City Council, Special Meeting

AGENDA
REVISED

6:30 pm – 9:30 pm
December 14, 2010 Council Chambers

Call to Order

Roll Call/Pledge of Allegiance

Approval of Agenda

Student Liaison Reports
- Eastlake High School
- Skyline High School

Presentations/Proclamations

- Planning Commission Hand Off of Transfer of Development Rights Regulations
- Interlocal Agreement: Transfer of Development Rights/King County

Public Comment
Note: *This is an opportunity for the public to address the Council. Three-minutes limit per person or 5 minutes if representing the official position of a recognized community organization***.**

Consent Agenda
1. Ordinance: Second Reading Repealing Ordinance No. 02010-288, Which Amended The 2009-2010 City Budget.
2. Bid Award: NE 14th Drive Neighborhood Traffic Management Program Project/ConstructCo
3. Contract: Facilities Janitorial Services/SMS Cleaning, Inc.
4. Contract: Legal Services/Kenyon Disend
5. Contract: Recycle Events/Olympic Environmental
6. Contract: On-Call Technical Support for Park, Recreation and Open Space Comprehensive Plan/Bruce Dees
7. Motion Canceling Council Meetings for December 20, December 21, 2010, AND January 17, 2011

City Council meetings are wheelchair accessible. American Sign Language (ASL) interpretation is available upon request. Please phone (425) 295-0500 at least 48 hours in advance. Assisted Listening Devices are also available upon request.

Public Hearings

8. Ordinance: Second Reading and Continuation of Public Hearing Relating To Siting Of Wireless Communication Facilities; Amending Chapter 21a.55.070 And .080 Of The Sammamish Municipal Code; Providing For Attachment Of Base Station Equipment And Limiting Height Increases; Providing For Severability; And, Establishing An Effective Date

Unfinished Business - None

New Business

9. Contract: Prosecution Services/Moberly

Council Reports

City Manager Report

Art Installation for trees in front of Starbucks

Executive Session – Potential Litigation pursuant to RCW42.30.110(1)(i)(B)

Adjournment

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AGENDA CALENDAR

Dec. 2010			
Mon 12/13	6:00 pm	Volunteer Appreciation Dinner	City Hall
Tues 12/14	6:30 pm	Special Meeting	PC Hand Off: Transfer of Development Rights Code Interlocal: Transfer of Development Rights/King County Public Hearing Amending Wireless Code Amendments Ordinance: Second Reading Repealing Ordinance O2010-288 adopting the 2009-2010 Budget Adjustment (consent) Bid Award: NE 14th Dr Neighborhood Traffic Management Program Project (consent) Contract: SMS Cleaning Inc./ Janitorial Services (consent) Contract: Kenyon, Disend/ City Attorney (consent) Contract: Lynn Moberly /Prosecution Services Contract: Recycle Events/Olympic Environmental (consent) Dec 20/21 Meeting Cancellation (consent) Contract: On-Call Technical Support for PRO plan/Bruce Dees (consent)
Mon 12/20	6:30 pm	Study Session	Canceled
Tues 12/21	6:30 pm	Regular Meeting	Canceled
Jan. 2011			
Tues. 1/4	6:30 pm	Regular Meeting	Public Hearing: Ordinance First Reading Transfer Of Development Rights Presentation: Transportation Improvement Board Plaque for 244th Project. Cities Update from the Executive Director of AWC Bid Award: Room 202 Tenant Improvements (Consent) Interlocal: Transfer of Development Rights/King County Final Acceptance: 2010 Neighborhood Traffic Management Program NE 19th Drive Project Amendment: ROW Landscaping Maintenance/NW Landscaping (consent) Contract: Kimberly Leyton/ Domestic Violence Advocate (consent) Contract: Stewart, Beall/ Public Defender (consent) Amendment: Stormwater System Cleaning/Bravo (consent)
Tues. 1/11	6:30 pm	Study Session	Update: Connectivity Presentation: Community Centers
Thurs 1/13	Noon	Employee Appreciation Luncheon	
Mon. 1/17	**6:30 pm**	**Holiday**	**Martin Luther King Day – City Offices Closed**
Tues. 1/18	6:30 pm	Regular Meeting	Presentation: Waste Management (Susan Robinson) Ordinance Second Reading Transfer Of Development Rights
Feb. 2011			
Tues. 2/1	6:30 pm	Regular Meeting	
Feb 3-5		Council Policy Session	
Tues. 2/8	6:30 pm	Study Session	SR520 Tolling Update(Craig Stone) Update: Wireless Amendments
Mon. 2/14	6:30 pm	Study Session	
Tues. 2/15	6:30 pm	Regular Meeting	Public Hearing: Ordinance for Wireless Amendments
Mon. 2/21	**Closed**	**Holiday**	**President's Day – City Offices Closed**

Mar. 2011			
Tues. 3/1	6:30 pm	Regular	
Tues. 3/8	6:30 pm	Joint Meeting with Parks Commission	Review: PRO Plan
Mon. 3/14	6:30 pm	Joint Study Session/PC	Sustainability
Tues. 3/15	6:30 pm	Regular Meeting	
Apr. 2011			
Tues. 4/5	6:30 pm	Regular	
Tues. 4/12	6:30 pm	Study Session	
Mon. 4/18	6:30 pm	Study Session	
Tues. 4/19	6:30 pm	Regular Meeting	
May 2011			
Tues. 5/3	6:30 pm	Regular	
Tues. 5/10	6:30 pm	Study Session	
Mon. 5/16	6:30 pm	Study Session	
Tues. 5/17	6:30 pm	Regular Meeting	
Mon. 5/30	**Closed**	**Holiday**	**Memorial Day – City Offices Closed**
Jun. 2011			
Tues. 6/7	6:30 pm	Regular	
Tues. 6/14	6:30 pm	Joint Meeting with Parks Commission	Review: PRO Plan
Mon. 6/20	6:30 pm	Study Session	
Tues. 6/21	6:30 pm	Regular Meeting	
Jul. 2011			
Mon. 7/4	**Closed**	**Holiday**	**Independence Day – City Offices Closed**
Tues. 7/5	6:30 pm	Regular	
Tues. 7/12	6:30 pm	Study Session	
Mon. 7/18	6:30 pm	Study Session	
August 2011			NO MEETINGS
Sept. 2011			
Mon. 9/5		Holiday	Labor Day– City Offices Closed
Tues. 9/6	6:30 pm	Regular	
Tues. 9/13	6:30 pm	Study Session	
Mon. 9/19	6:30 pm	Study Session	
Tues. 9/20	6:30 pm	Regular Meeting	
Oct. 2011			
Tues. 10/4	6:30 pm	Regular	
Tues. 10/11	6:30 pm	Study Session	
Mon. 10/17	6:30 pm	Study Session	
Tues. 10/18	6:30 pm	Regular Meeting	
Nov. 2011			

Tues. 11/1	6:30 pm	Regular	
Tues. 11/08	6:30 pm	Study Session	
Mon. 11/14	6:30 pm	Study Session	
Tues. 11/15	6:30 pm	Regular Meeting	
Dec. 2011			
Tues. 12/6	6:30 pm	Regular	
Tues. 12/13	6:30 pm	Study Session	
Mon. 12/19	6:30 pm	Study Session	
Tues. 12/20	6:30 pm	Regular Meeting	

To Be Scheduled	**To Be Scheduled**	**Parked Items**
Code Enforcement Code Amendments *(1/18/2011)* Ordinance: Second Reading Puget Sound Energy Franchise Franchise: Cable TV	Final Acceptance: ELSP Phase 1A Final Acceptance: 244th Avenue Improvement Project Final Acceptance: SE 20th Street Non-motorized Improvement Project	Joint Meeting/Issaquah School Dist. Joint Meeting/LWSD Joint Meeting/Issaquah City Council Joint Meeting/Samm PW & S Focus Groups for Community Center

<< November

December 2010

January >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 5:30 p.m. **Holiday Lighting Event**	**2** 6:30 p.m. **Planning Commission Meeting**	**3**	**4**
5	**6**	**7** 5 p.m. **Finance Committee Meeting** **Canceled** 6:30 p.m. **City Council Meeting**	**8** 6:30 p.m. **Parks and Recreation Commission Meeting**	**9**	**10**	**11**
12	**13**	**14** 6:30 p.m. **City Council Study Session**	**15** 6 p.m. **Sammamish Youth Board Meeting**	**16** 6:30 p.m. **Planning Commission Meeting**	**17**	**18**
19	**20** 6:30 p.m. **Arts Commission Meeting** **Canceled** 6:30 p.m. **City Council Study Session**	**21** 6:30 p.m. **City Council Meeting**	**22**	**23**	**24** 8 a.m. **Christmas Holiday** **City offices closed**	**25**
26	**27**	**28**	**29**	**30**	**31** 8 a.m. **New Year's Holiday** **City offices closed**	

<< December

January 2011

February >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	**3**	**4** 6:30 p.m. **City Council Meeting**	**5** 6:30 p.m. **Parks and Recreation Commission Meeting**	**6** 6:30 p.m. **Community Garden Steering Committee Meeting** 6:30 p.m. **Planning Commission Meeting**	**7**	**8**
9	**10**	**11** 6:30 p.m. **City Council Study Session**	**12**	**13**	**14**	**15**
16	**17**	**18** 6:30 p.m. **City Council Meeting**	**19** 2 p.m. **Artist Lecture and Walk-thru** 6 p.m. **Sammamish Youth Board Meeting**	**20** 6:30 p.m. **Planning Commission Meeting**	**21**	**22**
23	**24** 6:30 p.m. **Arts Commission Meeting**	**25**	**26**	**27** 4 p.m. **Public Safety Committee Meeting**	**28**	**29**
30	**31**					

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 8, 2010

Originating Department: Community Development

Clearances:

- [x] City Manager
- [ ] Attorney
- [ ] Admin Services
- [x] Community Development
- [ ] Finance & IT
- [ ] Fire
- [ ] Parks & Recreation
- [ ] Police
- [ ] Public Works

Subject: Transfer of Development Rights - amendments to the Sammamish Municipal Code

Action Required: First Reading, Planning Commission Recommendation – No Action Required

Exhibits:
1. Planning Commission Recommendation
2. Proposed Ordinance with Attachment A

Budget: N/A

Summary Statement:

To implement the adopted Town Center Subarea Plan, this ordinance would adopt Transfer of Development Rights regulations. The Development Regulations would be codified in the Sammamish Municipal Code as chapter 21A.80, and authorize sending sites within the City or unincorporated King County to transfer density into the Town Center. The proposed regulations are intended to complement the proposed Interlocal Agreement with King County.

Background:
The City Council unanimously adopted the Town Center plan on June 9, 2008. The Town Center plan provided policy direction that the Town Center should: *"…incorporate a TDR* [Transfer of Development Rights] *system to use market forces to better protect ecological resources and open space with public benefits".* Following analysis and recommendations from Cascade Land Conservancy, the City Council held discussions and review in 2009 and concluded that TDR program should allow for the transfer of TDR rights from sending sites, and the conversion of those rights into commercial square footage or additional residential units.

To be successful as a tool, TDR programs should be designed to ensure that there is a positive financial benefit for both the seller and the buyer. Staff and consultants have analyzed the policy goals, programmatic issues, and market values to develop the proposed TDR program.

The Planning Commission and staff held a public hearing on November 4 that was continued to November 10, 2010. The Planning Commission received public input from a private property owner in the Town Center.

Staff provided an extensive amount of background documentation supporting the proposed TDR ordinance, providing background on the market analysis used to generate receiving site incentives, and legal context and history surrounding TDR programs. The incentive ratios established by the receiving site incentive table is based upon the best information available to the City and Planning Commission. Based upon this information, the Planning Commission's recommended draft essentially incorporates the best aspects of TDR ordinances adopted by other jurisdictions.

Financial Impact: N/A

Recommended Motions: None.

Exhibit 1

City of Sammamish Washington

Planning Commission

801 – 228th Avenue SE • Sammamish, WA 98075 • Phone: 425-295-0500 • Fax: 425-295-0600 • Web: www.ci.sammamish.wa.us

To: City Council

From: Tom Vance, Chair

December 14, 2010

RE: Recommendation for proposed Transfer of Development Rights ordinance

On behalf of the Planning Commission, I am pleased to transmit the Planning Commission's recommendations for the Transfer of Development Rights (TDR) ordinance and code amendments to the Sammamish Municipal Code. The Commission and staff used a public participation process that included multiple public meetings and a public hearing process.

The Planning Commission **unanimously recommends that the City Council adopt** the proposed Transfer of Development Rights ordinance and associated code amendments to the Sammamish Municipal Code.

The Planning Commission and staff held a public hearing on November 4 that was continued to November 10, 2010. The Planning Commission received public input from a private property owner in the Town Center.

Staff provided an extensive amount of background documentation supporting the proposed TDR ordinance, providing background on the market analysis used to generate receiving site incentives, and legal context and history surrounding TDR programs. The incentive ratios established by the receiving site incentive table is based upon the best information available to the City and Planning Commission. Based upon this information, the Planning Commission's recommended draft essentially incorporates the best aspects of TDR ordinances adopted by other jurisdictions.

The Planning Commission considered a number of aspects of the Transfer of Development Rights ordinance, including, but not limited to:

1. Providing a flexible framework for transferring density from sending sites both inside and outside the City. The Planning Commission has also provided flexibility to amend the table to reflect changing market conditions as warranted. (Ref. SMC 21A.80.090, page 7 of 11)
2. The appropriate location of sending sites within the City of Sammamish. (Ref. 21A.80.030, pages 2 and 3 of 11)
3. Providing conservation easement flexibility to ensure the long term practicality of the TDR ordinance and sending site preservation. (Ref. SMC 21A.80.070(C)(4), page 6 of 11)
4. Providing the flexibility to allow sending sites in other jurisdictions (in addition to the anticipated Interlocal Agreement with King County) to transfer density into the City. Such transfer would be authorized only through a later interlocal agreement. (Ref. 21A.80.030, pages 2 and 3 of 11)
5. Allowing the City to adjust TDR incentives annually to address possible market fluctuations. (Ref. 21A.80.090(C), page 7 of 11)

Thank you for your consideration of our recommendations. If you have any questions, please contact Kamuron Gurol at 425.295.0520 or kgurol@ci.sammamish.wa.us.

Exhibit 2

DRAFT
CITY OF SAMMAMISH
WASHINGTON

ORDINANCE NO. O2011 -

AN ORDINANCE OF THE CITY OF SAMMAMISH, WASHINGTON, REPEALING THE TRANSFER OF DEVELOPMENT DENSITY CREDITS REGULATIONS AND ADOPTING TRANSFER OF DEVELOPMENT RIGHTS REGULATIONS CODIFIED INTO CHAPTER 80 OF TITLE 21A OF THE SAMMAMISH MUNICIPAL CODE

WHEREAS, the City incorporated in August of 2009;

WHEREAS, the City Council adopted the City's Comprehensive Plan on September 16, 2003, and the City has enacted zoning consistent with the comprehensive plan; and

WHEREAS, the City Council adopted the Sammamish Municipal Code on October 7, 2003 and subsequent revisions have been made since that time; and

WHEREAS, the City Council adopted the Town Center Plan on June 9, 2008, which established the policy basis for the development of the Transfer of Development Rights regulations and program; and

WHEREAS, the Transfer of Development Rights regulations and program will authorize development consistent with the policy direction of the adopted Town Center Plan, subject to specific regulatory provisions; and

WHEREAS, a State Environmental Policy Act (SEPA) Determination of Non Significance for the proposed Transfer of Development Rights regulations was issued on January XX, 2011; and

WHEREAS, in accordance with RCW 36.70A, a request for expedited review was received by the State of Washington Department of Commerce on December 8, 2010 and was granted expedited review on December XX, 2010; and

WHEREAS, the public process for the proposed amendments has provided for public participation opportunities at public meetings and hearings before the Planning Commission and City Council between November of 2010 and January of 2011; and

WHEREAS, the Planning Commission held public meetings and public hearings in November of 2010 and forwarded recommended Transfer of Development Rights regulations to the City Council on December 14, 2010; and

WHEREAS, the City Council considered the proposed Transfer of Development Rights at a City Council public hearing on January 4, 2011, which was continued on January 18, 2011; and

WHEREAS, the City Council considered the Planning Commission's recommendation, public comment, and other available information.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption of the Transfer of Development Rights regulations. The Transfer of Development Rights Regulations as set forth in Attachment "A" to this ordinance is hereby adopted.

Section 2. Codification of the Transfer of Development Rights regulations. The City Council authorizes the Community Development Director and City Clerk to codify the regulatory provisions of the Transfer of Development Rights ordinance into Title 21A of the Sammamish Municipal Code for ease of use and reference.

Section 3. Interpretation. The City Council authorizes the Community Development Director to administratively interpret these provisions as necessary to implement the intent of the Council.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE XX DAY OF JANUARY 2011.

CITY OF SAMMAMISH

_____

Mayor

ATTEST/AUTHENTICATED:

_____
Melonie Anderson, City Clerk

Approved as to form:

_____
Bruce L. Disend, City Attorney

Filed with the City Clerk: December 8, 2010
Public Hearing:
First Reading:
Public Hearing:
Second Reading:
Passed by the City Council:
Date of Publication:
Effective Date:

TDR Ordinance Elements:

- 21A.80 – Transfer of Development Rights (*New chapter replacing original)*
  - 21A.80.010 Purpose
  - 21A.80.020 Applicability
  - 21A.80.030 Sending Sites
  - 21A.80.040 Receiving Sites
  - 21A.80.050 Calculation of Available Development Rights from Sending Sites
  - 21A.80.060 Sending Site Certification
  - 21A.80.070 Documentation of Restrictions
  - 21A.80.080 Sending Site Development Limitations
  - 21A.80.090 Receiving Site Incentives
  - 21A.80.100 TDR Transfer Process

- 21A.15 - Technical Terms and Land Use Definitions *(Supplemental sections)*
  - 21A.15.XXX “Conservation easement”
  - 21A.15.XXX "Development right"
  - 21A.15.XXX “Interlocal agreement”
  - 21A.15.XXX “Partially Developed”
  - 21A.15.955 "Receiving site" (*Replaced definition)*
  - 21A.15.XXX "Sending site"
  - 21A.15.XXX "TDR certificate"
  - 21A.15.XXX “TDR certificate of intent”
  - 21A.15.XXX "TDR program"
  - 21A.15.XXX "TDR sending site application"
  - 21A.15.XXX "Transfer of Development Rights (TDR)"

- 20.05 – Procedures for Land Use Permit Applications, Public Notice, Hearings, and Appeals
  - 20.05.020 Classification of land use decision processes *(Edit)*

Transfer of Development Rights

21A.80.010 Purpose and Intent

21A.80.020 Applicability

21A.80.030 Sending Site Categories and Criteria

21A.80.040 Receiving Sites

21A.80.050 Calculation of Available Development Rights from Sending Sites

21A.80.060 Sending Site Certification

21A.80.070 Documentation of Restrictions

21A.80.080 Sending Site Development Limitations

21A.80.090 Receiving Site Incentives

21A.80.100 TDR Transfer Process

21A.80.010 Purpose and Intent.

A. The purpose of the transfer of development rights (TDR) program is to implement a market-based tool to permanently preserve partially developed or undeveloped land with important public benefits, such as farmland, forestland, open space, and wildlife habitat, through the private acquisition of the development rights on those lands ("sending sites") and the subsequent transfer of those rights to lands more suitable for development ("receiving sites").

B. The TDR provisions supplement land use regulations, resource protection efforts and open space acquisition programs and are intended to encourage increased residential development density or increased commercial square footage where it can best be accommodated by:

1. Providing an incentive process for property owners of partially developed property, undeveloped land, farmland, forestland, open space and wildlife habitat to preserve lands with a public benefit; and
2. Providing an administrative review process to ensure that transfers of development rights are evaluated and administered in a fair and timely manner in accordance with other City goals and policies.

21A.80.020 Applicability.

All new development on a site identified as a "receiving site" pursuant to 21A.80.040 shall have the option to acquire a certified Transfer of Development Right to increase the development potential of the receiving site. All private property owners owning a site that qualifies as a "sending site" pursuant to 21A.80.030 and 21A.80.050 shall have the option to request sending site certification and to sell the development potential of a sending site to an interested buyer. The development potential of a sending site, as determined by site certification pursuant to SMC 21A.80.060, may be transferred and credited to a receiving site only when the transfer is approved in accordance with this chapter.

21A.80.030 Sending Site Categories and Criteria.

A. A sending site may be certified by the City pursuant to SMC 21A.80.060 provided the sending site meets the criteria for one of the following sending site categories below, and the provisions of section "B.".
   1) In-City Sending Sites. Undeveloped or partially developed properties located within the following areas may qualify as "in-City sending sites". The department shall maintain maps of the approximate location of these areas, which shall be subject to field verification as part of the certification process:
      a. Properties located within the Thompson Sub-basin; or,
      b. Properties located within the Inglewood Sub-basin; or,
      c. Properties located within Erosion Hazards – special district overlay; or,
      d. Properties located within the Wetland Management Areas – special district overlay.
   2) Inter-jurisdictional Sending Sites:
      a. Unincorporated King County land identified by the City Council in an Interlocal Agreement with King County; or
      b. Land identified by the City Council in an Interlocal Agreement with another jurisdiction.
   3) For the purposes of this chapter, "undeveloped" properties are properties that have the potential to accommodate dwelling units and do not currently contain dwelling units.
B. To be eligible for the TDR program, all sending sites shall be certified by the City pursuant to SMC 21A.80.060, have intact development potential, and provide a defined public benefit.
   1) A sending site is deemed to have a defined public benefit if the site is:
      a. Open space adjacent to, or connected with, City Park or open space lands; or
      b. Wildlife habitat for threatened and/or endangered species listed by the federal government or the State of Washington; or
      c. Located such that preservation will provide additional protection for sensitive sub-basins or environmentally critical areas; or
      d. Farmland; or
      e. Forestland.
   2) A sending site is deemed to have intact development potential if the area proposed for conservation is:
      a. Of sufficient area to create at least one development right pursuant to 21A.80.050; and
      b. Contiguous, except for division by public rights-of-way; and
      c. The sending site's development rights or development capacity is not exhausted through any of the following:
         i. Existing development on the site; or
         ii. Agriculture, recreation, or open space easements; or
         iii. Conservation of environmentally sensitive areas and their buffers through means including, but not limited to, an open space easement or native growth easement; or
         iv. Alteration by a conservation easement, or through any agreement.
C. Development rights acquired from eligible sending sites may be transferred to eligible receiving sites through the TDR transfer process. After completion of the conveyance of a sending site's development rights, the property shall be maintained in a condition that is consistent with the criteria in this chapter under which the sending site was qualified by means of a TDR conservation easement.
D. Publicly owned property shall not be eligible to become a sending site unless the site is identified as a sending site in an interlocal agreement.

21A.80.040 Receiving Sites.

A. Eligible receiving sites shall be:
   1. Town Center Subarea properties as follows:
      a. Commercial properties in Zone A of the Town Center Subarea
      b. Residential properties in Zones A, B, C, and D of the Town Center Subarea
   2. [Placeholder for future receiving sites]

B. Except as provided in this chapter, development of a receiving site shall remain subject to all use, lot coverage, height, setback and other applicable requirements of the Sammamish Municipal Code.

C. A Town Center Subarea receiving site may accept density credits, up to the maximum density authorized pursuant to SMC 21B.25, from any sending site or combination of sending sites.

D. A [Placeholder for future receiving sites] receiving site may accept density credits, up to the maximum density authorized pursuant to SMC 21A.25, from any sending site or combination of sending sites.

21A.80.050 Calculation of Available Development Rights from Sending Sites.

The number of development rights that a sending site is eligible to sell under this program shall be calculated based upon the sending site category established pursuant to SMC 21A.80.030, provided:

A. Inter-jurisdictional Sending Sites.
   1. The number of development rights eligible for sale on a sending site located on land identified by the City Council in an Interlocal Agreement with another jurisdiction, shall be determined pursuant to the Interlocal Agreement.
   2. If the sending site is located on un-incorporated King County land identified by the City Council in an Interlocal Agreement with King County, the number of development rights eligible for sale may be determined pursuant to the Interlocal Agreement.

B. In-City Sending Sites. The number of development rights eligible for sale on a sending site located in the In-City Preservation Sending Site category shall be determined pursuant to SMC 21A.25.070 and 21A.25.080, subject to the limitation of subsection "C." below, and provided that the minimum number of development rights for a undeveloped property shall be one per legal lot.

C. No development rights may be assigned to land already encumbered by a conservation easement unless expressly reserved by the easement.

21A.80.060 Sending Site Certification

A. Sending sites located within Sammamish
   1. The City shall be responsible for determining whether properties are eligible to be considered a sending site. The City shall base its decision on the materials provided by the landowner in a TDR sending site application and a satisfaction of the sending site requirements outlined in 21A.80.030 and calculations in 21A.80.050.
   2. Responsibility for preparing a completed sending site application rests exclusively with the applicant. Application forms shall be available from the Department of Community Development.
   3. Sending site landowners may obtain TDR certificates which can be transferred pursuant to 21A.80.100 and used by receiving area landowners. The process for obtaining the TDR certificates is as follows:
      a. Following City review and approval of an application for TDR certificates by the sending site owner, the City shall issue a TDR certificate letter of intent. The letter shall contain the following:

i. A determination of the number of development rights calculated for the sending site pursuant to 21A.80.050 and 21A.80.100; and

ii. An agreement by the City to issue a corresponding number of TDR certificates in conversion for an conservation easement granted by the City or the City's designated agent; and

iii. A summary of the expected terms of use for the sending site established through 21A.80.070.

b. The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the certificate letter of intent shall have no value and cannot be transferred or used to obtain increased development rights within receiving areas.

c. The letter of intent shall expire 10 years from the date of issuance by the City of Sammamish.

d. As provided by the TDR certificate letter of intent, the City shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement. The City shall have 90 days from the date the conservation easement is offered by the sending site owner in which to conduct, at its discretion, a review of the sending site records and/or a site inspection.

e. A TDR conservation easement will not encumber a sending site until such time as a TDR certificate or certificates have been issued to sending site landowners pursuant to 21A.80.100 except by owner preference. The Director is authorized to create administrative rules to provide for phased development of a project incorporating TDRs.

B. Sending sites located outside of Sammamish

1. All development rights transferred through an interlocal agreement with another jurisdiction from sending sites located outside of the city limits of Sammamish shall be transferred into Sammamish pursuant to the terms of the interlocal TDR agreement with the relevant jurisdiction.

2. All development rights that are not subject to the terms of an interlocal agreement with another jurisdiction and are transferred from sending sites located outside the city limits of Sammamish, shall be transferred into Sammamish pursuant to 21A.80.060(A).

21A.80.070 Documentation of Restrictions

A. TDR certificates issued to sending sites by the City of Sammamish shall have a conservation easement restricting the deed and granted to the City of Sammamish, or an appropriate agent, recorded with King County and notice placed on the title of the sending parcel.

B. TDR certificates issued to sending sites pursuant to an interlocal agreement with another jurisdiction shall have a conservation easement restricting the deed recorded with King County and notice placed on the title of the sending parcel.

C. The Director shall establish the form of conservation easements issued by the City of Sammamish; however the conservation easement shall contain at a minimum, the following items:

1. The number of development rights extinguished on the sending site through the TDR certificate issuance;

2. The specific public benefit identified on the subject site pursuant to SMC 21A.80.030; and,

3. The terms of use for the subject site, consistent with required protections of the identified public benefit;

4. The intent of the conservation easement shall be to encumber the property perpetually; however, authorization for the release of the conservation easement may be granted, subject to the following provisions:
    a. At least 50 years have elapsed from the date of recording of the conservation easement, and provided the Director determines that the public benefit is eliminated pursuant to sections “b.” through “d.” below. If the Director determines that public benefit is eliminated, the time period may be reduced to a minimum of 10 years, subject to the provisions “b.” through “d.” below; and
    b. The City has the first right of refusal on acquisition of the property; and
    c. The Director shall determine that:
        i. The original purpose of the easement is no longer practical or economical; and
        ii. The original public benefit has been effectively eliminated on the constrained sending site;
    d. The public benefit is preserved by the owner of the sending site:
        i. Acquiring sufficient development rights from an alternative sending site and preserving an equivalent public benefit as determined by the Director; or
        ii. Providing an equivalent public benefit to the City as determined by the Director, in the case where a TDR program is no longer applicable.

21A.80.080 Sending Site Development Limitations

A. Sending sites that the City has issued TDR Certificate letter of intent for, shall be limited to uses consistent with the purpose and intent of this chapter and with the criteria originally used as the basis for issuing the letter of intent to the sending site pursuant to SMC 21A.80.030 and .060. Failure to use the sending site in a manner consistent with the original certification may result in the City not issuing TDR certificates.
B. When only a portion of a site’s development rights have been conveyed and extinguished, the owner retains all rights on the remaining buildable portion of the property and may exercise them pursuant to Sammamish Municipal Code.
C. The conservation easement by its terms may reserve dwelling units that may be developed in the future. Transferred development rights explicitly identified in the conservation easement pursuant to SMC 21A.80.070, shall be separated from the property through the conservation easement.
D. The landowner shall not undertake any division, subdivision or partitioning of the property, whether by physical or legal process, which includes, but is not limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the property is divided into lots or in which title to different portions of the property are not held in unified ownership, unless such land division allocates the reserved development rights between the divided parcels of property in a manner consistent with the terms of the conservation easement.
E. Use of a sending site subject to a conservation easement shall be limited to uses consistent with the purpose and intent of this chapter and with the criteria originally used to establish the sending site.
F. Once an undeveloped or partially developed sending site has been encumbered by a conservation easement, additional development potential within the sending site area constrained by the conservation easement cannot be created by means of a rezone of the property.

21A.80.090 Receiving Site Incentives

A. Development rights may be purchased to achieve TDR-based incentive densities allowed by Sammamish development regulations on receiving sites identified in 21A.80.040.

B. Receiving site incentives:

1. Town Center

i. The following table outlines TDR-based incentives for eligible receiving sites with the purchase of a development right. (For example, a sending site in the R-1 zone that generates 1 TDR, will allow for the creation of 4 dwelling units at a receiving in the TC-C zone of the Town Center. Alternatively, the same site in the R-1 zone that generates 1 TDR, will allow 7,716 square feet of additional commercial development in the Town Center):

Table A – Receiving site incentive table.

		Sending Zoning			
		R-1	R-4	R-6	KC Lands
Receiving Zoning	Commercial	7716 sq-ft	3560 sq-ft	2600 sq-ft	3560 sq-ft
	Zone C	4 du	2 du	1 du	2 du
	Zone B	7 du	3 du	2 du	3 du
	Zone A	10 du	5 du	4 du	5 du
	Zone D	7 du	3 du	2 du	3 du

2. [Placeholder for future receiving sites]

C. Modification of receiving site incentives:

1. The Director is authorized to administratively adopt a revised incentive table to address changing economic conditions or to further refine the receiving site incentives. The Director is also authorized to administratively adopt receiving site incentives for sending sites not currently identified in section "B" above. The incentive table shall not be revised more than once in a calendar year. The Director shall base the administrative adoption of a revised incentive table on the following economic analysis:

i. The expected marginal value of the receiving site incentives; and

ii. The prevailing cost of per square foot commercial or residential development and the impact of the acquisition of TDR's on a project marginal returns; and

iii. The appropriate regional costs of development per commercial square foot or residential dwelling unit; and

iv. Consistency with the conservation principles and purpose and intent of this chapter.

3. Once adopted by the Director, the modified receiving site incentive table shall be used for calculation of receiving site incentives. Within 14 days of adopting a revised incentive table, the Director shall mail notification to property owners with an active TDR certificate letter of intent following adoption of a revised incentive table.

4. If adoption of a revised incentive table is requested by a developer or private property owner, the burden of preparing the economic analysis shall be on the developer or private property owner.

3. The Director shall keep a log of modified receiving site incentives and shall periodically report the modifications to the City Council.

21A.80.100 TDR Transfer Process

A. Receiving site landowners are required to transfer sending site TDR certificates to achieve TDR-based incentive densities. Permit applications may be submitted without the purchase of TDR certificates, but no permits for development associated with a TDR project shall be issued until the TDR certificate requirement is satisfied.

B. The required TDR certificates may be acquired by:

   1. Transferring development rights from certified sending sites; or
   2. Transferring development rights from certified sending sites owned by a receiving site owner; or
   3. Purchasing previously purchased, unexecuted development rights from another buyer.

C. All receiving site projects using TDR must be in accordance with all other applicable laws and regulations.

21A.15 Technical Terms and Land Use Definitions

…

21A.15.XXX "Conservation easement" is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its non-development values. It allows the landowner to continue to own and use the land, to sell it, or to pass it on to heirs. A conservation easement is placed on a sending site at the time development rights are sold from the property. The conservation easement typically prohibits any further development of the property but allows resource uses, such as farming and forestry, to continue.

21A.15.XXX "Development right" is an interest in and the right under current law to use and / or subdivide a lot for any and all residential, commercial, and industrial purposes.

21A.15.XXX "Interlocal agreement" is a legal contract between two or more local jurisdictions (cities and counties) that specifies the conditions under which development rights may be transferred (typically from an unincorporated county into an incorporated city). Interlocal agreements must be endorsed by the legislative bodies of both jurisdictions.

21A.15.XXX "Partially Developed" means a lot or lots where a portion of the lot or lots have been improved with a single family home and associated appurtenances consistent with the underlying zoning designation, and the remaining portion of the lot or lots are unimproved and retains additional development right(s).

21A.15.955 ~~"Receiving site" means land for which allowable residential density is increased over the base density permitted by the underlying zone, by virtue of permanently securing and dedicating to the City of Sammamish, or another qualifying agency, the development potential of an associated sending site.~~ "Receiving site" means those lots where the procurement of development rights enable a permissible change in the allowed intensity on the property pursuant to the TDR chapter and all other controlling policies and law.

21A.15.XXX "Sending site" means designated lot or lots with development rights which landowners may sell in exchange for placing a conservation easement on the property or a portion of the property.

21A.15.XXX "TDR certificate" is a form of currency that represents development rights available for sale and use.

21A.15.XXX "TDR certificate of intent" is a document issued to a landowner upon approval of a TDR sending site application. The letter contains a determination of the number of development rights calculated for the sending site and an agreement by the City to issue a corresponding number of TDR certificates in exchange for a conservation easement. The sending site owner may use the TDR certificate letter of intent to market development rights to potential purchasers, but the letter of intent document has no value itself and cannot be transferred or used to obtain increased development rights within receiving areas.

21A.15.XXX "TDR program" is a market-based program that permanently conserves lands with important public benefits by establishing a means to transfer development rights from eligible sending sites to eligible receiving sites through a voluntary process that fairly compensates landowners while providing a public benefit for communities.

21A.15.XXX "TDR sending site application" is an application that a sending site landowner must file in order to be eligible for consideration for designation as a TDR sending site.

21A.15.XXX "Transfer of Development Rights (TDR)" means the transfer of the right to develop or build from sending sites to receiving sites.

20.05.020 Classifications of land use decision processes.

…

Exhibit A

LAND USE DECISION TYPE

Type 1	Decision by Director, no administrative appeal	Building; clearing and grading; boundary line adjustment; temporary use; TDR sending site certification; right-of-way; road variance except those rendered in conjunction with a subdivision or short plat decision1; variance from the requirements of Chapter 9.04 KCC as adopted by Chapter 15.05 SMC; shoreline exemption; approval of a conversion harvest plan
Type 2	Decision by Director appealable to hearing examiner, no further administrative appeal	Short plat; road variance decisions rendered in conjunction with a short plat decision; zoning variance; conditional use permit; shoreline substantial development permits (SSDP); procedural and substantive SEPA decision; site development permit; approval of residential density incentives; reuse of public schools; reasonable use exceptions under SMC 21A.50.070(2); preliminary determinations under SMC 20.05.030(2); critical areas exceptions and decisions to require studies or to approve, condition or deny a development proposal based on the requirements of Chapter 21A.50 SMC; binding site plan

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 8, 2010

Originating Department: Community Development

Clearances:

- ☒ City Manager
- ☒ Attorney
- ☐ Admin Services
- ☒ Community Development
- ☒ Finance & IT
- ☐ Fire
- ☐ Parks & Recreation
- ☐ Police
- ☐ Public Works

Subject: Transfer of Development Rights – Interlocal Agreement with King County

Action Required: No Action Required

Exhibits: 1. DRAFT Transfer of Development Rights Interlocal Agreement With King County

Budget: N/A

Summary Statement:

The Town Center plan was adopted on June 9, 2008, and was the basis for the Town Center regulations adopted on October 26, 2010. The Draft Interlocal Agreement with King County would authorize the Transfer of Development Rights (TDR) from unincorporated King County into the Town Center and is designed to integrate seamlessly with the adopted Town Center regulations.

Background:
The City Council unanimously adopted the Town Center plan on June 9, 2008. The Town Center plan provided policy direction that the Town Center should: *"…incorporate a TDR* [Transfer of Development Rights] *system to use market forces to better protect ecological resources and open space with public benefits".*

Following analysis and recommendations from Cascade Land Conservancy, the City Council held discussions and review in 2009 and concluded that there were benefits to the City of Sammamish in participating in an Interlocal Agreement with King County on a limited basis. The Interlocal Agreement would:

A) Authorize sending sites in unincorporated King County to transfer density into Town Center,
B) Limit the number of sending sites from unincorporated King County to 75 TDRs,
C) Provide phase 1 and 2 "amenity" funds to the City, and
D) Allow for the protection of City specified "focus sending sites" or areas through King County's acquisition as a TDR sending site (e.g. DNR property)

Financial Impact: N/A

Recommended Motions: None.

AN INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF A REGIONAL PROGRAM TO TRANSFER DEVELOPMENT RIGHTS FROM RURAL UNINCORPORATED KING COUNTY TO THE TOWN CENTER SUB AREA IN THE CITY OF SAMMAMISH

This Agreement is hereby entered into by King County, a home rule charter county of the State of Washington, herein after referred as the "County," and The City of Sammamish, a municipal corporation of the State of Washington, herein referred to as the "City."

RECITALS

WHEREAS, the Washington State Growth Management Act (GMA), RCW 36.70A, directs development into urban areas and discourages inappropriate conversion of undeveloped rural land into sprawling, low-density development; and

WHEREAS, the GMA encourages the conservation of productive forest and agricultural lands and the retention of open space to conserve fish and wildlife habitat and enhance recreational opportunities; and

WHEREAS, the GMA requires counties to adopt county-wide planning policies in cooperation with cities within the County; and

WHEREAS, by Interlocal Agreement, the County, Suburban Cities and the City, adopted and ratified the Countywide Planning Policies for King County; and

WHEREAS, the Countywide Planning Policies direct jurisdictions in the County to implement programs and regulations to protect and maintain the rural character of rural, farm and forest lands, and to direct growth to cities and urban centers; and

WHEREAS, the County's rural and resource areas are recognized by both the City and the County as containing important countywide public benefits such as forestry, agricultural, wildlife habitat and scenic resources and recreational opportunities; and

WHEREAS, the City has identified rural and resource lands in King County as preservation priorities; and

WHEREAS, the County has in King County Code 21A.37 adopted a Transfer of Development Rights Program which authorizes incorporated areas to receive development rights transferred from rural and resource unincorporated areas; and

WHEREAS, by Sammamish Ordinance O2008-232 the City adopted the Town Center Plan which encourages the incorporation of a Transfer of Development Rights

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system to use market forces to better protect ecological resources and open space with public benefits; and

WHEREAS, the Town Center Plan calls for increased public amenities to improve the pedestrian, park, and transit pattern in Town Center; and

WHEREAS, by Sammamish Ordinance 02010-293 the City adopted the Town Center Regulations as Title 21B of the Sammamish Municipal Code to implement the Town Center Plan; and

WHEREAS, the Town Center Regulations provides for additional (additional) residential density or commercial development capacity for Town Center, and permits the use of a Transfer of Development Rights program to increase residential and commercial development capacity in Town Center under conditions described in this Agreement; and

WHEREAS, by Sammamish Ordinance, O2011-XXX, the City adopted a Transfer of Development Rights ordinance as Chapter 80 of Title 21A; the Transfer of Development Rights ordinance authorizes and prioritizes sending sites from unincorporated King County for use in the Town Center; and

WHEREAS, the County in its xxxx Budget, Ordinance xxxx, appropriated funding to provide cities with amenity payments which enter into interlocal TDR agreements with the County; and

WHEREAS, the City and the County share an interest in creating an effective, cooperative development right transfer system to achieve: the City's goals for the Town Center Sub Area, the County's goals in the King County Comprehensive Plan, and goals inherent to the Countywide Planning Policies and the GMA; and

WHEREAS, this shared interest is manifested through this ongoing Regional Transfer of Development Rights (TDR) Agreement in which the City agrees to accept additional development to preserve rural and resource land and the County invests in receiving area amenities; and

WHEREAS, the Washington State Legislature recently affirmed the value of Regional TDR programs by adopting SSHB 1172; and

WHEREAS, the City and the County seek to make this Regional TDR Agreement applicable to Regional TDR legislation that the Washington State Legislature may adopt in the future; and

WHEREAS, an extension of this Agreement may be considered based on the availability of future County, State, or federal infrastructure funding incentives for the City; and

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WHEREAS, this Agreement will act to encourage other cities in the Region to enter into similar TDR agreements with the County; and

WHEREAS, the County and the City are authorized, pursuant to RCW 39.34 and Article 11 of the Washington State Constitution, to enter into an interlocal governmental cooperation agreement to accomplish these shared goals.

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AGREEMENT

NOW THEREFORE, in consideration of the foregoing circumstances, the County and the City herein agree:

I. PURPOSE

King County and the City of Sammamish agree to implement a program (hereafter the "Program") to transfer development rights (hereafter "unincorporated TDR credits") from unincorporated rural and resource sending areas of the King County, as depicted in Exhibit A, into the Town Center Sub Area in the City of Sammamish, as depicted in Exhibit B, according to the provisions described below. Furthermore, the Program seeks to establish a marketplace for unincorporated TDR credits to generate on-going preservation of rural and resource lands deemed important to the City, while investing in City amenities, using the King County TDR Bank.

II. RESPONSIBILITIES AND POWERS OF THE CITY OF SAMMAMISH

A. City Ordinances

The City has adopted the Town Center regulations (O2010-293) and Transfer of Development Rights regulations (O2011-XXX) to implement the Program. These regulations have, among other provisions:

1. Amended the Sammamish Municipal Code to include chapter 21B.25 of the Town Center regulations, which establish development regulations, standards, and design guidelines for development within the Town Center;
2. Amended the Sammamish Municipal Code to include chapter 21A.80, which provides for the transfer of development rights from sending sites within the City of Sammamish and unincorporated King County;
3. Allowed for the TC-A, TC-B, and TC-C zones in the Town Center described in Exhibit B, to act as receiving areas for unincorporated TDR credits that originate from sending sites located in King County's unincorporated rural and resource areas under the terms of this Program;
4. Established the Town Center Additional Residential Density and Commercial Development Capacity Provisions, attached as Exhibit C, which allows Town Center development projects to increase residential density and commercial development capacity with the use of unincorporated TDR credits;
5. Established and modified development standards and provisions for public amenities.

B. TDR Sending Site Areas

The City has identified the following "Focus Sending Site Areas," described below and depicted in Exhibit A, from which unincorporated TDR credits may be used for additional residential density and commercial development capacity in the Town Center. Properties within these focus sending

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site areas must contain a public benefit to Sammamish, be "qualified" and then "certified" in accordance with the County's TDR Program (K.C.C. 21A.37).

1. The "Proximate" focus area which is generally described as properties with an identified public benefit, within ½ mile of the edge of the Urban Growth Boundary adjacent to the City of Sammamish.

2. The "Sammamish resource land" focus area which is generally described as properties within unincorporated King County that are used for forest or farm land purposes that directly benefit Sammamish (e.g. farm land that produces agricultural products for the Sammamish Farmer's Market).

Sending sites in these focus areas shall have an identified public benefit to the City of Sammamish. A sending site is deemed to have a defined public benefit if the site is:

a. Open space adjacent to, or connected with, City Park or open space lands; or
b. Wildlife habitat for threatened and/or endangered species listed by the federal government or the State of Washington; or
c. Located such that preservation will provide additional protection for sensitive sub-basins or environmentally critical areas; or
d. Farmland; or
e. Forestland

C. Unincorporated TDR Credit Limit and Transfer Ratio

Up to seventy five (75) unincorporated TDR credits may be used for additional residential density or additional commercial development capacity in Town Center. Receiving site incentives for Town Center properties shall be as established in SMC 21A.080.090, provided that when modifying receiving site incentives pursuant to SMC 21A.80.090(C), the director shall consult with King County prior to modifying the incentives associated with unincorporated King County TDR credits.

E. King County TDR Bank

The City agrees that the King County TDR Bank (hereafter the "Bank") will be used to sell unincorporated TDR credits for additional residential density or additional commercial development capacity in Town Center. The City understands the Bank will play an important role to facilitate the City-County unincorporated TDR credit market by: (1) buying development rights up-front from willing private landowners in the identified Sending Site Areas, (2) holding the unincorporated TDR credits, and (3) selling the unincorporated TDR credits when willing buyers of additional residential density or additional commercial development capacity in the Town Center are available.

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As a phase II Amenity Investment by the County in the City, the City will share and use the proceeds from the Bank's sales of unincorporated TDR credits in accordance with Section III B and Section IV of this Agreement. To enable the phase II Amenity Investment, the City shall allow the Bank to sell unincorporated TDR credits for development in Town Center zones per Sammamish Municipal Code Chapter 21.B.25. .

If the Bank is successful in purchasing unincorporated TDR credits from focus sending sites in the focus area described in II B, the City agrees to allow the first 20 development rights used by developers for additional residential and commercial development capacity in Town Center, under Sammamish Municipal Code Chapter 21.B.25 for the Transfer of Development Rights (TDR) program, to be the 20 unincorporated TDR credits purchased by the Bank from this initial focus sending site.

Proceeds the Bank receives from the sale of unincorporated TDR credits for Town Center Development shall be used to create a revolving fund to buy development rights from focus properties in the City's designated Sending Site Focus Areas described in Section II B, after the phase II Amenity payment is made by the Bank to the City.

In the event that unincorporated TDR credits are not purchased by the Bank in the sending site focus areas for future sale into Town Center, the City shall accept XX TDR credits currently held by the Bank for additional development capacity in Town Center.

Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale methodology required in K.C.C. 21A.37.130 for sales of TDR credits from the King County TDR Bank.

F. County Acknowledgment; Modifications

The County acknowledges that the provisions of Ordinances XXX and YYYY are consistent with the intent and purposes of the Program.

G. Notification Process

The City, in consultation with the County, shall develop a process to notify the County when it has approved the use of unincorporated TDR credits in a specific project in the Town Center. For purposes of this Agreement, "approved" occurs at the earlier of (a) issuance by the City's Development Services Department of the first building permit for a project using unincorporated TDR credits; or (b) a developer's irrevocable commitment to use the unincorporated TDR credits for a specific project.

H. Report

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The City shall report to the County within thirty (30) days after the end of each calendar quarter the number of unincorporated TDR credits that have been approved by the City for projects in the Town Center, and shall identify the specific projects involved. In addition, the City shall cooperate with the County in providing the information required for the annual report as described in Section VI.

The City shall take any necessary steps to allow the City to receive and track the amenity payments described in this Agreement.

III. RESPONSIBILITIES AND POWERS OF KING COUNTY

A. Program Administration

The County has adopted polices, regulations and administrative procedures to implement the Program, which shall promote and facilitate the purchase and sale of unincorporated TDR credits. The County shall, at a minimum:

1) In accordance with K.C.C. 21A.37, facilitate and promote the TDR qualification and certification of properties located in Sending Site Areas;
2) Establish procedures to facilitate the sale of unincorporated TDR credits from private landowners and the Bank;
3) Establish procedures to require, maintain, and enforce deed restrictions on unincorporated and resource sending sites from which unincorporated TDR credits are bought, in order to prohibit those sites from being developed in violation of the deed restrictions.

B. Operation of the TDR Bank

The County shall make its best efforts to identify, appraise, and purchase unincorporated TDR credits primarily from identified City and County focus properties in the sending site focus areas and provide the City with values and prices of unincorporated TDR credits that the County has appraised and/or purchased.

As a phase II Amenity Investment by the County in the City, the TDR Bank shall provide the City with funds equivalent to 25% of the sale price of each unincorporated TDR credit the Bank sells for additional residential or commercial development capacity in Town Center. The County understands this will create a stream of smaller amenity payments to the City as unincorporated TDR credits are sold. The funds will be provided by the Bank to the City within sixty days of unincorporated TDR credit sales closing, or by December 31 of the Calendar year in which the transaction closed.

For example, if the TDR Bank purchased 20 unincorporated TDR credits in 2011 for the appraised price of $80,000 each, and later sold 15 of these to a Town Center developer in 2013 for $80,000 apiece, the TDR Bank shall pay the City

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$300,000 within sixty days of the close of the sale.

Nothing herein shall be construed to require the County to deviate from the valuation, purchase, and sale methodology required in K.C.C. 21A.37.130 for sales of TDR credits from the King County TDR Bank.

C. Program Evaluation

The County shall, jointly with the City, publish every year a report as described in Section VI.

D. Public Amenity Investments

The County shall provide funds as phase I and phase II amenity investments to the City for the creation and acquisition of public open space, and parks amenities according to the provisions in Section IV, Public Amenities Investment.

E. Notification Process

The County shall notify the City within thirty (30) days after the end of each calendar quarter the number of unincorporated TDR credits it has qualified and certified in the Sending Site Areas identified in Subsection II B.

IV. PUBLIC AMENITY INVESTMENTS

A. Phase I Amenity Investment

Consistent with adopted County appropriations and statutory restrictions, the County shall provide funds as a phase I investment in the amount of $375,000 to the City for the creation and acquisition of public open space and parks to mitigate a portion of the impacts associated with transferred density and to encourage increased density in the Town Center. The $375,000 will be disbursed according to Subsection IV E. The initial $375,000 payment shall be referred to as the "phase I Amenity Funds."

B. County Fund Sources; Contracting

The source of the phase I Amenity Funds is authorized in King County's 20XX Budget, Ordinance XXXX. The phase I Amenity Funds shall only be spent on the creation and/or acquisition of public amenities consistent with Subsection IV D. Unless otherwise required by statutory restrictions on such funds and where applicable, City contracting procedures will be used for amenity projects utilizing the phase I Amenity Funds.

C. Phase II Amenity Investment

To further mitigate a portion of the impacts associated with transferred density and to encourage increased density in the Town Center, the County shall provide funds as a phase II investment to the City through the TDR Bank revenue share agreement described in Section III B of this Agreement, and consistent with adopted County appropriations and statutory restrictions. The phase II Amenity

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Funds shall only be spent on the creation and/or acquisition of public amenities consistent with Subsection IV D. The phase II Amenity Funds will be disbursed according to Subsection IV E. Unless otherwise required by statutory restrictions on such funds and where applicable, City contracting procedures will be used for amenity projects utilizing the phase II Amenity Funds.

D. Eligible Amenities.

The City shall only spend Phase I and II Amenity Funds for the creation and/or acquisition of amenities indicated in this Subsection IV D, and provided that City expenditures shall be consistent with statutory restrictions in K.C.C. 26.12 of the County Conservation Futures Tax (CFT) Levy funds and K.C.C. XXX of the County Parks Expansion Levy (PEL) funds. The funds may only be used for the creation and/or acquisition of amenities with the following Parks and Open Space Resource Criteria as specified by one or more of the following described below:

1. Parks, open space, gardens, or gateways;
2. Wildlife habitat;
3. Salmon habitat and aquatic resources;
4. Scenic resources;
5. Historic or Cultural Resources;
6. Urban passive-use natural area/greenbelt
7. Park, open space or natural corridor addition
8. Passive Recreation opportunity in area with unmet needs

E. Funding of Amenities

1. Phase I Amenity Funds. After adoption of this Agreement, the County shall provide $375,000 to the City for the acquisition of open space and/or park property. Thirty days prior to the County's disbursement of funds, the City shall provide the County with: a project description, time schedule, and budget for the City's open space acquisition. The County shall disburse funds for the acquisition contingent upon a signed purchase and sale agreement provided by the City; the County shall wire funds to an escrow account established for the acquisition at time of closing. In the event the transaction does not close the funds shall be returned to the County.

   The County shall not withhold or delay approval of a purchase or the concept plan and scope of work so long as such purchase or work meets the restrictions of Section IV.C above. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County.

2. Focus for other Funding. In addition to the provisions for public amenities under this Subsection IV, the County shall, while this Program is in effect, consider granting focus to amenity projects within the Town Sub Area to receive funding from other sources to increase amenities in the area.

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3. Phase II Amenity Funds. The County shall provide the City with funds equivalent to 25% of the sale price of each unincorporated TDR credit the Bank sells for additional residential or commercial development capacity in Town Center. The funds will be provided by the Bank to the City within sixty days of unincorporated TDR credit sale closing, or by December 31 of the Calendar year in which the transaction closed. The County shall wire funds to a City account dedicated to uses authorized for CFT and PEL funds.

3. Future Amenity Funding. The County and the City may consider future amenity fund payments to extend the Program according to Section V.C.

E. Funding is Additional

County funding under this Agreement is in addition to any funding to be provided to the City, or for amenities, under any other agreement, commitment, or program.

V. DURATION

A. Duration

This Regional TDR Agreement shall become effective on the date it is signed by all parties and shall continue until the limit of additional residential and commercial development capacity is reached plus an additional 12 months in accordance with Sammamish Municipal Code Chapter 21.B.25 for the Transfer of Development Rights (TDR) program in Town Center zones, unless earlier terminated as provided in Section V B.

B. Termination

Either party may terminate this Agreement upon 180 days' written notice to the other if: (1) the City's development regulations allowing the use of unincorporated TDR credits, or the provisions of the County's development regulations allowing transfer of development rights to cities are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or (2) the other party shall materially default in the performance of its obligations herein, and shall not cure such default within thirty (30) days' notice after such party's receipt of written notice thereof from the City or County, as the case may be. Any termination of this Agreement shall affect the use of unincorporated TDR credits previously certified by the County for use in the Town Center only to the extent provided in City development regulations, as the same may be amended. Any termination of this Agreement shall not affect the City's or County's rights or duties with respect to the phase I Amenity Funds previously provided by the County under the terms hereof, nor the City's right to receive County funds for which the City shall have satisfied all conditions to disbursement prior to termination. In the event this Agreement is terminated by the County pursuant to Section V(B)(2) because the City has modified its Land Use Code in a manner that prohibits or effectively prohibits the use of

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unincorporated TDR credits consistent with the Program, and the Phase I Amenity Funds provided in Section IV(E)(1) have been disbursed to the City, the City shall refund to the County a percentage of the Phase I Amenity Funds equal to a percentage of the amount of unincorporated TDR credits available for transfer into the Town Center.

C. Extension

Pursuant to a mutual written agreement between the parties, this Agreement may be extended beyond the date at which the limit of additional residential and commercial development capacity is reached in accordance with Sammamish Municipal Code Chapter 21.B.25 for the Transfer of Development Rights (TDR) program in Town Center zones.

Extension of this Agreement shall be considered contingent upon the availability of a combination of County, State, or Federal amenity funding incentives for the City.

To extend this Agreement, the City or the County shall make a written request to the other within the 12 month period established in section V A of this Agreement. The request shall specify the proposed terms of the extension. The parties must agree to the extension in writing by the termination date or the agreement will lapse. Notwithstanding anything in this Agreement to the contrary, it is acknowledged by the parties that neither party has an obligation to renew or extend this Agreement.

1. Extension - Future Amenity Funding. Subject to available budget authority, the County through the King County Executive, and the City will negotiate in good faith to determine the amount of future amenity funds, beyond any phase II Amenity Funds, to be provided by the County to the City, provided that notwithstanding any other provision of this Agreement nothing herein shall obligate the County to any funding beyond the phase I and phase II Amenity Funds, including ongoing programs or projects partially funded. The level of additional County amenity funding, above the phase I and phase II Amenity Funds authorized, shall be determined by the County in cooperation with the City based on the number and cost of unincorporated TDR credits accepted for use in permitted projects inside the Town Center during the initial term of this Agreement.

   Future amenity funding from the County above the phase I and phase II Amenity Funds authorized in this Agreement shall be contingent on appropriations adopted by the Metropolitan King County Council.

2. Use of Future Amenity Funding. Additional funds provided by the County under Section V shall be expended by the City only for amenities mutually approved by the City and County. The County shall not unreasonably withhold approval of amenities consistent with County statutory restrictions

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and the City's Town Sub Area Plan.

Prior to distribution of any future amenity funding, the City must provide and the County must approve a concept plan and written scope of work describing the elements, estimated schedule, and estimated budget for the work to be accomplished with the funding. The City shall provide sufficient detailed scope and budget information consistent with standard engineering, public finance and auditing practices. The County shall not unreasonably withhold or delay approval of the concept plan and scope of work. Any disapproval by the County shall include a written statement of the grounds for disapproval and the changes deemed necessary by the County. The County shall approve or disapprove a concept plan and scope of work within sixty (60) days of its delivery to the County, or within twenty (20) working days of delivery to the County of revisions after any County disapproval.

VI. EVALUATION AND MONITORING

A. Records

The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review, or audit by the City or County as requested by each jurisdiction during the applicable records retention period specified by or pursuant to law.

B. Joint Report

The City and County shall cooperate to allow the County to publish a yearly report evaluating the progress of the Program. The report shall include at minimum an analysis of the factors listed below.

1) the number of sites qualified or certified by the County in the Sending Site Areas identified in Section II B;
2) the number and price of unincorporated TDR credits bought and sold by the TDR Bank;
3) the number and price of unincorporated TDR credits bought and sold through private transactions;
4) the County's marketing efforts, ease or difficulty in qualification or certification of sites and the purchasing or selling of unincorporated TDR credits;
5) the effect of deed restrictions in preserving the unincorporated character and conservation values of sending sites;
6) the amount (square feet and/or number of units) of additional residential and commercial development, outside of this Program, earned by developers using the City's additional development capacity for Town Center per City Code 21B.25;
7) the value and types of amenities in the Town Center, outside of this Program, funded by developers in Town Center;

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8) the number of development projects in the Town Center using the Program, the number of unincorporated TDR credits approved, the amount (square feet and/or number of units) of additional residential and/or commercial development approved using the Program, and the ease or difficulty in permitting projects using the Program; and
9) the balance of the phase I and phase II Amenity Funds and the City's use of the funds (i.e. types of amenity improvements).

The County shall provide information pertaining to numbers 1 through 5; the City shall provide the County information pertaining to numbers 6 through 9. The County shall develop and distribute the yearly report to the City and may use the yearly report to the County Council as part of this evaluation.

VII. INDEMNIFICATION

A. County Negligence

The County shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and expense, provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

B. City Negligence

The City shall indemnify and hold harmless the County and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same.

C. Concurrent Negligence

The City and the County acknowledge and agree that if such claims,

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actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

VIII GENERAL TERMS

A. Administration

This Agreement shall be administered for the City by the Community Development Director or his/her designee, and for the County by the Director of the Water and Lands Resources Division of the King County Department of Natural Resources and Parks, or his/her designee.

B. Severability

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

C. No Waiver

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this Agreement.

D. No Third Party Beneficiary

This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based upon any provision set forth herein.

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Entire Agreement

This Agreement is the complete expression of the terms hereof and any oral representation or understanding not incorporated herein is excluded. Any modifications to this Agreement shall be in writing and signed by both parties.

In witness whereof, the parties have executed this Agreement as of the ___ day of _____, 2010.

KING COUNTY

By:_____

Pursuant to Ordinance _____

Approved as to Form:

By: _____
Senior Deputy Prosecuting Attorney

THE CITY SAMMAMISH

By:_____

Pursuant to Ordinance _____

Approved as to Form:
xxxxxxxxxx, City Attorney

By: _____
xxxxxxxxx
City Attorney

DRAFT

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: November 18, 2010

Originating Department: Finance IT

Clearances:

- [x] City Manager
- [x] Attorney
- [ ] Admin Services
- [ ] Community Development
- [x] Finance & IT
- [ ] Fire
- [ ] Parks & Recreation
- [ ] Police
- [ ] Public Works

Subject: Repealing Adopted 2009-2010 Budget Amendment Ordinance O2010-288

Action Required: 2st Reading of the Ordinance and move to adopt the ordinance

Exhibits: 1. Ordinance

Budget: Repeals the Ordinance Amending the 2009-2010 Biennial Budget

Summary Statement:

This housekeeping ordinance repeals the 2009-2010 Budget amendment adopted by City Council on Nov. 16, 2010. The original amendment intended to clarify budgeted capital funds that would not be spent in 2010 in order to re-budget those funds in the 2011-2012 biennial budget period.

Due to interpretations of technical accounting requirements, the result of the amendment could be construed as "recognizing" a carry forward budget item prior to the completion of the 2009-2010 biennial budget period. The purpose of repealing this amendment is to clarify Council's intent in order to avoid any misunderstanding.

Carry forwards are typically "recognized" following the closure of the biennial period to ensure double budgeting does not occur. Although the savings is correctly included and budgeted in the adopted 2011-2012 Biennial Budget, the amendment to the 2009-2010 Budget in November of 2010 could create a conflict in that the 2009 financial statements that have already been audited by the State Auditor. Due to this potential complication, repealing this amendment would make the 2009-2010 adopted Budget revert back to it's prior state, which are the numbers that were included in the City's reported 2009 Annual Audited Financial Statements and would allow a clearer picture of the 2009-2010 Budget for purposes of the State's 2010 financial statement audit.

Repealing the amendment would have no impact on the adopted 2011-2012 Biennial Budget.

City Council Agenda Bill

Background:

This is largely a technical correction necessary for clarifying the legally adopted budget amounts for the 2009-2010 Biennial Budget period.

Financial Impact:

The 2009-2010 Biennial Budget would revert back to the amounts authorized in the previously adopted 2009-2010 Budget Ordinance #O2009-273.

Recommended Motion:

Motion to adopt this Ordinance, which repeals Ordinance #O2010-288.

CITY OF SAMMAMISH
WASHINGTON
ORDINANCE No. O2010-XXX

AN ORDINANCE OF THE CITY OF SAMMAMISH, WASHINGTON, REPEALING ORDINANCE NO. 02010-288, WHICH AMENDED THE 2009-2010 CITY BUDGET.

WHEREAS, the City Council adopted Ordinance No. 02010-288, amending the City's Biennial budget for the years 2009-2010; and

WHEREAS, the City Council desires to minimize any technical accounting potential conflict or misunderstanding related to the already audited 2009 comprehensive annual financial statements (CAFR); and

WHEREAS, during 2010, the State Auditor Office completed its audit of the City's 2009 financial statements, noting that there were no findings or management letter items; and

WHEREAS, there are no plans in November or December of 2010 to expend any of the parks capital project funds that were identified in the previous amendment; and

WHEREAS, repealing the amendment ordinance will not have any impact on the 2011-2012 Biennial Budget adopted by City Council on November 16, 2010;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 2010-288, adopted November 16th, 2010, relating to amending the City of Sammamish's 2009-2010 budget, is hereby repealed.

Section 2. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 3. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A SPECIAL MEETING THEREOF ON THE _____ DAY OF DECEMBER 2010.

CITY OF SAMMAMISH

_____
Mayor Donald J. Gerend

Attest:

_____
Melonie Anderson, City Clerk

Approved as to form:

_____
Bruce L. Disend, City Attorney

Filed with the City Clerk:	November 18, 2010
First Reading:	December 7, 2010
Passed by City Council:	
Date of Publication:	
Effective Date:	

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 9, 2010

Originating Department: Public Works

Clearances:

- [x] City Manager
- [ ] Attorney
- [ ] Admin Services
- [ ] Community Development
- [ ] Finance & IT
- [ ] Fire
- [ ] Parks & Rec
- [ ] Police
- [x] Public Works

Subject: Authorization to award a contract for construction of the NE 14th Drive Neighborhood Traffic Management Project.

Action Required: Authorize the City Manager to award and execute a Small Works Construction Contract with Construct Company LLC for construction of NE 14th Drive Neighborhood Traffic Management Project.

Exhibits: n/a

Budget: This project is funded through the adopted 2010 Neighborhood Capital Improvements and Intersection Improvements Program budgets in the Transportation Capital Improvement Fund (Fund 340). A detailed breakdown of the budgets is described in the Financial Impact section of this agenda bill.

Summary Statement:

The Public Works Department recommends that the City Council authorize the City Manager to award and execute a contract with the lowest responsible bidder, Construct Company LLC, for construction of the NE 14th Dr Neighborhood Traffic Management Project. The work consists primarily of installation of Neighborhood Traffic Management Program Phase II measures such as rain garden curb extensions, a traffic circle, traffic control signage and pavement marking. The project limits are from 220th Place NE to 228th Ave NE on the NE 12th Place/NE 14th Drive roadway corridor.

Utilizing the Small Works Roster on the e-gov Shared Procurement Portal, staff requested bids for this work from 6 contractors. Bids for this work were opened on December 2, 2010. Construct Company, LLC was the only 1 of the 6 contractors to submit a bid for $158,443.90. Prior to recommending award of this contract, staff conducted due diligence review for the lowest responsible bidder, and determined that Construct Company LLC is both responsive and responsible. As further background, Construct Company LLC was also the successful bidder and contractor for the City's recently completed NE 19th Drive Phase II Neighborhood Traffic Management Program Project. The NE 19th Drive project installed similar physical neighborhood traffic management measures which Construct Company LLC completed both responsibly and successfully.

City Council Agenda Bill

Background:

The City's Neighborhood Traffic Management Program (NTMP) works with neighborhood residents to reduce the impact of traffic speed and volumes on the city's residential streets. The program provides the process of indentifying and addressing traffic concerns as well as for construction of physical traffic management devices. Residents on NE 14th Drive and surrounding neighborhood areas have participated in the NTMP since 2009 to address their neighborhood traffic concerns. In summer of 2010, as part of the NTMP Phase II process to construct physical traffic management devices on NE 14th Drive, the residents submitted a petition ballot containing the required signature amount to the City in support of construction of the referenced NTMP Phase 2 traffic control devices on NE 14th Drive between 220th Pl NE and 228th Ave NE. On October 14, 2010, staff sent project notification to residents in the neighborhood areas with information on the project design.

The bid amount for this project is within the combined 2010 adopted budgets for Neighborhood CIP and Intersection Improvement Programs in the City's Transportation Capital Improvement Fund budget. Staff recommends that the City Manager be authorized to administer an additional $31,680 construction contingency for this project to address any unexpected items that may be identified during project construction. Just like the recently completed NE 19th Drive NTMP project, construction management for this NE 14th Drive project will be provided in-house by existing city staff.

Financial Impact:

Remaining unallocated 2010 CIP Budget:

Neighborhood CIP (340-117-595-30-63-00):	$55,000
Intersection Improvement (340-115-595-30-63-00):	$203,000
TOTAL REMAINING BUDGET:	**$258,000**

Construction Contract:	$158,444
Construction Contingency:	$31,680
TOTAL PROJECT BUDGET ALLOCATION:	**$190,124**
TOTAL REMAINING UNALLOCATED 2010 PROGRAM BUDGETS:	**$67,876**

Recommended Motion:

Move to authorize the City Manager to award and execute a Small Works Construction Contract with Construct Company LLC for construction of NE 14th Drive Neighborhood Traffic Management Project in the amount of $158,443.90 and to administer a project construction contingency of $31,680.

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 7, 2010

Originating Department: Admin Services

Clearances:

- ☒ City Manager
- ☒ Attorney
- ☒ Admin Services
- ☐ Community Development
- ☐ Finance & IT
- ☐ Fire
- ☐ Parks & Recreation
- ☐ Police
- ☐ Public Works

Subject: Custodial Services for Beaver Lake Maintenance Shop, City Hall, and the new M & O Facility

Action Required: Authorize the City Manager to execute a contract with SMS Cleaning, Inc. to provide custodial services for city buildings.

Exhibits: Contract with SMS Cleaning

Budget: 2011-2012 Budget $170,000

Summary Statement:

This is a contract with SMS Cleaning, Inc. to provide custodial services for the Beaver Lake Maintenance Shop, City Hall, and the new M & O Facility

Background:

On October 28, 2010 the City issued a Request for Proposals (RFP) for custodial services at the Beaver Lake Maintenance Shop, City Hall, and the new M & O Facility. A total of six (6) firms responded to the RFP. SMS Cleaning, Inc. was identified as the lowest responsible bidder.

Financial Impact:

2011-2012 Budget $170,000, SMS Cleaning Inc. 2011 contract $55,800.

Recommended Motion:

Move to Authorize the City Manager to execute a contract with SMS Cleaning, Inc. for $55,800 to provide custodial services for at the Beaver Lake Maintenance Shop, City Hall, and the new M & O Facility.

Exhibit 1

SMALL PUBLIC WORKS MAINTENANCE CONTRACT

Between:	City of Sammamish and SMS Cleaning Inc.
Project:	Custodial Services for City Facilities
Commencing:	January 1, 2011
Terminating:	December 31, 2011
Amount:	55,800

THIS CONTRACT, is made and entered, by and between the CITY OF SAMMAMISH, a Washington municipal corporation (the "City"), and SMS Cleaning Inc., (the "Contractor").

RECITALS

WHEREAS, the City desires to contract with the Contractor for Custodial Services for City Facilities, and

WHEREAS, pursuant to the invitation of the City, extended through the eCityGov Shared Procurement Portal Small Works Roster, of which the City of Sammamish is a member, the Contractor did file with the City a proposal containing an offer; and

WHEREAS, the City has determined that the contractor's offer was the lowest responsive and responsible quote submitted;

NOW THEREFORE, in consideration of the terms and conditions contained in this Contract, the parties covenant and agree as follows:

1. Scope of Work to be Accomplished. The Contractor shall perform the work described in Exhibit "**A**" of this contract ("Work"). The Contractor shall provide and bear the expense of all equipment, materials, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the Work provided for in this Contract, unless otherwise specified in the attached plans and specifications.

2. Contract Documents. The Contract between the parties includes this contract, along with any Special and General Conditions, the project quote, any required Performance Bond or optional 50% Retainage Bond Waiver, L&I form Statement of Intent to Pay Prevailing Wages - Public Works Contract, any required Declaration of Option for Management of Statutory Retained Percentage, Certificate of Insurance naming City as additional insured, copy of Contractor's state contractor license and UBI number, copy of Contractor's city business license, which are all hereby incorporated by reference and made a part of this contract as if fully set forth herein, and shall be referred to collectively as the "Contract."

3. Payment. The Contractor shall submit properly certified invoices for the Work performed. The City agrees to pay the Contractor for the actual work completed to the satisfaction of the City and in conformance with this Contract. Upon acceptance of payment, Contractor waives any claims against the City related to the Work covered by the invoice.

The Contractor shall complete and return to the City Exhibit "**B**" or a W-9 Request for Taxpayer Identification Number and Certification, prior to or along with the first invoice submittal. The City shall pay the Contractor for services satisfactorily rendered within ten days after City Council approval of such payment.

4. Warranties/Guaranty.

4.1 Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers. The warranty period shall be for the longer period of: one year from the date of the City's final acceptance of the entire Work or the duration of any special extended warranty offered by a Contractor, a supplier or common to the trade.

4.2. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:

1. Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
2. Prior to final acceptance require all warranties be executed, in writing, for the benefit of the City;
3. Enforce all warranties for the benefit of the City; and,
4. Be responsible to enforce any warranty of a subcontractor, manufacturer, or supplier, should they extend beyond the period specified in the Contract.

4.3 If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written notice from the City to do so. In the event the City determines that Contractor corrective action is not satisfactory and/or timely performed, then the City has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party. All damages incurred by the City and all costs for the City's remedy shall be reimbursed by the Contractor.

4.4 The warranties provided in this section shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

5. Change Orders. Changes to the scope of work to be performed, of the amount of the contract sum, or in the time for completion of the work, may be accomplished only by a written document, signed by the Contractor and the City. Once effective, the Contractor shall proceed promptly with the Work as modified, unless otherwise provided in the change order.

6. Insurance. The Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The Contractor shall provide a Certificate of Insurance evidencing:

6.1 Automobile Liability insurance with limits no less than $1,000,000 combined single limit per accident for bodily injury and property damage;

6.2 Commercial General Liability insurance written on an occurrence basis with limits no less than $1,000,000 combined single limit per occurrence and $1,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and

6.3 Worker's Compensation insurance at the limits established by the State of Washington.
Any payment of deductible or self-insured retention shall be the sole responsibility of the Contractor.

The City shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the Contractor, and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The Contractor's insurance shall be primary insurance as respects the City and the City shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

7. Prevailing Wages/Prevailing Wages

~~7.1 Performance Bond. Upon execution of this contract, as required by RCW 39.08, the Contractor shall furnish a surety bond in the full amount of the contract price, plus State sales tax, which shall guarantee the faithful performance of the Contract and the payment of all labor, mechanics, subcontractors, and material and all persons who supply them with provisions, equipment, labor or supplies for carrying out the work under this contract. This bond shall be in force until completion of the project and acceptance by the City and also upon such period thereafter during which the law allows liens to be filed and sued upon. This performance bond shall be furnished by a corporate surety company authorized to do business in the State of Washington, by a company acceptable to the City and on the form attached hereto as Exhibit **"C"**.~~

7.2 Prevailing Wages. The work under the Contract **may** be subject to the prevailing wage requirements of Chapter 39.12 RCW, as amended or supplemented**. If this Contract is subject to prevailing wage requirements**, the Contractor, each of its subcontractor(s) and other person(s) doing any work under the Contract shall pay all laborers, workers or mechanics not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed as required by law. The prevailing rate of wage to be paid to all workman, laborers or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule

of the prevailing wage rates for the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this contract as though fully set forth herein. These rates may be accessed on the internet at http://www.Ini.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp.

Pursuant to RCW 39.12, prior to payment by the City, the Contractor must submit -- on behalf of itself and each and every subcontractor at every tier -- a "Statement of Intent to Pay Prevailing Wages," which must be approved by the Department of Labor and Industries prior to its submission. Within fifteen (15) days of the final acceptance of the Contractor's work under this Contract, the Contractor must submit -- on behalf of itself and every subcontractor -- an "Affidavit of Wages Paid".

OR

At the option of the City, the Contractor may use the combined Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid form. Contractor must meet the Washington State Department of Labor and Industries criteria for use of the form. Combined forms may be requested from the City.

8. Assignment/Delegation. The Contractor shall not assign this contract nor delegate any duties hereunder without prior written consent of the City, which consent may be withheld by the City in its sole subjective discretion for any cause whatsoever.

9. Applicable Law; Venue. This Contract shall be subject to, and the Contractor shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Sammamish Municipal Code and ordinances of the City of Sammamish. Venue for any action arising from or related to this Contract shall be exclusively in King County Superior Court.

10. Termination.

10.1 The City reserves the right to terminate or suspend this Contract at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Contractor pursuant to this Contract shall promptly be submitted to the City

10.2 In the event this Contract is terminated or suspended, the Contractor shall be entitled to payment for all services satisfactorily performed and reimbursable expenses incurred to the date of termination.

10.3 This Contract may be terminated immediately if the Contractor's insurance coverage is canceled for any reason, or if the Contractor fails to timely perform the services or defaults on any other material obligations under this Contract.

10.4 Any termination of this Contract shall not prevent the City from seeking any legal or equitable remedies it may otherwise have against the Contractor for the violation or nonperformance of any provisions of this Contract.

11. **Duration**. This contract may be renewed at the City's option for up to two (3) additional one year terms. Compensation will be adjusted based on any increase in the June to June Seattle Consumer Price Index –Urban (CPI-U) rate.

12. Indemnification/Hold Harmless. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

If and only if a court of competent jurisdiction determines that this Contract 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for purposes of indemnification. The parties have mutually negotiated this waiver. The provisions of this section shall survive the expiration or termination of this Contract.

13. Independent Contractor. For all purposes, the Contractor shall be deemed an independent contractor and shall not be deemed an employee or agent of the City for any purpose.

14. Wages and Other Costs. The City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold the City, its officers, agents, and employees, harmless against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

15. Waiver. Waiver by the City of any breach of any term or condition of this Contract shall not be construed as a waiver of any other breach.

16. Attorneys Fees. In the event any action is brought by either party to enforce the terms of this Contract or for breach of this contract by the other party, the parties agree that the non-prevailing party shall pay to the prevailing party reasonable attorney fees and expert witness fees, costs and disbursements incurred by such party.

17. Entire Contract/Binding Effect. This Contract constitutes the entire agreement between the parties hereto.

18. Modification. No amendment or modification of this Contract shall be of any force or effect unless it is in writing and signed by the parties.

19. Severability. If any provision of this Contract is held invalid, the remainder shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law, and shall continue in force and effect.

20. Notices. Any notice required by this Contract may be delivered personally or mailed, certified with return receipt requested. If mailed, notice shall be deemed given upon the first business day after the date of the postmark. Notices shall be delivered or mailed to the following:

TO CITY:

City of Sammamish, and
Administrative Services Department

Contact Name: Mike Sauerwein

Street Address: 801 228th Avenue SE

City, State, Zip: Sammamish, WA 98075

Phone: (425) 295-0500

Contact email:
msauerwein@ci.sammamish.wa.us

TO CONTRACTOR:

Contractor:
SMS Cleaning Inc.

Contact Name: Sang So

Street Address: 1401 S Sprague Avenue, Suite 520

City, State, Zip: Tacoma, WA 98405

Phone: 253-582-0777

Contact email: info@smscleaning.net

CITY OF SAMMAMISH, WASHINGTON

By: _____

Title: _____

Date: _____

Attest/Authenticated:

_____
City Clerk

CONTRACTOR, WASHINGTON

By: _____

Title: _____

Date: _____

Approved as to Form:

_____
City Attorney

Exhibit 1

EXHIBIT A
City of Sammamish

SCOPE OF SERVICES

Section I: Specifications and Work Calendar for the Beaver Lake Park Maintenance Shop 25005 SE 24th Street

1. RESTROOMS

One time per week cleaning services (one weekend night)

- Empty waste cans and replace plastic liners as necessary
- Refill all soap dispensers from City's inventory.
- Clean and disinfect all toilets, urinals and sinks.
- Wash and dry stainless steel fittings and other bright work.
- Clean mirrors.
- Sweep and wet mop vinyl floors with germicide solution.
- Report any fixture, dispenser malfunction or non-functioning lights to City

2. OFFICE AREA

One time per week cleaning services (one weekend night)

- Sweep and wet mop vinyl floor in kitchen area with germicide solution.
- Empty recycle and waste cans and replace plastic liners as necessary (city supplies recycle bins and waste dumpster outside of facilities)
- Replace paper towels, seat protectors and toilet paper as needed

One time per week cleaning services (one weekend night)

- Vacuum carpeted floors-Contractor will not have to move objects within individual workspaces to accomplish this task.

The City shall supply all dispensable items to be refilled by contractor.

Section II: Specifications and Work Calendar. Locations consist of the City Hall 801 228th Ave SE

1. RESTROOMS – Garage, First Floor, and Second Floor

Six times per week cleaning services (after hours Sunday – Friday Nights. No service on Saturday Night)

- Empty waste cans and replace plastic liners as necessary
- Refill all soap dispensers from City's inventory.
- Clean and disinfect all toilets, urinals, shower stalls and sinks.
- Wash and dry stainless steel fittings and other bright work.
- Clean mirrors, counter tops and all other horizontal surfaces.

- Clean any debris from interior ceiling of restrooms.
- Sweep and wet mop all tile and vinyl floors with provided germicidal solution.
- Clean all light fixtures and vents.
- Report any fixture, dispenser malfunction or non-functioning lights to the City
- Replace paper towels, seat protectors and toilet paper as needed
- Wipe down walls, stalls, partitions, shower stalls, doors, door jambs, and trash containers exteriors with disinfectant solution.

2. **KITCHEN AREAS**

Six times per week cleaning services (after hours Sunday – Friday Nights. No service on Saturday Night.)

- Sweep and wet mop vinyl floor in kitchen area with germicide solution.
- Clean and disinfect sinks.
- Wash and dry stainless steel fittings and other bright work.
- Clean counter tops and all other horizontal surfaces (table tops, stove top).
- Spot clean cupboard doors as necessary.
- Empty recycle and waste cans and replace plastic liners as necessary (city supplies recycle bins and waste dumpster outside of facilities).

3. **OFFICE, PUBLIC AREAS, STAIRWAYS - First Floor, Second Floor, and all Stairways**

Six times per week cleaning services (after hours Sunday – Friday Nights. No service on Saturday Night.)

- Sweep and wet mop tile and cement floors, including stairways, with provided germicidal cleaning solution.
- Empty recycle and waste cans and replace plastic liners as necessary (city supplies recycle bins and waste dumpsters outside of facility – waste and recycled materials shall be disposed of separately)
- Vacuum all carpeted floors.
- Dust and spot cleaning to include counters, office furniture, horizontal surfaces, doors and glass panels (interior and exterior), light fixtures, wall vents and ceiling vents.
- Wipe clean with provided disinfectant all drinking fountains.

4. **Four times per year**

- Clean all windows inside and out. Provide notice to the City at least one week prior to providing this service.
- Shampoo all carpets. Provide notice to the City at least one week prior to providing this service.
- Clean basement garage floors. Provide notice to the City at least one week prior to providing this service.
- Machine scrub and recoat 1st floor employee lunchroom floors
- Machine scrub and recoat 1st floor mailroom floors
- Machine scrub and rinse ceramic tile restroom floors

5. **Annually**

- Machine scrub lobby ceramic tile floors

Exhibit 1

This is a LEED certified facility therefore the City shall supply all cleaning agents required for cleaning. The contractor shall not use any cleaning agent other than those provided by the City without authorization.

The City shall supply all dispensable items to be refilled by contractor.

Section III: Specifications and Work Calendar for the **M&O Facility 1801 NE 244th**

1. RESTROOMS/LOCKER ROOMS

Two times per week cleaning services (one weekend night)

- Empty waste cans and replace plastic liners as necessary
- Refill all soap dispensers from City's inventory.
- Clean and disinfect all toilets, urinals and sinks.
- Wash and dry stainless steel fittings and other bright work.
- Clean mirrors.
- Sweep and wet mop vinyl floors with germicide solution.
- Report any fixture, dispenser malfunction or non-functioning lights to City

2. OFFICE AREA

Two times per week cleaning services (one weekend night)

- Empty recycle and waste cans and replace plastic liners as necessary (city supplies recycle bins and waste dumpster outside of facilities)
- Vacuum carpeted floors-Contractor will not have to move objects within individual workspaces to accomplish this task

3. KITCHEN AREA

Two times per week cleaning services (one weekend night)

- Sweep and wet mop vinyl floor in kitchen area with germicide solution.
- Clean and disinfect sinks.
- Wash and dry stainless steel fittings and other bright work.
- Clean counter tops and all other horizontal surfaces (table tops, stove top).
- Spot clean cupboard doors as necessary.
- Empty recycle and waste cans and replace plastic liners as necessary (city supplies recycle bins and waste dumpster outside of facilities).
- Vacuum carpeted floors

The cost of these services shall be $55,800/yr and emergency/on call shall be billed at $30/hour.

EXHIBIT B
CITY OF SAMMAMISH
801 228th Avenue SE
Sammamish, WA 98075
Phone: (425) 295-0500
Fax: (425) 295-0600

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Sammamish, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Sammamish prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

☐ Corporation ☐ Partnership ☐ Government

☐ Individual/Proprietor ☐ Other (explain) ☐ Consultant

TIN No.: _____ Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

_____ _____

Date Authorized Signature (Required)

EXHIBIT C BOND No. _____

PAYMENT AND PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that _____of _____ as Principal, and _____ as Surety, are jointly and severally held and bound unto the City of Sammamish in the sum of _____ dollars ($_____), for payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, and assigns, and successors and assigns, firmly by these presents, the condition of this bond such that;

WHEREAS, on the_____ day of, 20_____, the Principal herein made and entered into a certain contract with the City of Sammamish by the terms, conditions and provisions of which contract the said Principal agrees to furnish all material and do certain work to with: _____ _____

As per maps and specifications made a part of said contract, which contract as so executed is hereunto attached, is now referred to, and by reference is incorporated, herein and made a part hereof, as fully for all purposes as if here set forth at length.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of said contract in all respects, and shall well and truly and fully do and perform all matters and things by said Principal undertaken to be performed under said contract, upon the terms proposed therein, and within the time prescribed therein and, further, if the Principal shall, as required by law, pursuant to 39.08 Revised Code of Washington, pay all laborers, mechanics, and subcontractors and material men, and all persons who shall supply such person or persons or subcontractors with provisions or supplies for the carrying on of such work, then and in that event this obligation shall be void; but otherwise it shall be and remain in full force and effect.

WITNESS our hand the day of 20

_____	_____
PRINCIPAL	SURETY
By_____	By: _____
Title: _____	Title: _____
Address: _____	Address: _____
City/State/Zip: _____	City/State/Zip: _____
Telephone: _____	Telephone: _____

IMPORTANT: Surety companies executing bonds must appear on the U.S. Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Washington, for the full amount of the Contract.

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 9, 2010

Originating Department: Admin Services

Clearances:

- ☒ City Manager
- ☒ Attorney
- ☒ Admin Services
- ☐ Community Development
- ☐ Finance & IT
- ☐ Fire
- ☐ Parks & Recreation
- ☐ Police
- ☐ Public Works

Subject: 2011-2012 Contract for Legal Services

Action Required: **Approve 2011-2012 Contract for Legal Services**

Exhibits: 1. 2011-2012 Contract for Legal Services

Budget: 2011-2012 Budget $315,402

Summary Statement:

This is a contract with the Law Firm Kenyon & Disend to provide Legal Services to the City for 2011-2012

Background:

The City has traditionally contracted with an outside law firm to provide the following services:

- Review or draft City ordinances, contracts, resolutions, interlocal agreements and other legal documents as requested by the City;
- Represent the City in all lawsuits and other contested administrative proceedings commenced by or against the City;
- Advise City Councilmembers and staff members with regard to legal matters relating to their respective duties for the City;
- Consult with and advise the City Councilmembers and staff members in person, by telephone, e-mail, or by written memo on City business;
- Attend all regular City Council meetings on an as-needed basis, unless excused there from by the City Manager;
- Attend Weekly Department Director Meetings

City Council Agenda Bill

Financial Impact:

2011-2012 Budget $315,402, Total Contract $314,628

Recommended Motion:

Move to Approve 2011-2012 Contract for Legal Services

CONTRACT FOR LEGAL SERVICES
2011-2012

I.
PARTIES

This contract is made on this _____ day of _____, 2010, between the City of Sammamish ("City") and Kenyon Disend, PLLC ("Attorneys").

II.
SERVICES OF THE ATTORNEYS

The Attorneys shall work for the City at the pleasure of and under the direction of the City Manager. Bruce Disend will serve as the City Attorney and will direct the services provided under this contract.

III.
QUALITY OF SERVICES

The Attorneys shall perform all legal services covered by this contract in a capable and efficient manner, and in accordance with the professional standards of the Washington State Bar Association.

IV.
SERVICES PROVIDED

The City Attorney shall be principally responsible for performing all legal work for the City, except for prosecution services. The City Attorney may have other attorneys employed by the law firm assist him in the performance of his duties. The following list of duties is illustrative, but is not necessarily inclusive, of the services to be performed by the Attorneys:

(1) Review or draft City ordinances, contracts, resolutions, interlocal agreements and other legal documents as requested by the City;

(2) Represent the City in all lawsuits and other contested administrative proceedings commenced by or against the City;

(3) Advise City Councilmembers and staff members with regard to legal matters relating to their respective duties for the City;

(4) Consult with and advise the City Councilmembers and staff members in person, by telephone, e-mail, or by written memo on City business;

(5) Attend all regular City Council meetings on an as-needed basis, unless excused there from by the City Manager;

(6) Attend Weekly Department Director Meetings

V.
FEES AND COSTS

For the year 2011, the services identified in Section IV, subsections 1, 3, 4, and 5 shall be billed on a fixed fee basis of $13,012 = (2010 Rate $13,077 x .995) per month. The services identified in subsection 2 shall be billed at the Attorneys' and Paralegals' regular hourly rates for 2011 as set forth in Exhibit A.

For the year 2012, the services identified in Section IV, subsections 1, 3, 4, and 5 shall be billed on a fixed fee basis of $13,207 = (2011 Rate $13,012 x 1.015) per month. . The services identified in subsection 2 shall be billed at the Attorneys' and Paralegals' regular hourly rates for 2012 as set forth in Exhibit A.

Additional work performed under this contract shall be billed at the Attorneys' regular hourly rates. In addition, the Attorneys will charge the City ten cents per page for photocopying and facsimile, and shall be reimbursed for legal messenger services, filing fees advanced and other direct expenses.

The Attorneys shall not charge the City for any travel time or mileage costs incurred for trips to or from Sammamish, nor for long-distance telephone charges. Travel time and mileage costs for trips to locations other than Sammamish, if any, shall be reimbursed at the Attorneys' then current rates and charges.

Attorneys' current rates expressly account for any taxes, business license fees, or related charges ("charges") imposed on professional service providers by the City and State of Washington. In the event that any such additional charges are imposed during the term of this agreement, Attorneys shall be entitled to recover any such additional charges as a reimbursable cost item on Attorneys' monthly billing statements.

VI.
PAYMENT TERMS

Fees and costs are due in full from the City upon billing by the Attorneys. A service charge shall accrue at the rate of 12% per annum, but shall only be added to any balance remaining unpaid sixty (60) days after the statement date.

VII.
TIME RECORDS

The Attorneys shall maintain accurate time records describing the services performed and the dates upon which said services were performed, and shall provide a monthly statement to the City setting forth the time expended for such services.

VIII.
CONTRACT PERIOD

This contract shall take effect as of January 1, 2011 and expire on December 31, 2012, unless sooner terminated by either party. Each party shall have the right to terminate this contract upon thirty (30) days written notice.

IX.
INSURANCE

The Attorneys agree to maintain for the protection of the City a professional errors and omissions insurance policy with minimum coverage of one million dollars per claim and three million dollars annual aggregate.

CITY OF SAMMAMISH

By:_____
Ben Yazici, City Manager

KENYON DISEND, PLLC

By:_____
Bruce L. Disend

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 9, 2010

Originating Department: Admin Services

Clearances:

- ☒ City Manager
- ☒ Attorney
- ☒ Admin Services
- ☐ Community Development
- ☐ Finance & IT
- ☐ Fire
- ☐ Parks & Recreation
- ☐ Police
- ☐ Public Works

Subject: Contract for Prosecution Services 2011

Action Required: **Approval of Contract**

Exhibits: 1. Contract for Prosecution Services 2011

Budget: 2011-2012 $174,000

Summary Statement:

This is a contract for Prosecution Services in 2011.

Background:

Prosecution Services will be provided by the Law Firm of Lynn Moberly.

Financial Impact:

Despite the fact the City's court case load is increasing, the Law Firm of Lynn Moberly voluntarily reduced their fee for prosecution services from $90,000 in 2009 to $87,000 in 2010. They have further reduced their fee for 2011 to $86,568 per year.

Recommended Motion:

Move to approve the contract for Prosecution Services

Exhibit 1

CITY OF SAMMAMISH
CONTRACT FOR PROSECUTION SERVICES

The City of Sammamish, Washington, (hereinafter the "City") and the Law Firm of Lynn Moberly, (hereinafter the "Law Firm") agree as follows:

I. LEGAL SERVICES

A. The Law Firm shall perform the duties of the office of the City Prosecutor for the City. The Law Firm shall take all actions to fulfill the obligations of the City for prosecution as established by state law or City ordinance. All services and all duties incidental or necessary thereto, shall be conducted and performed diligently, completely, and in accordance with the highest legal and ethical standards.

II. COMPENSATION

A. The Law Firm shall be compensated for services provided to the City at a monthly rate of $7,214.00 (2010 Rate $7,250 x .995)which includes all administrative costs associated with prosecution including paralegal time, postage, faxes, copies and legal messenger. The City will not be billed for any mileage or driving time. (This flat fee is based upon the past years case filings and anticipated attorney and paralegal work hours.) Appeals to the Court of Appeals or the Supreme Court will be billed at an hourly rate of $100.00 an hour. Code compliance work will also be billed at the same hourly rate.

B. The Law firm's services (under section IIA above).include: Prosecutor presence at pre-trial hearings, motion hearings, bench trials, jury trials and Sammamish Police Department training as needed as well as criminal appeals to the King County Superior Court.

C. If the Municipal Court Judge appoints "conflict" prosecution counsel in accordance with the Washington State Rules of Professional Conduct, the City will be responsible to pay the appointed conflict counsel for such services.
The Law firm shall take reasonable steps to avoid conflicts or potential conflicts with representation of the City.

D. The Law Firm shall be paid the monthly fee of $ 7,214 on or before the 10th of the month for the prior month, without the need for

invoicing. Invoices for applicable appeals and code work will be billed within 60 days of the work being completed and the City agrees to pay the invoice within 30 days, unless disputed.

III. TERM

A. The Term of this agreement shall be for a period of two years, commencing January 1 2011 with levels of compensation outlined herein effective January 1, 2012. This agreement shall automatically renew for each additional year, unless either party notifies the other of its intent not to renew the agreement as written at least 30 days before the end of the year.

B. Either Party may terminate this agreement at any time, with or without cause, upon sixty days written notice.

C. The Law firm will maintain office hours to prepare cases for court, communicate with victims and lay witnesses, communicate with police officers, communicate with defense counsel, and be available for police consultation.

IV. PROFESSIONAL REQUIREMENTS

A. The attorneys of the Law Firm shall be licensed to practice law in the State of Washington and shall remain in good stranding with the Washington State Bar Association throughout the length of this contract.

B. The Law Firm will keep current on all legal issues and legislation relevant to criminal prosecution. The members of the Law Firm will attend continuing legal education courses emphasizing matters relevant to criminal prosecution, specifically including domestic violence and DUI issues.

V. OWNERSHIP OF WORK PRODUCT

A. All information, records, files, and court documents produced under this Agreement shall belong to the City.

VI. NONDISCRIMINATION

The law Firm, in all hiring or employment, shall not discriminate against any employee or applicant for employment based on sex, race, age, color, creed, national origin, marital status or the presence

of any sensory, mental or physical handicap unless based upon a bona fide occupational qualification.

VII. INDEMNIFICATION

The Law Firm agrees to indemnify, defend, and hold harmless the City and its Officers, from any claim against the City arising out of the subject matter of this agreement alleging damage or injury arising out of the subject matter of this agreement; provided, however, that such provision shall not apply to the extent that damage or injury results from the fault of the city or its officers, agents, or employees. “Fault” as herein used shall have the same meaning as set forth in RCW 4.22.015

VII. LIABILITY INSURANCE

The Law firm shall, at its own expense, maintain professional liability insurance in the amount of 1,000,000.00 per occurrence

VIII. INDEPENDENT CONTRACTOR

The Law Firm shall at all times perform its duties and responsibilities and carry out all responsibilities under this Agreement as an independent contractor and shall not be entitled to any benefits except as provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates written below:

THE LAW FIRM: CITY OF SAMMAMISH

By: _____ By: _____
Lynn Moberly, Managing Attorney

Date: _____

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 9, 2010

Originating Department: City Manager

Clearances:

- [x] City Manager
- [x] Attorney
- [ ] Admin Services
- [ ] Community Development
- [ ] Finance & IT
- [ ] Fire
- [ ] Parks & Recreation
- [ ] Police
- [ ] Public Works

Subject: Agreement with Olympic Environmental Services – Management of the City's Recycling Program

Action Required: **Approval of Agreement with Olympic Environmental Services**

Exhibits: 1. Agreement with Olympic Environmental Services

Budget: N/A

Summary Statement:

The City's grant funded Recycling Program is managed through an Agreement with Olympic Environmental Services. The program includes three Residential Recycling Collection Events, one Business Collection Event, and our Rain Barrel Distribution Program.

Background:
Our Recycling Program has been in operation for a number of years and is extremely popular with our citizens.

Financial Impact:

The City is eligible and has applied for three separate grants totaling $88,866.24 to fund our Recycling Program. No non-grant funds will be expended on these projects.

Recommended Motion:

Move to Approve Agreement with Olympic Environmental Services.

Exhibit 1

CITY OF SAMMAMISH
AGREEMENT FOR SERVICES
With
OLYMPIC ENVIRONMENTAL SERVICES

This Agreement is entered into by and between the City of Sammamish, Washington, a municipal corporation, hereinafter referred to as the "City," and Olympic Environmental Services, hereinafter referred to as the "Consultant."

WHEREAS, the City desires to have certain services performed for its citizens; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. **Scope of Services to be Performed by Consultant**. The Consultant shall perform those services described in Exhibit "A" of this agreement. In performing such services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the performance of such services. The Consultant shall perform services diligently and completely and in accordance with professional standards of conduct and performance.

2. **Compensation and Method of Payment**. The Consultant shall submit invoices for work performed using the form set forth in Exhibit "A".

The City shall pay Consultant:

[Check applicable method of payment]

___ According to the rates set forth in Exhibit "__"

__X_ A sum not to exceed eighty-eight thousand, eight hundred, sixty-six dollars, and twenty-four cents ($88,866.24) as detailed in Exhibit "A".

___ Other (describe): _____

The Consultant shall complete and return to the City Exhibit "C," Taxpayer Identification Number, prior to or along with the first invoice submittal. The City shall pay the Consultant for services rendered within ten days after City Council approval.

3. **Duration of Agreement**. This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2011, unless sooner terminated under the provisions of the Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. **Ownership and Use of Documents**. Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not.

5. **Independent Contractor**. The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. The Consultant will solely be responsible for its acts and for the acts of its agents, employees, sub consultants, or representatives during

the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

6. **Indemnification**. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the City.

7. Insurance.

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

Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned and hired.

2. Commercial General Liability insurance shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury.

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

Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

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

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

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance.

2. The Consultant's insurance not be cancelled by either party except after thirty (30) days prior written notice has been given to the City

Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of six years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by the City during the performance of this Agreement.

10. Termination.

A. This City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be cancelled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen days written notice, or in the event that outstanding invoices are not paid within sixty days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement

11. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

12. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City. The City recognizes that Recycling subcontracting for substantial portions of the scope of work in this Agreement is a normal practice of the recycling and waste reduction industry and shall not unreasonably withhold consent to subcontract.

13. Conflict of Interest. The Consultant represents to the City that it has no conflict of interest in performing any of the services set forth in Exhibit "A." In the event that the Consultant is asked to perform services for a project with which it may have a conflict, Consultant will immediately disclose such conflict to the City.

14. Confidentiality. There are no confidential aspects of this Agreement.

15. **Non-appropriation of funds.** If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

16. **Entire Agreement**. This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. **Notices**. Notices to the City of Sammamish shall be sent to the following address:

Assistant City Manager
City of Sammamish
486 228th AVE NE
Sammamish, Washington 98074-7209

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

Paul Devine
Olympic Environmental Resources
4715 SW Walker ST
Seattle, Washington 98116

18. **Applicable Law; Venue; Attorneys' Fees**. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee, shall be included in the judgment.

19. **Severability.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

CITY OF SAMMAMISH, WASHINGTON	CONSULTANT: OLYMPIC ENVIRONMENTAL RESOURCES
By:_____	By:_____
Title: City Manager	Title: General Manager
Date:_____	Date: November 19, 2010
Attest/Authenticated:	Approved As To Form:
_____	_____
City Clerk	City Attorney

Exhibit A

Scope of Work

This Scope of Work is intended to detail the Consultant's services and responsibilities in implementing City of Sammamish Recycling Projects in 2011. The Consultant will implement three Residential Recycling Collection Events, one Business Collection Event, and Barrel/Bin Distribution. Activities will begin after January 1, 2011 in accordance with grant guidelines. The proposed projects include:

Three Residential Recycling Collection Events

One residential Recycling Collection Event will be scheduled for spring (March) and two will be scheduled for the fall (September, October) of 2011 for a total of three events. At the events the following materials will be collected and recycled: used tires, used anti-freeze, used lead acid batteries, used household batteries (alkaline), used petroleum-based products, used oil filters, and used motor oil, bulky yard waste (large material only), scrap wood, (yard debris and scrap wood will be collected only in the spring), appliances (including refrigerators, freezers, household air conditioners, and other appliances), ferrous metals, nonferrous metals (appliances and scrap metal will be collected only in the fall), electronic equipment, cellular phones, TV sets, computer equipment, textiles, reusable or recyclable household goods, porcelain toilets and sinks, propane tanks and other materials whenever practical. User fees will apply to the collection of some materials. OER may work with the Washington Materials Management and Financing Authority (WMMFA) to collect and recycle televisions, CPUs (computers), computer monitors, and laptop computers or refer residents to state E-cycle sites.

One Business Recycling Collection Event

To address the situation that many Sammamish businesses have of keeping/storing recyclable materia1s, the Consultant will implement a Sammamish Business Collection Event. The purpose will be to allow for the collection of recyclables that would otherwise not be collected. Many small businesses do not generate enough of a particular material to retain a service provider, so they store the material. Other businesses generate materials that there are not service providers readily available. To help City businesses recycle more material, the Consultant will implement a one-day event on a weekday to collect and recycle a variety of materials from Sammamish businesses in a central City location.

Rain Barrel/Compost Bin Distribution

The City will support recycling programs by distributing recycle content rain barrels, compost bins, or worm bins to City residents. The units each divert plastic material from the waste stream when produced. The number of units distributed will be based on the size and quality of the items selected. OER will work to promote the distribution to City residents and may distribute the units at City Recycling Collection Events or through a "virtual sale" via the City web site for home delivery.

The Consultant will provide professional management for implementation of all projects. The Consultant wishes to involve the Sammamish City staff at the level most comfortable for the City. The Consultant will meet with the City of Sammamish staff at any time during the project for updates on activities or will pursue activities independently if desired by the City.

The project budget will incorporate the City of Sammamish grant funds available from the King County Solid Waste Division, Seattle-King County Health Department, and the Washington State Department of Ecology. The specific project activities to be carried out by the Consultant are detailed in the grant scopes of work. Total 2011 grant funds available total $88,866.24 (see below). The Consultant will cover project expenses as they arise, such as the costs of printing and vendor services. The Consultant will then request

reimbursement of staff time and expenses on a monthly basis with thirty-day payment terms. The Consultant will assist the City in requesting reimbursement for these costs from the King County Solid Waste Division, Seattle-King County Health Department, and the Washington State Department of Ecology on a quarterly or project basis**.**

The Consultant's goal is to conduct events with very limited City staff time and no City cost. However, there are a number of "official acts" necessary for the City to bring the program on line:

- Sign necessary grant agreements.
- Keep OER informed of any changes made to grant agreements.
- Reimburse OER for staff time and expenses from grant funding.

2011 Sammamish Grants

The City of Sammamish is eligible and has applied for the following grants. It is expected that no non-grant City funds will be expended on the projects listed above. The City has applied for the following:

1) The King County Waste Reduction and Recycling Grant Program. Grant total $49,146.97.

3) The King County Health Department Local Hazardous Waste Management Plan Grant. Grant total $13,839.27.

4) The Washington State Department of Ecology Coordinated Prevention Grant. Grant total $25,880.00.

TOTAL: $88,866.24.

EXHIBIT B

City of Sammamish
Billing Invoice

To: City of Sammamish
486 228th Avenue NE
Sammamish, Washington 98074
Phone: (425) 898-0660
FAX: (425) 898-0669

Invoice Number:_________________ Date of Invoice:_______________

Consultant:____
Mailing Address:____
____
Telephone: (   ) __________________

Contract Period:____________________ Reporting Period:______________________

Amount requested this invoice: $__________

Attach itemized description of services provided.

Specific Program:____

____
Authorized signature

For Department Use Only

- -

BUDGET SUMMARY

Total contract amount	
Previous payments	
Current request	
Balance remaining	

Approved for Payment by: ________________________ Date: _______________

EXHIBIT C

CITY OF SAMMAMISH
486 228th Avenue NE
Sammamish, WA 98074
Phone: (425) 898-0660
FAX: (425) 898-0669

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Sammamish, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Sammamish prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

—X— Corporation ——— Partnership ——— Government Consultant

——— Individual/Proprietor ——— Other (explain)

TIN No.: 91-2027892

Social Security No.: _____

Print Name: Paul M. Devine

Title: General Manager

Business Name: Olympic Environmental Resources

Business Address: 4715 SW Walker Street Seattle, WA 98116

Business Phone: 206 938-8262

_____ _____

Date Authorized Signature (Required)

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 8, 2010

Originating Department: Parks and Recreation

Clearances:

- [x] City Manager
- [x] Attorney
- [ ] Admin Services
- [ ] Community Development
- [ ] Finance & IT
- [ ] Fire
- [x] Parks & Recreation
- [ ] Police
- [ ] Public Works

Subject: On-Call Technical and Design Support Service for the Parks, Recreation and Open Space (PRO) Plan Update

Action Required: Authorize the City Manager to execute a contract with Bruce Dees & Associates for on-call technical and design support services for the PRO Plan Update.

Exhibits: 1. Contract and Scope of Work

Budget: 2010 Budget - $140,000 Allocated for PRO Plan Technical Support
2011 Budget - $60,000 allocated for PRO Plan Technical Support (Professional Services)

Summary Statement:

This is a contract with Bruce Dees & Associated to provide on-call technical and design support services for the Parks, Recreation and Open Space (PRO) Plan Update. Most of the plan update is being done in-house, however, technical assistance and additional design support is needed to complete several elements of the plan. This is structured as an "on-call contract" as the support tasks will vary and likely change as work on the plan progresses.

Background:

The PRO Plan is part of the City's Comprehensive Plan. The current PRO Plan was adopted December 2004. As this plan must be updated every six years to maintain eligibility for state grants and to remain relevant for current times, we are underway with a plan update and anticipate adoption in late 2011.

This project was originally intended to be done exclusively by a consulting firm. As a cost-saving measure, this project was moved in-house in 2010. Nearly 80% of the work on this plan will be completed by in-house staff. There are numerous elements, however, that require design or analysis that is beyond the level of expertise of the staff and/or for efficiency reasons would best be performed by a consultant. Some of these elements may include assistance with the update/revision of the parks level of service standards; preparing an updated valuation of the parks system (for impact fee analysis if needed); conceptual design and cost estimates to support the proposed Parks CIP update; mapping and

GIS analysis and technical support; service gap-analysis; and development of graphics for inclusion in the final plan.

Evaluation Process

AN RFP was issued for consultant support related to the PRO Plan Update. A total of seven responses were received. After an extensive evaluation, team discussion and confirmation with the consultant on availability, Bruce Dees and Associates was selected to perform this work.

Financial Impact:

The 2010 Park Planning Professional Services budget has a total of $140,000.00 allocated for the PRO Plan update. These funds were originally allocated for a consultant to do the entire plan update. As mentioned previously, the approach changed in 2010, and the majority of the plan update is now being done by in-house staff. To date, none of the 2010 funds have been spent. Looking ahead to 2011, $60,000 was included in the Park Planning Professional Services budget for technical and design support.

The requested authorization amount is not-to-exceed $40,000.00. There is no guarantee that the full contract amount will be needed or expended. Work tasks under this agreement will be assigned to the consultant on an as needed basis and as the plan update further develops.

Recommended Motion:

Authorize the City Manager to execute an on-call contract for an amount not-to exceed $40,000.00 with Bruce Dees and Associates for technical support for the PRO Plan update.

Exhibit 1

CITY OF SAMMAMISH
AGREEMENT FOR SERVICES

Consultant: Bruce Dees & Associates

This Agreement is entered into by and between the City of Sammamish, Washington, a municipal corporation, hereinafter referred to as the "City," and Bruce Dees and Associates, hereinafter referred to as the "Consultant."

WHEREAS, the City desires to have certain services performed for its citizens; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. **Scope of Services to be Performed by Consultant.** The Consultant shall perform those services described in Exhibit "A" of this agreement. In performing such services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the performance of such services. The Consultant shall perform services diligently and completely and in accordance with professional standards of conduct and performance.

2. **Compensation and Method of Payment.** The Consultant shall submit invoices for work performed using the form set forth in Exhibit "B".

   The City shall pay Consultant:

   [Check applicable method of payment]

   _X_ According to the rates set forth in Exhibit "D"

   _X_ A sum not to exceed $40,000

   ___ Other (describe): _____

   _____

   The Consultant shall complete and return to the City Exhibit "C," Taxpayer Identification Number, prior to or along with the first invoice submittal. The City shall pay the Consultant for services rendered within ten days after City Council approval.

3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2011, unless sooner terminated under the provisions of the Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. **Ownership and Use of Documents.** Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not

5. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. The Consultant will solely be responsible for its acts and for the acts of its agents, employees, subconsultants, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

6. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the City.

Exhibit 1

7. **Insurance.**

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

Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

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

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

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

4. Professional Liability insurance appropriate to the Consultant's profession.

Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

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

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

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance shall not be cancelled by either party except after thirty (30) days prior written notice has been given to the City

Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

8. **Record Keeping and Reporting.**

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

9. **Audits and Inspections.** The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by the City during the performance of this Agreement.

10. **Termination.**

A. This City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be cancelled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen days written notice, or in the event that outstanding invoices are not paid within sixty days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. **Discrimination Prohibited.** The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

12. **Assignment and Subcontract.** The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

13. **Conflict of Interest.** The City insists on the highest level of professional ethics from its consultants. Consultant warrants that it has performed a due diligence conflicts check, and that there are no professional conflicts with the City. Consultant warrants that none of its officers, agents or employees is now working on a project for any entity engaged in litigation with the City. Consultant warrants that for 2 years following termination of this contract, no officer, agent or employee of Consultant will enter into any contract or agreement with any entity that is currently engaged in litigation with the City or which is in the future engaged in or has threatened litigation with the City. It is the Consultant's duty and obligation to constantly update its due diligence with respect to conflicts, and not the City's obligation to inquire as to potential conflicts. This provision shall survive termination of this Agreement.

14. **Confidentiality.** All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

15. **Non-appropriation of funds.** If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

16. **Entire Agreement**. This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

Exhibit 1

17. **Notices**. Notices to the City of Sammamish shall be sent to the following address:

City of Sammamish
Attn: Parks & Rec Director
801 228th Avenue SE
Sammamish, WA 98075
Phone number: (425) 898-0660

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

Company Name	Bruce Dees & Associates
Contact Name	Bruce Dees, Principal
Street Address	222 East 26th Street, Suite 202
City, State Zip	Tacoma, WA 98421
Phone Number	(253) 67-7947
Email	info@bdassociates.com

18. Applicable Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee, shall be included in the judgment.

19. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

CITY OF SAMMAMISH, WASHINGTON	CONSULTANT
By:_____	By: Bruce Dees
Title: City Manager	Title: PRINCIPAL
Date:_____	Date: 12-8-10
Attest/Authenticated:	Approved As To Form:
_____	_____
City Clerk	City Attorney

Exhibit 1

EXHIBIT A
SCOPE OF WORK

On-Call Technical Support for PRO Plan Update
Bruce Dees & Associates

General Scope of Work

The work under this Agreement shall consist of performing services related to Bruce Dees and Associates, as herein defined and necessary to accomplish individual tasks ("Task Orders") issued by the City of Sammamish. The Consultant shall furnish all services and labor necessary to accomplish these tasks, and provide all materials, supplies, equipment, and incidentals, except as designated elsewhere in the Agreement, necessary to prepare and deliver to the City the studies, plans, specifications, estimated, and other deliverable item(s) requested by the City.

The City is not obligated to assign any specific number of tasks to the Consultant, and the City's and Consultant's obligations hereunder are limited to the tasks assigned in writing. The City may require the Consultant to perform all work on a project, or act as part of a team by performing only a portion of the project work. Task assignments may include, but are not limited to the following types of work:

- Assist in the development/revision of the parks system level of service (LOS) standards.
- Prepare updated cost valuations for the parks system.
- Develop conceptual design plans for selected existing and proposed facilities.
- Develop conceptual cost estimates for identified capital improvement projects. May include operating cost models.
- Provide design guidelines for identified capital improvement projects (with an emphasis on green infrastructure.)
- Develop graphics and maps suitable for inclusion in the final plan. Maps shall be available in both GIS and PDF formats as requested by the City.
- Other planning related work as requested by the City.

It is anticipated that the task assignments may vary in scope, complexity and location. Specific scopes of work will be developed as individual task assignments are requested.

Authorization of Work

Work requested by the City shall be issued in writing. The request by the City should include the following information, which may be furnished in coordination with the Consultant:

1. Task Order title (project name)
2. Technical approach to the task (if complex enough to require this)
3. Specific deliverables
4. Schedule with milestones and deliverables
5. Cost/hour estimate
6. Due date of work

All of the above items may be brief, but will be sufficiently detailed to understand the work being authorized and the amount it will cost.

The City will review and approve the Consultant's submittal for any work requested, or at the City's option, negotiate various elements of the work requested prior to authorizing work to begin and issuing a Notice to Proceed. If, after work has begun, the Consultant cannot meet the agreed schedule or cost, the Consultant shall immediately notify the City. Authorization of additional time or cost for approved work will be at the sole option of the City and will be made in writing. New budgets for any new requests or extensions of previous work will be approved in writing by the City prior to beginning new work.

Work may begin when the Notice to Proceed is sent to the Consultant by the City, except that emergency actions requiring a 24-hour response can be handled by an oral authorization. Such oral authorization shall be followed up with a written confirmation within 24 hours with the information listed above included.

Exhibit 1

EXHIBIT B

REQUEST FOR CONSULTANT PAYMENT

To: City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Phone: (425) 295-0500
FAX: (425) 295-0600

Invoice Number: _____ Date of Invoice: _____

Consultant: _____

Mailing Address: _____

_____

Telephone: _____

Email Address: _____

Contract Period: _____ Reporting Period: _____

Amount requested this invoice: $_____

Specific Program:_____

_____
Authorized signature

ATTACH ITEMIZED DESCRIPTION OF SERVICES PROVIDED

For Department Use Only

Total contract amount	
Previous payments	
Current request	
Balance remaining	

Authorization to Consultant: $
Account Number:
Date:

Approved for Payment by: _____ Date: _____

Finance Dept.

*Check #*_____ *Check Date:*_____

Exhibit 1

EXHIBIT C

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Sammamish, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Sammamish prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

_____ Corporation _____ Partnership _____ Government Consultant

_____ Individual/Proprietor __X__ Other (explain) LLC

TIN No.: 91-2147966

Social Security No.: _____

Print Name: Bruce Dees

Title: Principal

Business Name: Bruce Dees & Associates, LLC

Business Address: 222 East 26th Street, Suite 202, Tacoma, WA 98421

Business Phone: 253-627-7947

12-8-10
Date

Bruce Dees
Authorized Signature (Required)

Exhibit 1

EXHIBIT D

FEE SCHEDULE

BRUCE DEES & ASSOCIATES

EFFECTIVE January 1, 2010

Standard Fee Schedule

The compensation of Bruce Dees & Associates for work done on the basis of a charge rate, plus incurred expenses, will be the sum of all of the items set forth below:

A. Personnel Services — **Hourly Rates**

Landscape Architect (Principal).....	$140.00
Landscape Architect III.....	$130.00
Landscape Architect II.....	$120.00
Landscape Architect I.....	$100.00
Engineering Technician.....	$100.00
Clerical.....	$ 65.00

B. Travel and Transportation Expenses

1. Reimbursement for actual travel and subsistence expenses paid to or on behalf of personnel on business connected with the project, plus a service charge of 15%.
2. Fifty cents ($0.50) per mile for use of vehicles (or current IRS approved rate).

C. Outside Services

1. Invoice cost of services and expenses charged to Bruce Dees & Associates by outside consultants, professional or technical firms engaged in connection with the order, plus 15% overhead cost.

D. Miscellaneous Expenses

1. The invoice cost of materials, supplies, reproduction work, and other services, including communication expenses, procured by Bruce Dees & Associates from outside sources, plus a service charge of 15%. All out-of-pocket expenses not included in Items A, B, and C will be included in this category.
2. Computer station for CAD services will be charged at $10.00 per hour.

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 7, 2010

Originating Department: City Manager

Clearances:

- [x] City Manager
- [x] Attorney
- [x] Admin Services
- [ ] Community Development
- [x] Finance & IT
- [ ] Fire
- [ ] Parks & Recreation
- [ ] Police
- [ ] Public Works

Subject: Official Cancellation of the December 20 Study Session, December 21 Regular Meeting and January 17, 2011 Study Session

Action Required: Motion to cancel the last two meetings in December, 2010 and January 17, 2011

Exhibits: 1. none

Budget: N/A

Summary Statement: The last two meetings of December occur very close to the Holidays and are therefore being cancelled. Martin Luther King Day falls on Monday, January 17, 2011, which is an observed holiday and City Hall is closed.

Background: State law requires Council action at an open public meeting to cancel regularly scheduled meetings.

Financial Impact: None

Recommended Motion: Move to cancel the December 20, 2010 Study Session, December 21, 2010 Regular meeting and January 17, 2011 Study Session.

City Council Agenda Bill

Meeting Date: **December 14, 2010** Date Submitted: December 8, 2010

Originating Department: Community Development

Clearances:

- ☐ City Manager
- ☒ Attorney
- ☐ Admin Services
- ☒ Community Development
- ☐ Finance & IT
- ☐ Fire
- ☐ Parks & Recreation
- ☐ Police
- ☐ Public Works

Subject: Wireless Communication Facility Ordinance Amendments

Action Required: Re-open public hearing, take testimony and continue to February 15, 2011

Exhibits: None

Budget: N/A

Summary Statement: The City Council continues to consider code amendments to the Wireless Communication Facility (WCF) chapter in SMC 21A. The amendments involve underground and attached base stations, the height of antenna support structures, the additional allowance for the construction of "canister design monopoles", reformatting the siting and base station hierarchies, allowing antennas within the city's Town Center zones, and requiring color-matched conduits at the time of upgrades. The Council opened and has continued the public hearing to solicit comments on those amendments.

Background: The Planning Commission reviewed the Council's WCF concerns and held public meetings related to the amendments on May 6, 2010, May 20, 2010, June 3, 2010 and June 17, 2010. The Planning Commission recommended amendments to allow base station equipment to be attached to utility poles, and that only the minimum necessary be allowed for height increases.

As a part of their public hearing and review process, the City Council has identified additional amendments (beyond those recommended by the Commission) and has sought comment from WCF providers and the public. On November 29 and December 7, staff met with individual Council members to discuss potential amendments to the WCF code. Representatives of the WCF provider industry have attended these meetings to provide information. Staff had intended to have specific amendment language ready for the Council meeting on December 14, but more time is needed. Staff recommends that we schedule a study session on February 8, 2011 so the Council can review all the proposed amendments, and that the public hearing be continued to February 15, 2011.

Financial Impact: N/A

Recommended Motion: Re-open public hearing and continue to February 15, 2011.