



CITY OF DES MOINES, WASHINGTON

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ENVIRONMENTAL MITIGATION AGREEMENT

Project File No: LUA09-015
Project Name: SCORE
Project Address: 1801 South 200th Street
Applicant: South County Correctional Entity
Attn: Penny Bartley
1050 South Grady Way
Renton, WA 98057
(425) 430-7565
Staff Contact: Jason Sullivan; Land Use Planner II
Date: June 1, 2009

THIS AGREEMENT, is entered into by and between the City of Des Moines, a municipal corporation hereinafter referred to as the "City" and the South County Correctional Entity, created pursuant to an Interlocal Agreement dated as of February 25, 2009 among the Cities of Auburn, Burien, Des Moines, Federal Way, Renton, SeaTac, and Tukwila, hereinafter referred to as "SCORE."

WHEREAS, this agreement is executed pursuant to Chapter 43.21 RCW, the State Environmental Policy Act (SEPA), WAC 197-11-350, and Title 16 of the Des Moines Municipal Code, to provide for mitigation of existing and known environmental impacts associated with the development hereinafter described, and

WHEREAS, this agreement is not, and shall not be construed as a voluntary agreement pursuant to RCW 82.02.020, and the provisions of RCW 82.02.020 shall not be applied hereto. This agreement does not preclude any evaluation and determination by the City of Des Moines upon later actions or proposals undertaken by SCORE that may require a determination of significance and environmental review under SEPA, and

WHEREAS, WAC 197-11-060(4)(a) requires the consideration of "environmental" impacts that are likely, not merely speculative, and

WHEREAS, the SEPA "threshold determination" is the formal decision as to whether the proposal is likely to cause a significant adverse environmental impact for which mitigation cannot be easily identified. The SEPA Rules state that significant "means a reasonable likelihood of more than a moderate adverse impact on environmental quality" (*SEPA Handbook* Section 2.6), and

WHEREAS, WAC 197-11-782 defines "probable" as likely or reasonably likely to occur, as in "a reasonable probability of more than a moderate effect on the quality of the environment; probable is used to distinguish likely impacts from those that merely have a possibility of occurring, and

WHEREAS, WAC 197-11-794(1) defines "significant" as used in SEPA to mean a reasonable likelihood of more than a moderate adverse impact on environmental quality.

WHEREAS, WAC 197-11-060(4)(b) requires the lead agency to consider the proposal's impacts not only to those aspects within its jurisdiction but also neighboring jurisdictions, and

WHEREAS, mitigation is the avoidance, minimization, rectification, compensation, reduction, or elimination of adverse impacts to built and natural elements of the environment, and

WHEREAS, mitigation can be applied to a proposal through the use of SEPA's substantive authority, based on identified potential adverse impacts related to the proposal; provided that agencies should only use their SEPA substantive authority to condition a project's impacts when the impacts cannot be adequately addressed by other regulations, if the applicable regulations require measures that adequately address a proposal's environmental impacts, additional measures should not be required under SEPA (*SEPA Handbook 8.4*), and

WHEREAS, RCW 43.21C.060 requires that such substantive authority may only be used to mitigate specific adverse environmental impacts which are identified in the environmental documents; provided that the conditions shall be stated in writing by the SEPA responsible official and shall be reasonable and capable of being accomplished, and

WHEREAS, WAC 197-11-310 requires the SEPA responsible official to make the threshold determination as close as possible to the time an agency has been presented with a proposal, and

WHEREAS, the City's SEPA Responsible Official has determined that not all environmental impacts identified will be adequately mitigated by the development regulations and comprehensive plan adopted by the City, and in other applicable local, state, or federal laws or rules necessitating that SCORE to enter into an agreement to mitigate such impacts, and

WHEREAS, SCORE is proposing to construct an 830 bed correctional facility to serve the misdemeanor detention needs of the seven member jurisdictions which includes the Cities of Auburn, Burien, Des Moines, Federal Way, Renton, SeaTac and Tukwila, and

WHEREAS, local correctional facilities are defined by DMMC 18.04.263 and RCW 36.70A.200 as Essential Public Facilities, and

WHEREAS, the City has reviewed the SEPA Checklist prepared by DLR Group, and

WHEREAS, the City has reviewed the "Project Narrative for the SCORE Facility" prepared by DLR Group, and

WHEREAS, the City has reviewed a study entitled, *SCORE Jail Technical Information Report* (dated March 23, 2009) prepared by KPFF Consulting Engineers which evaluated drainage requirements for the proposed facility, and

WHEREAS, the City has reviewed a study entitled, *Geotechnical Engineering Design Study: Proposed South Correctional Entity (SCORE) Des Moines, Washington* (hereinafter "the Geotechnical Study") (dated April 9, 2009) prepared by HartCrowser Inc., which evaluated surface and subsurface conditions at the project site in order to develop geotechnical recommendations and design criteria, and

