Obligations. The Parties shall:

- A. Operate the EOC/ACC in good faith, relying on both organizations' staffing and resources to best serve the public, particularly during sustained operations;
- B. Operate using the standardized National Incident Management System, where staff from either organization is interchangeable in serving the public;
- C. Engage the City's Policy Board (City Council) for City policy decisions and the District's Policy Board (Fire Commissioners) for District policy decisions. A joint meeting will support policy decisions involving both organizations; and
- D. The City and the District agree to support each other in managing an event as follows:
 - a. Only events that exceed seventy-two (72) hours will be subject to reimbursement.
 - b. Events subject to reimbursement will be reimbursed on a jurisdictional basis as follows:
 - i. Events occurring solely within the City's or the District's jurisdiction that is not the type of event the assisting jurisdiction would typically respond. Examples of the types of situations where this might occur, without limitation, would be a fire activation that does not threaten the City, but where the City activates the facility and supports the activation with staff, or a City activation

that does not involve emergency response from the District but where District staff are involved in EOC/ACC operations.

- ii. The assisting jurisdiction is entitled to reimbursement of actual costs associated with its support in managing the event.
 - iii. The City and the District are responsible for their own costs for events where the City and the District have concurrent jurisdiction and responsibility. An example, without limitation, is a fire within the City limits that activates the EOC/ACC.
 - iv. Payment will be made within 3 months after the invoice, unless there is a dispute. If both Parties submit an invoice, the Parties may credit payment and remit only any overage due to the other Party. The City will provide its cost data for the EOC/ACC facility, staffing, and other expenses related to the EOC/ACC during activation, to the District upon request. The District will also, upon request, provide the City any requested District cost data related to EOC/ACC operations during activation.
- c. If the City Manager or the City Council declares a local state of emergency to protect and preserve health, safety life and property, the Parties remain committed to sharing in the cost of emergency management fairly and equitably.
 - d. In the event that the City obtains federal funds for disaster relief, the Parties may meet to discuss potential options for expenditure or allocation of the funds as appropriate.

Section 4. City and District to Share in the Cost and Administration of Joint Emergency Management Training. The City and the District will:

- A. Continue joint emergency management training with each agency leading the organization of training at different times.
- B. Negotiate cost sharing between the agencies to appropriately allocate training costs on a per training basis as agreed upon by the Parties. Such agreement will not be unreasonably withheld. Any training for which cost sharing is requested and cost sharing amounts must be mutually agreed upon by the Parties before the training is booked.

Section 5. Emergency Equipment Procurement and Storage.

- A. The City will identify, in cooperation with the District and the King County Department of Emergency Management, items needed or desired for emergency preparedness mitigation efforts, such as support material for first responder staff responding and supporting emergency response, or items for community use during an emergency event, such as water purification systems.

- B. The District will assist the City in identifying, maintaining, and storing those items procured under this Section. The District will ensure all items maintained or stored in their immediate possession are kept in good order and available for audit at the City's request.

Section 6. Additional Terms and Conditions.

Relationship of the Parties: No agent, official, employee, servant, or representative of the City is an officer, employee, agent, servant or representative of the District for any purpose. No agent, official, employee, servant or representative of the District is an officer, employee, agent servant or representative of the City for any purpose.

Duration and Termination:

- A. This Agreement will be in force and effect on the date of last signature and will remain in effect for a period of five years or upon either party giving notice of intent to terminate this Agreement pursuant to Paragraph B below. This Agreement will be automatically extended for additional five-year terms unless either Party provides notice of intent to terminate.
- B. Either Party may terminate this Agreement, prior to its expiration, by providing the other Party at least six months prior written notice. Such notice must state the grounds for the termination.

Annual Review: The terms and operations of this Agreement will be reviewed annually in December of each year. The purpose of the review is to assure that the purpose and objectives of this Agreement are being met. This review will be conducted by a committee composed of at a minimum the City Manager and the District Fire Chief. This committee may be supported by staff of either or both the City and the District.

Indemnification:

- A. To the fullest extent allowed by law, the City will be solely and entirely responsible for its acts/omissions and for the acts/omissions of its agents, employees, servants, or representatives. To the fullest extent allowed by law, the District will be solely and entirely responsible for its acts/omissions and for the acts/omissions of its agents, employees, servants or representatives.
- B. Each Party agrees to defend and indemnify the other Party and its elected and appointed officials, officers, employees, and agents from and against all claims, losses, damages, suits and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of the negligence or willful misconduct of the indemnitor or its elected or appointed officials, officers, employees, and agents in the performance of this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or

subcontractor of indemnitor. The indemnitor waives its immunity under Title 51 Item 5 Attachment 1 8 (Industrial Insurance) of the Revised Code of Washington solely for the purposes of this provision and acknowledges that this waiver was mutually negotiated.

Non-Payment and Other Defaults: In the event of any default hereunder, upon thirty (30) calendar days written notice by either Party with regard to failure to make any payment required, and if the same is not cured within sixty (60) calendar days, then the requesting Party is entitled, without further notice or demand, to give notice of termination as set forth in Section 8 Duration and Termination, including any other remedy granted at law or in equity.

Disputes: Disputes will be referred to the Fire Chief of the District and the City Manager for settlement. If disputes are not resolved by the Parties within thirty (30) calendar days of the referral, unless the Parties agree to an extension of time, the dispute will be referred to an arbitrator who has been mutually agreed upon by the City and District. Or if they cannot agree to an arbitrator, the Parties may apply to the presiding judge of the King County Superior Court for appointment of an arbitrator. The arbitrator's decision is final and binding on both Parties; provided however, an arbitrator's decision may be appealed to Superior Court if it is based on an error of law, is arbitrary and capricious, is not founded on substantial facts or exceeds the arbitrator's authority. Each Party will pay one-half of the arbitrator's fee. If mutual written consent to apply for the appointment of an arbitrator is not reached, either Party may seek court action to decide the disputed contract provision.

Notice: Any notice required to be given by either Party to the other will be deposited in the United States mail, postage prepaid, addressed:

To the District at: South King Fire and Rescue
Attention: Fire Chief
31617 1st Ave S
Federal Way, WA 98003

To the City at: Des Moines City Clerk
21630 11th Ave. S, Suite A
Des Moines, WA 98198

Or at such other address as either Party may designate to the other in writing from time to time. All notices to be given with respect to this Agreement must be in writing. Every notice is deemed to have been given at the time it is deposited in the United States mails in the manner prescribed herein. Nothing contained herein will be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

Entire Agreement: This Agreement constitutes the entire Agreement of the Parties and supersedes all prior agreements, contracts, and understanding, written or oral. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. Any and all previous agreements, understandings, and the like, oral or otherwise, are hereby revoked.

Construction of Agreement: In the event of a dispute between the Parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement will not be cause for this Agreement to be construed against any Party nor in favor of any Party.

Execution: This Agreement is executed by each Party acting with authority granted, where required, by its governing body. This Agreement may be executed in counterpart originals. A copy of each such executed counterpart original will be delivered to each Party upon that Party's execution of a counterpart original.

Administration: This Agreement will be jointly administered by the City and the District. This Agreement does not create any separate legal or administrative entity. However, nothing in this Agreement is intended to prevent or otherwise interfere with discussions or decisions that may be made by the Parties during the Annual Review. Further, the Parties understand and agree that there will be communication between the Parties to effectuate the terms of this Agreement.

Financing; Budget: This Agreement does not contemplate a joint budget.

Property Acquisition and Disposition: This Agreement does not contemplate the joint acquisition of property by the Parties. At termination, each Party will remain the sole owner of its own property.

Applicable Law and Venue: This Agreement will be governed by and construed in accordance with the laws of the State of Washington. The venue for any court action will be in King County in any court with jurisdiction.

Nondiscrimination: The District and the City agree not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification. The District and the City will comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement. Violation of this section is a material breach of this Agreement and grounds for cancellation, termination or suspension by the City or the District, in whole or in part, and may result in ineligibility for further work from the City or the District.

Waivers: Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement are not a waiver of such, nor does any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

Independent Governments: The City and the District recognize and agree that the City and District are independent governments. Except for the specific terms herein, nothing herein shall be construed to limit the discretion of the governing bodies of each Party. Neither the City nor the District, except as expressly set forth herein or as required by law, shall be liable for any debts or obligations of the other. This Agreement shall not prevent either Party from entering into separate interlocal agreements as permitted by law.

Files: All files and other documents maintained by either Party relating to this Agreement or the services provided pursuant to this Agreement belong to that Party. On request, such files will be made available for review by the other Party through a duly authorized representative from either Party during normal business hours.

Public Records Requests: The City is responsible for timely and adequately responding to requests for records addressed to it under the Public Records Act. The District is responsible for timely and adequately responding to requests for records addressed to it under the Public Records Act.

Challenges and Non-Waiver: The entry into this Agreement will not be construed to be a waiver or abandonment of any defense or claim either Party may have against the other.

Counterparts: This Agreement may be executed in counterparts, i.e. at separate times and in separate places, and a copy of this Agreement shall be deemed as valid as any original. This Agreement shall take effect on the last-dated signature below.

Signatories. The signatories below hereby covenant that they are possessed of sufficient authority to execute this Agreement and bind their respective agencies, as delegated by the governing bodies thereof.

THIS AGREEMENT IS HEREBY EXECUTED:

CITY OF DES MOINES

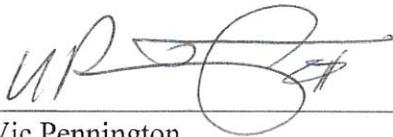
Approved as to form:

By: 
Name: Michael Matthias
Title: City Manager

/s/ Tim George
City Attorney

SOUTH KING FIRE AND RESCUE

Approved as to Form:

By: 
Name: Vic Pennington
Title: Fire Chief


District Attorney