

INTERLOCAL AGREEMENT

In accordance with the Interlocal Cooperation Act (chapter 39.34 RCW), the City of Kent ("Kent") and the City of Des Moines ("Des Moines") agree as follows:

Facts and Assumptions

This agreement is entered into on the basis of the following facts and assumptions:

1. The real property which is the subject of this interlocal agreement is the Midway Crossing Neighborhood Shopping Center ("Midway Crossing") which is generally located at the southwest corner of Pacific Highway South and the KentDes Moines Road (SP. 516).

2. The boundary of Kent and Des Moines passes in a generally east/west line through the southern portion of Midway Crossing. The majority of Midway Crossing is in Kent. With the exception of the QFC Supermarket, all structures in the Midway Crossing are in Kent.

3. While the majority of the floor area of the QFC Supermarket is in Des Moines, eight of the nine checkout stands are in Kent. The Washington State Department of Revenue takes the position that sales taxes are collected at the "point of sale", which means that Des Moines is entitled to sales tax revenue solely from sales occurring at one specific checkout stand.

4. Kent and Des Moines each impose a business and occupation tax for the privilege of conducting certain utility businesses in their respective cities. It is awkward to create ratios by which the various utilities may apportion this tax between Kent and Des Moines with respect to utility usages at the QFC Supermarket.

5. The topography in the vicinity of Midway Crossing is such that surface water drains to the west towards the Massey Creek drainage basin, which is in Des Moines. Funds from the Des Moines surface water management program will be expended to deal with the quantity and quality of surface water runoff from the impermeable areas of Midway Crossing.

6. Kent and Des Moines have previously entered into an interlocal agreement dated March 17, 1987, which is appended to this agreement as Attachment "A". The 1987 agreement deals with building sites that may be located within both the jurisdiction of Kent and the jurisdiction of Des Moines, and provides for lead agency status. Des Moines agrees that Kent is the lead agency for Midway Crossing.

7. While the 1987 agreement deals with a number of development issues for real property lying within the jurisdictions of both Kent and Des Moines, it fails to address issues of taxation and surface water management.

8. Representatives of Des Moines and Kent met at the request of Stan Finkelstein, Executive Director of the Association of Washington Cities, for the purpose of arriving at a resolution of taxation issues related to Midway Crossing. A representative of the Washington State Department of Revenue was present at the meeting. Kent and Des Moines were in general agreement that taxation should flow to the municipal corporation which essentially provides municipal services for Midway Crossing, and that in arriving at an understanding, the municipalities should avoid hypertechnical

considerations (such as the location of a particular cash register) in order to arrive at an understanding which will provide equity to both municipalities.

Agreement

WHEREFORE, in reference to the foregoing, the parties agree as follows:

(1) **Sales Tax and Utility Tax.** With respect to municipal sales tax and utility tax revenue attributable to the QFC Supermarket:

(a) **Sales Tax.** Des Moines agrees that Kent is entitled to the benefit of municipal revenue of all sales taxes collected at the QFC Supermarket; and that the Washington State Department of Revenue should be instructed to code all such sales for the benefit of Kent.

(b) **Utility Tax.** Des Moines agrees to waive its right to collect any utility occupation tax imposed as a business and occupation tax for the privilege of engaging in the business of electric energy, natural gas, telephone, solid waste collection, and transmitting television or audio services. Kent shall be entitled to collect its equivalent of these taxes on the premises.

(2) **Annual Payment to Des Moines.** Kent agrees to pay annually to the City of Des Moines an amount equal to one-ninth (1/9th) of all actual revenues received arising out of retail sales at the QFC Supermarket which are authorized by chapter 82.14 RCW. The first payment will be made on or about March 31, 1995 for revenue collected by Kent from April 1, 1994, and annual payments will be made by Kent on or about March 31 of each subsequent year.

Surface Water Management Charges, Maintenance, Capital

(a) **SWM Charges.** Kent agrees to remit to Des Moines annually an amount equal to all the maintenance and operation portion of its surface water management service charge revenue collected from the Midway Crossing property owner, effective April 1, 1994. Annual payments are made on or about March 31st of each year. The first payment is made on March 31, 1995.

(b) **Operation & Maintenance.** Des Moines is responsible for the operation and maintenance of the public portion of the surface water management system within the Midway Crossing property.

(c) **Basin-related Capital Issues.** Kent and Des Moines agree to cooperate in meeting basin-related surface water management capital issues pertaining to the Midway Crossing.

(4) **Hold Harmless.** Des Moines agrees to defend, indemnify, and hold Kent, its officers, officials, agents, employees, and volunteers harmless from any claim, damages, suit, action, or liability, costs or expenses in law or equity, including attorney fees and expenses in defending against any such claim because of damaged property or personal injury arising out of the operation and maintenance of the public portion of the surface water management system within the Midway Crossing property, which may be occasioned by any willful or negligent act or omission of Des Moines or any agent,

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THIS AGREEMENT is entered into between the City of Des Moines and the City of Kent, municipal corporations.

WHEREAS, the boundaries of the City of Des Moines and the City of Kent are contiguous west of Pacific Highway South between the Kent-Des Moines Road and South 252nd Street, and

WHEREAS, building sites may be located within both jurisdictions,

WHEREAS, a policy is needed to provide for orderly processing of licenses and permits where dual jurisdiction occurs,

NOW, THEREFORE, it is hereby agreed between the parties as follows:

Section 1. Lead Agency.

a. When a building site is located both in the City of Kent and the City of Des Moines, a lead agency will be determined. The lead agency will have primary responsibility for coordinating development reviews, conducting plan checks and building inspections, and collecting and distributing permit fees as provided below.

b. Lead agency status will be determined pursuant to WAC 197-11-932, i.e., the lead agency shall be that municipality within whose jurisdiction is located the greatest portion of the proposed project area, as measured in square feet.

Section 2. Development Review.

a. A joint development review will be employed to work out minimum setbacks and other zoning requirements, required landscaping, etc. A preliminary review shall be held to define such developmental constraints. A final review and joint approval of site plan features shall be required prior to acceptance of the building permit application. The lead agency shall be responsible for compliance with the State *Environmental Policy Act*, as amended, RGW 43.21C.

b. For permits and approvals under the jurisdiction of a discretionary board of a municipality, when such permits or approvals are required by one municipality but not the other, such permits or approvals shall be obtained prior to final site plan approval. The municipality granting any approval and/or permit shall incorporate the recommendations of the other municipality in its staff report to the deciding municipality.

c. For permits and approvals which are not subject to the discretionary review of a municipality as described in Section 2.b, but are the subject of administrative determination, and such permits or approvals are required by one municipality but not the other, they shall be obtained subsequent to final site plan approval by the lead agency. Where such permits or approvals are required by both municipalities, the lead agency shall have exclusive authority and responsibility for granting the permit or approval in accordance with the ordinances of the lead agency, including assessment of any fees.

d. Minimum zoning requirements of each jurisdiction shall be met. In case of discrepancy between zoning provisions of the City of Des Moines and the City of Kent, the more stringent regulations, as determined by the lead agency, shall apply.

Section 3. Business Licenses.

Business licenses shall be secured from the lead agency, who is responsible for notifying the secondary agency when a change in business use is proposed. No business license shall be issued without having secured zoning/building/fire code compliance from both municipalities or agencies.

Section 4. Fees.

Where permits or approvals are required by one municipality and not the other, the developer shall be responsible to the particular municipality for *payment* of fees as if this agreement did not exist. When such permits or approvals are required by both municipalities, the developer will be responsible solely to the lead agency for payment of fees. All fees collected by the lead agency shall be designated as "Interlocal Agreement Lead Agency Permit Fee Fund." Disbursements to the City of Kent and City of Des Moines shall be made pursuant to their established legislative and administrative policies respectively.

Section 5. Hold Harmless.

The lead agency shall defend and hold the non-lead agency, its elected officers, employees and agents harmless and shall indemnify such persons from and against all losses, claims, demands, suits, actions, payments, judgements and any and all other expenses, legal, and *otherwise, incurred* by the non-lead agency in defense of any suit or claim as a result of any actions or non-actions by any personnel of the lead agency pursuant to this agreement.


Section 6. Termination.

This *Agreement* shall be effective for a period not to exceed forty (40) years unless otherwise extended or terminated by either City upon ninety (90) days written notice of one party to the other party.

IN WITNESS THEREOF, the parties their adherence to this interlocal agreement is evidenced by the following signatures.

City of Des Moines

Dated: February 27, 1987



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By: Stan McNutt, City Manager

Attest:

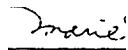

City Clerk

City, of

Dated: 3/17/87 8-7

By:

Attest:


By:

427P-23P