



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 30, 2017

Ordinance 18597

Proposed No. 2017-0324.1

Sponsors Balducci and von Reichbauer

1 AN ORDINANCE approving an agreement between King
2 County and the city of Algona relating to construction of a
3 new recycling and transfer station and authorizing the King
4 County executive to sign and implement the agreement.

5 STATEMENT OF FACTS:

- 6 1. The King County solid waste system serves the unincorporated areas of
7 King County and thirty-seven cities that have signed interlocal agreements
8 with the county.
- 9 2. The solid waste system is comprised of eight transfer stations, two drop
10 boxes, and the Cedar Hills regional landfill. Several of the original
11 transfer stations, built in the 1960s, are still in operation today. The
12 Algona transfer station is one of these stations.
- 13 3. Transfer stations are essential public facilities that are vital to
14 communities for the safe and efficient handling of their solid waste.
- 15 4. Adopted in 2004, Ordinance 14971 to establishes a process for the
16 cities to collaborate with the county in solid waste system planning,
17 including future transfer station alternatives.
- 18 5. Working with the cities, the solid waste division of the department of
19 natural resources and parks developed the Solid Waste Transfer and Waste

20 Management Plan in 2007, as required by Ordinance 14971. According to
21 the plan, the existing Algona transfer station fails to meet five of the six
22 level-of-service station capacity criteria, because only the hours of
23 operation were sufficient, and did not meet goals for traffic impacts on
24 local streets. The plan recommends replacing the aging Algona transfer
25 station with a new recycling and transfer station. These findings were
26 confirmed though the 2014 Transfer Plan review.

27 6. In 2012, the solid waste division began a search for potential sites on
28 which to locate a new south county recycling and transfer station. The site
29 search for this essential public facility was concentrated in and around the
30 cities of Auburn, Algona, Pacific and Federal Way, which is the service
31 area for the existing Algona transfer station.

32 7. The division conducted an in-depth search that screened sites with pre-
33 established policy criteria. Starting with over one hundred sites, the
34 division narrowed the list of reasonable alternatives to two potential sites.

35 8. The division prepared an environmental impact statement analyzing
36 two action alternatives located at 901 C Street Southwest, Auburn, and
37 35101 West Valley Highway South, Algona, which is the preferred
38 alternative. A no-action alternative was also analyzed.

39 9. Notices that the draft environmental impact statement was available for
40 public comment were sent to over twenty-six thousand residents and
41 emailed to a list of agencies, residents and other interested stakeholders
42 that had participated in other public comment periods or meetings. The

43 solid waste division received comment letters from seventy-eight
44 stakeholders. The comments were reviewed and a response summary was
45 incorporated in the final environmental impact statement.

46 10. The final environmental impact statement was issued on September
47 20, 2016.

48 11. In February 2017, the executive made the decision to proceed with the
49 new recycling and transfer station at the site in the city of Algona. The
50 decision considered the findings from the final environmental impact
51 statement, an equity impact review that looked at equity and social justice
52 factors and an economic analysis that considered the potential positive and
53 negative economic impacts of the station.

54 12. The county and the city of Algona have had discussions about the new
55 recycling and transfer station project and desire to enter into an agreement
56 relating to the construction of the new recycling and transfer station in the
57 city. The agreement includes a development agreement pursuant to
58 chapter 36.70B.170 RCW, which establishes the permitting standards and
59 conditions, the mitigation measures and the permit process governing the
60 construction of the new recycling and transfer station in the city as well as
61 providing certain additional requirements for the operation of the facility.

62 13. The agreement will provide for regulatory certainty, mitigation and
63 timely construction of the new recycling and transfer station. In
64 accordance with chapter 36.58.080 RCW, the agreement establishes the
65 nature and extent of future vehicular traffic impacts to the West Valley

66 Highway S within the city of Algona from the new recycling and transfer
67 station and the extent to which the county shall compensate the city. The
68 agreement also establishes the project mitigation options as identified in
69 the final environmental impact statement and establishes a mechanism to
70 resolve disputes if they arise during the city's permitting process.

71 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

72 SECTION 1. The agreement with the city of Algona, relating to the construction
73 of a new recycling and transfer station, substantially in the form of Attachment A to this

74 ordinance, is hereby approved, and the King County executive is authorized to sign and
75 to implement the agreement.
76

Ordinance 18597 was introduced on 8/14/2017 and passed by the Metropolitan King County Council on 10/30/2017, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

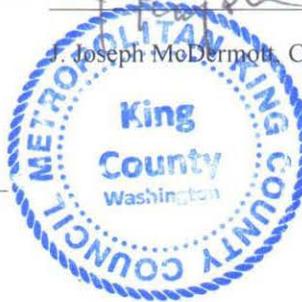


J. Joseph McDermott, Chair

ATTEST:



Melani Pedroza, Clerk of the Council



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CLERK
METROPOLITAN KING COUNTY COUNCIL

APPROVED this 8 day of NOVEMBER 2017.



Dow Constantine, County Executive

Attachments: A. Agreement Between King County and the City of Algona Relating to Construction of New Transfer Station

**AGREEMENT BETWEEN KING COUNTY
AND THE CITY OF ALGONA RELATING TO
CONSTRUCTION OF NEW TRANSFER STATION**

This Agreement is by and between King County, a political subdivision of the State of Washington, hereinafter referred to as the "County," and the City of Algona, hereinafter referred to as the "City." The County and the City are collectively referred to as the "Parties."

Recitals

- A. The County owns and operates the Transfer Station on West Valley Highway in the City ("Existing Station Property"). The County intends to close the existing Transfer Station ("Existing Station") and construct a new South County Recycling and Transfer Station ("Project") on West Valley Highway adjacent to the Existing Station Property ("New Project Property").
- B. The Project is within the City's boundaries, and the City is the jurisdiction with land use and development permitting authority for the Project.
- C. The Parties desire to enter into this Agreement in order to provide for regulatory certainty and mitigation for and timely construction of the Project. Portions of this Agreement serve as a development agreement under RCW 36.70B.170 through 36.70B.210.
- D. On September 20, 2016 the County issued a Final Environmental Impact Statement under the State Environmental Policy Act ("SEPA") for the siting, construction and operation of the Project, titled "Final Environmental Impact Statement (EIS) for the South County Recycling and Transfer Station" ("Project FEIS"). The City filed an appeal with the King County Hearing Examiner, File No. 1033497, challenging the adequacy of the Project FEIS ("City Appeal").
- E. On November 22, 2016 the City enacted Ordinance No. 1135-16 adopting a six-month moratorium on the filing, acceptance, review or issuance of any permit or approval for the establishment, location, construction or siting of an essential public facility ("EPF") within the City ("Moratorium Ordinance"). On January 17, 2017, the City amended the Moratorium Ordinance to exclude from its coverage, the Project and the Existing Station.
- F. The Parties desire to enter into this Agreement in order to provide regulatory certainty to both the City and the County for the timely construction of the Project within the City. This Agreement establishes the nature and extent of future impacts to the West Valley Highway from the Project and the extent to which the County owes the City compensation for those impacts under RCW 36.58.080. This Agreement also establishes the mitigation that shall be provided as part of the Project and sets forth a

mechanism to resolve disputes concerning such mitigation during the permitting phase of the Project. Finally, this Agreement settles the City Appeal of the Project FEIS and the dispute between the Parties concerning the nature and extent of existing impacts to the West Valley Highway from the Existing Station and the extent to which the County owes the City compensation for those impacts under RCW 36.58.08.

Agreement

1. Relationship Between Agreements; Term; Approval; Termination.

1.1. The rights and duties of the Parties with regard to the Project and the settlement of the Parties' disputes concerning existing impacts to West Valley Highway shall be governed by this Agreement ("Agreement" or "Construction Agreement"). This Agreement shall become effective only upon the approval and execution by the legislative bodies and executives of the Parties of (a) this Construction Agreement and (b) the agreement between the Parties that addresses the Existing Station Property and the ownership, maintenance and operation of the portion of the West Valley Highway between 5th Avenue South and 1st Avenue North ("Land Transfer Agreement") ("Effective Date"). The failure of either Party to approve and execute both this Agreement and the Land Transfer Agreement shall render this Agreement null and void.

1.2. This Agreement shall terminate (a) upon the closure or cessation of operation of the Project (New South County Recycling and Transfer Station); provided that the effective period of the Development Agreement portion of this Agreement (Section 2 of this Agreement) shall terminate in accordance with Section 2 of this Agreement or (b) as provided in Section 1.3, herein.

1.3 Except as set forth in this Section 1.3, the County's obligation to make payment of any mitigation funds set forth in this Agreement or to fulfill any other obligation under this Agreement is also contingent on the County actually proceeding with the Project in the City. The County has the sole discretion to determine whether or not it will proceed with the Project. On or before September 30, 2019 ("Project Decision Date"), the County must either (1) give notice to the City that it will not proceed with the Project or (2) select the procurement method for the Project, take the major first step to implement such method, and give written notice of such selection to the City. The possible procurement methods, as identified in King County Ordinance 17437 and described in a preliminary draft of the report described in Ordinance 17434, and their respective major first steps, are as follows:

a. Traditional public works contracting (Design-bid-build): Selection of and execution of contract with the design consultant.

b. General contractor/construction manager (GC/CM): Selection of and execution of contract with the design consultant.

- c. Fixed price design-build (DB); progressive design-build: Selection of and execution of contract with a design firm or a design-build contractor.
- d. Competitive negotiated procurement: Selection of and execution of contract with the design consultant.
- e. Developer-delivered with private financing (DD): Selection of the nonprofit entity and development team, consisting of a property developer, designer and construction contractor.

The Parties by mutual written agreement may extend the Project Decision Date for an additional one (1) year period. If the County gives notice to the City that it will not proceed with the Project, this Agreement shall terminate on the date of the notice. If the County fails to give notice to the City that it will not proceed with the Project or fails to select the procurement method and take the first major step, as described above, on or before the Project Decision Date, then this Agreement shall terminate on the Project Decision Date. In the event of termination of this Agreement pursuant to this Section 1.3, the County shall reimburse the City as set forth in Sections 3.4 and 14, herein, within forty-five (45) days of termination, and shall repair, grind and overlay with asphalt Segment 2A of West Valley Highway as set forth in Section 3., herein, pursuant to a schedule determined jointly by the Parties.

2. Development Agreement for Project

2.1 Section 2 of this Agreement sets forth the terms and conditions of a Development Agreement for the Project pursuant to RCW 36.70B.170-36.70B.210 (“Development Agreement”). The Development Agreement provided for by this Section 2 shall be effective on the Effective Date of this Agreement; provided that the legislative bodies of the Parties must hold at least one public hearing before approving this Agreement (as required by RCW 36.70B.200).

2.2 The City’s “development standards” (as that term is defined in RCW 36.70B.170 (a copy of RCW 36.70B.170 is at **Exhibit A**, attached hereto and incorporated herein) and other City laws and regulations that apply to and govern the development, use and mitigation of the development of real property (collectively, “development regulations”), which are in effect as of the Effective Date of this Agreement, shall govern the development, use and mitigation of the Project; provided that the City may impose new or different development regulations to the extent required by serious threat to public health and safety. If, as of the Effective Date of this Agreement, the City lacks applicable development standards, the County’s applicable development standards shall be applied to the development, use and mitigation of the Project.

2.3 Within thirty (30) days of the Effective Date of this Agreement the Parties shall jointly select an arbitrator (“Arbitrator”) who shall be available to resolve, in accordance with Section 2.9, herein, disputes regarding environmental impacts and

mitigation that may arise between the Parties during the permitting phase of the Project. If the Parties are unable to agree upon the selection of the Arbitrator within the thirty (30) days, then each Party shall suggest three names and the Arbitrator shall be selected from the names by blind draw. If the Arbitrator should become unavailable, a replacement arbitrator shall be selected in the same manner.

2.4 If new or modified off-site utilities are necessary to serve the Project and/or the New Project Property, the County shall be responsible for extending, improving and upgrading such new or modified utilities, at its own cost and expense, and shall construct and install such utilities pursuant to City Code. If the County extends, improves or upgrades any such facilities to serve the Project or New Project Property (collectively, "New Utility Facilities") and the New Utility Facilities are used for any development, project or property other than the Project or the New Project Property, then the County shall be entitled to a pro-rata reimbursement for the New Utility Facilities. To the maximum extent allowed by law, the County and City shall work cooperatively to comply with any statutory requirements necessary to establish a valid latecomer's agreement process regarding the New Utility Facilities.

2.5 In conjunction with the Project, the County shall complete mitigation for the Project that is included in the Project FEIS, including but not limited to the mitigation for transportation impacts, which mitigation involves Segments 2C, B3 and 2D as shown and described in **Exhibit B** identified in Paragraph 3.1 below. The frontage improvements related to Segment B3 shall be designed to accommodate turn lanes and a potential future traffic signal. All mitigation involving Segments 2C, B3 and 2D shall be completed prior to issuance of the certificate of occupancy for the Project.

2.6 As authorized by WAC 197-11-926, the County is the lead agency under SEPA for the Project. The County shall continue to serve as SEPA lead agency for the Project and the County's SEPA rules and regulations shall govern the SEPA review of the Project.

2.7 The Project FEIS shall apply to all City permits and approvals for the Project. Except as set forth in Section 2.12, herein, the City's ordinances that are in effect as of the Effective Date of this Agreement shall be the substantive SEPA authority to condition such permits and approvals.

2.8. There are commercially zoned properties in the City that contain wetlands, which if minimized or removed, will maximize the development options of the properties. The County administers an in lieu fee mitigation program, called the "Mitigation Reserves Program" ("MRP"), that can simplify the process for developing and implementing mitigation for development projects that create unavoidable impacts to wetlands, rivers, streams, shorelines and buffers. The County shall work with the City and the developers of the properties to use the services available through the MRP.

2.9 The City agrees that the mitigation proposed in this Development Agreement and the Project FEIS is adequate to mitigate the identified adverse

environmental impacts of the Project, and that the City will not impose additional mitigation on the Project for the identified impacts pursuant to any permit or other action taken by the City, and/or its council and/or any of its hearing examiners, agencies, boards, commissions or departments, or by any other city or entity working on behalf of the City. If during the City's review and processing of any permit or approval for the Project, the City determines that there are new or different impacts from the Project that were not addressed by or mitigated in the Project FEIS, then the City will notify the County of such new or different impacts and any proposed new or modified mitigation for the Project along with the factual and legal basis for the City's determination. Within fourteen (14) days of the date of the City's notice of its determination, the County shall either agree or object to the proposed new or modified mitigation. If the County agrees to the new or modified mitigation, then the City may require it as part of the permit or approval. If the County disagrees with the new or modified mitigation, then the Parties shall submit the matter to the Arbitrator within thirty (30) days of the date of the City's notice. The Arbitrator shall determine based upon the preponderance of the evidence whether the alleged impact is a new or different impact from that described in the Project FEIS. If the Arbitrator so determines, then the Arbitrator shall also determine whether the City's proposed new or modified mitigation to address the new or different impact is reasonable. The Arbitrator shall within thirty (30) days from submission of the matter to him/her prepare a written report that upholds, reverses or modifies the City's determination of a new or different impact and if applicable, shall uphold, reverse or modify the City's proposed new or modified mitigation, based upon a standard of reasonableness. The Arbitrator's decision shall be binding on the Parties and is not subject to the dispute resolution procedures set forth in Section 12, herein.

2.10 The New Project Property is located in the C-3 Heavy Commercial District of the City. The County acknowledges that it must apply for and receive approval of a conditional use permit ("CUP") for the Project under City Code, which CUP may be reasonably conditioned subject to the provisions herein, but not denied. The City reserves the right, in its sole discretion, to contract with third parties to handle and process the CUP and other Project permit and approval applications on behalf of the City, at the expense of the County. The County acknowledges that the City's decisions regarding the CUP and other Project permits and approvals (hereinafter collectively, "Project Decisions") are actions pursuant to SEPA. The County and City agree that pursuant to State SEPA rules at WAC 197-11-600, the City will use the Project FEIS unchanged when the City takes action on the Project, except as set forth in Section 2.9, herein. If a third party files a challenge claiming that, for the City's Project Decisions, the City should have conducted its own SEPA review and should not have relied upon the Project FEIS, then the County agrees to reimburse the City its reasonable attorneys' fees and consultant's fees in defending such a challenge. This reimbursement provision shall not apply to any other challenge which may be filed against the City for its Project Decisions. As the Project proponent the County is committed to obtaining regulatory approvals as required by the City's Code. Should any person, organization, or other entity not a party to this Agreement file a challenge to any Project Decision by the City, or file a "takings' claim" or substantive due process claim against the City regarding any Project Decision, the County will defend, at its own expense, such Project Decision

and/or takings' claim and/or substantive due process claim. In such matters the City agrees to a waiver of any conflict of interest so that the County's attorneys may represent both the County and the City in such action. The City may or may not, in its discretion and at its own expense, provide separate legal representation in defense of any Project Decision by the City.

2.11 The Parties agree that the Project and, if applicable, the Project mitigation shall be the only permitted and authorized use of the New Project Property. The City agrees to process all County permit and approval applications for the Project in a timely manner. The Parties agree to have at least one in-person pre-application meeting before the County submits its first application to the City for a permit or land use approval for the Project.

2.12 The Parties agree that the Moratorium Ordinance shall not apply to the Project or to the Existing Station and that any new or different development standard or development regulation, including but not limited to any new or different development regulation or comprehensive plan amendment related to EPFs, that may be adopted by the City, shall not apply to the Project or to the Existing Station.

2.13 Within two (2) days of the Effective Date, the City shall cause to be filed, a dismissal, with prejudice, of the City Appeal. The dismissal shall be without cost or fees to either Party.

2.14 Except as set forth in Sections 1.3, 3.4 and 14, herein, the County's obligation to provide the mitigation set forth in this Agreement is conditioned upon the County obtaining all permits and approvals necessary to construct and operate the Project as specified in the Development Agreement and all applicable appeal periods having passed on said permits and approvals.

2.15 This Development Agreement (Section 2 of this Agreement) shall commence on the Effective Date of this Agreement and shall continue in force until December 31, 2027, unless this Agreement terminates earlier pursuant to Section 1.3, herein.

3. Past and Future Impacts to West Valley Highway.

3.1 To mitigate for past impacts to West Valley Highway from the Existing Station, the County shall repair, grind and overlay with asphalt Segments 2A, 2C and 2D, and shall provide pavement reconstruction in Segment B3 of West Valley Highway, as shown and described on **Exhibit B**, attached hereto and incorporated herein. **Exhibit B** contains, from south to north along West Valley Highway, Segments 2A, 2B, 2C, B3 and 2D. In 2013, the City constructed the overlay on Segment 2B. The County has received grant funds to overlay Segment 2A, which overlay shall be completed as required by or consistent with the grant fund agreement, but prior to issuance of the certificate of occupancy for the Project. If the Project proceeds, the repair, grind and overlay of Segments 2C and 2D, and the pavement reconstruction of

Segment B3, shall be completed as late as possible but prior to issuance of the certificate of occupancy for the Project. If the Project does not proceed, the County shall only be obligated to repair, grind and overlay with asphalt Segment 2A of West Valley Highway, pursuant to a schedule determined jointly by the Parties.

3.2 To mitigate for future impacts to the West Valley Highway from the Project, the County shall pay to the City for as long as the Project (the New South County Recycling and Transfer Station) is open and operating, a proportionate share of the cost of asphalt overlay, including associated spot repairs (“overlay”), of the entire length of West Valley Highway, as shown and described by Segments 2A, 2B, 2C, B3 and 2D on **Exhibit B** (“Overlay Area”). The County’s proportionate share of overlay costs shall be paid annually and calculated utilizing the formulas established in **Exhibit C**, attached hereto and incorporated herein by this reference. Any particular overlay may include all or a portion of the Overlay Area, as determined in the sole discretion of the City.

3.3 The City shall place the County’s annual payments for overlay costs into an account to be used only for the overlay costs, or any other costs relating to the West Valley Highway and agreed upon by the Parties. Such uses shall be consistent with the Amended and Restated Solid Waste Interlocal Agreement dated March 12, 2013. The County reserves the right to request or conduct an audit of the use of the County’s annual payments.

3.4 Consistent with Section 1.3, herein, the County also agrees to reimburse the City for the City’s share of the matching funds needed to secure the grant referenced in Section 3.1 of this Agreement, not to exceed \$100,000. The City shall send an invoice to the County for the actual amount paid by the City. The County shall reimburse the City within sixty (60) days of the Effective Date of this Agreement.

3.5 The City agrees that the County’s work and payments in this Section 3, if performed and paid, resolve and settle the dispute between the Parties concerning the extent to which the County owes the City compensation for impacts to the West Valley Highway.

4. Public Art. As part of the Project, the County shall provide funding and installation of for public art, consistent with King County Code Chapter 4.40, as now in effect or hereafter amended, and consistent with legal requirements for use of solid waste rate funds. This funding includes administrative and project management costs for installation of the art. The County shall work with 4 Culture (or its successor agency) to ensure that the City has the opportunity to meaningfully participate in the selection of the artist and the selection of art proposals from the selected artist.

5. Rights of Way. The County agrees that the City owns and has title to the street rights of way within the boundaries of the New Project Property, depicted on **Exhibit D**, attached hereto and incorporated herein by this reference (“City Rights of Way”). The County shall not challenge or contest City ownership of and title to the City

Rights of Way. The County shall identify those City Rights of Way which will need to be vacated in order to accommodate the Project. The City shall vacate only those City Rights of Way requested to be vacated by the County and only after the County has paid to the City the full value of the vacated City Rights of Way, as determined by an independent appraiser selected and retained jointly by the Parties. The County shall pay for the cost of the appraisal. The vacation and payment shall occur before the City issues a building permit for the Project. Before the vacation, the City shall grant to the County a license to perform tests and investigations in the City Rights of Way related to the Project.

6. Notice. Any notice provided for herein shall be sent to the respective parties at:

King County:

Division Director
Solid Waste Division
Department of Natural Resources
and Parks
201 South Jackson Street, Suite 701
Seattle, WA 98104

City:

Mayor
City of Algona
402 Warde Street
Algona, WA 98001

7. Taxes. The County agrees to pay to all taxes related to the Project, including but not limited to sales and excise taxes, as required by law. The situs for taxation shall be the City and not unincorporated King County or another city.

8. Entire Agreement and Modification. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may only be amended by written agreement of both Parties.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

10. Neutral Authorship. Each Party has been represented by legal counsel or has had the opportunity to consult with legal counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both Parties hereto.

11. Jurisdiction and Venue. The exclusive jurisdiction and venue for any disputes arising under this Agreement, including matters of construction, validity and performance, shall be in the Superior Court for King County in Seattle, Washington.

12. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, representatives from the City and County shall meet and confer in an effort to resolve the dispute. If the City and

County representatives cannot resolve the dispute within fourteen (14) calendar days, then either Party may request that the Parties engage in mediation, with each Party to share equally in the costs of mediation. If the dispute is not resolved to the satisfaction of both Parties within sixty (60) calendar days through mediation, then either Party may pursue any other remedy in law or equity, including specific performance.

13. Recording. This Agreement shall be recorded by the County with the King County Recorder's Office at the cost of the County.

14. County Fees and Charges. The County shall pay all fees and charges required by City code for the Project permits and approvals, including but not limited to standard application fees and the charges for services of City employees, consultants and contractors. The County also shall reimburse the City for the services of City employees, consultants and contractors that are not required by City Code and are related to the Project, the Existing Station, the New Project Property, and the Existing Station Property, which services are rendered both before and after the Effective Date of this Agreement, in an amount not to exceed three hundred thousand dollars (\$300,000.00) (the "Maximum Non-City Code Amount"). The charges and reimbursement for the costs and expenses of the City consultants and contractors shall be their charges to the City, with no mark-up. The charges and reimbursement for the costs and expenses of the City employees shall be their standard hourly rates, including benefits, in effect at the time the services are performed. After the Effective Date, the City shall send an itemized invoice for charges or reimbursement to the County at intervals determined by the City, but no more frequently than monthly, and in a format determined jointly by the Parties. Except as set forth below, the County shall pay a properly documented invoice within sixty (60) days of receipt. Notice of any potential dispute regarding an invoice shall be made in writing within the same time period. Payment by the County of any invoice shall not constitute agreement as to the appropriateness or acceptance of any item on the invoice. The County shall have the right to audit the invoices. At the time of final audit, all required adjustments related to any potential dispute for which notice has been timely given shall be made and reflected in a final payment. A delinquent invoice shall accrue interest at the rate of twelve percent (12%) per annum. The County shall pay the City up to \$150,000 of the Maximum Non-City Code Amount within sixty (60) days after the Effective Date based on the invoiced amount. The County shall pay any remaining balance of the Maximum Non-City Code Amount sixty (60) days after the City's issuance of the CUP for the Project.

15. Indemnification. Each of the Parties, shall protect, defend, indemnify and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all claims, actions, suits, liabilities, losses, costs, expenses and damages of any nature whatsoever, arising out of, or in any way resulting from, that Party's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, action or suit for injuries, death, or damages is caused by the sole negligence of the other Party. Where such claims, actions or suits result from the concurrent negligence of the Parties, the

indemnity provisions provided herein shall be valid and enforceable only to the extent of a Party's own negligence. Each of the Parties agrees that its obligations under this Section extend to any claim, demand and/or action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available to it against such claims, demand and/or actions under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of this Section, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred from the other Party. The obligations of this Section shall survive termination of this Agreement.

16. Audits and Inspections. Any of either Party's records related to any matters covered by this Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either Party at the requesting Party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

17. Waiver and Amendments. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the Parties hereto

18. Prevailing Party Costs. If either Party incurs attorneys' fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party. This provision does not apply to the procedures described in Sections 2.9 or 12, herein.

19. Binding Effect. This Agreement shall be binding on the Parties' successors and assigns.

20. Name of Project. The County shall not use the word "Algona" in the name of the Project, which is referred to on the Effective Date of this Agreement as the "South County Recycling and Transfer Station."

IN WITNESS WHEREOF, the Parties have executed this Agreement.

King County

City of Algona

King County _____

Mayor _____

Date: _____

Date: _____

Approved as to Form:

King County
Deputy Prosecuting Attorney

Date: _____

Approved as to Form:

City Attorney

Date: _____

EXHIBIT A

Definition of City's development standards

EXHIBIT A

Definition of City's development standards

RCW 36.70B.170

Development agreements—Authorized.

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

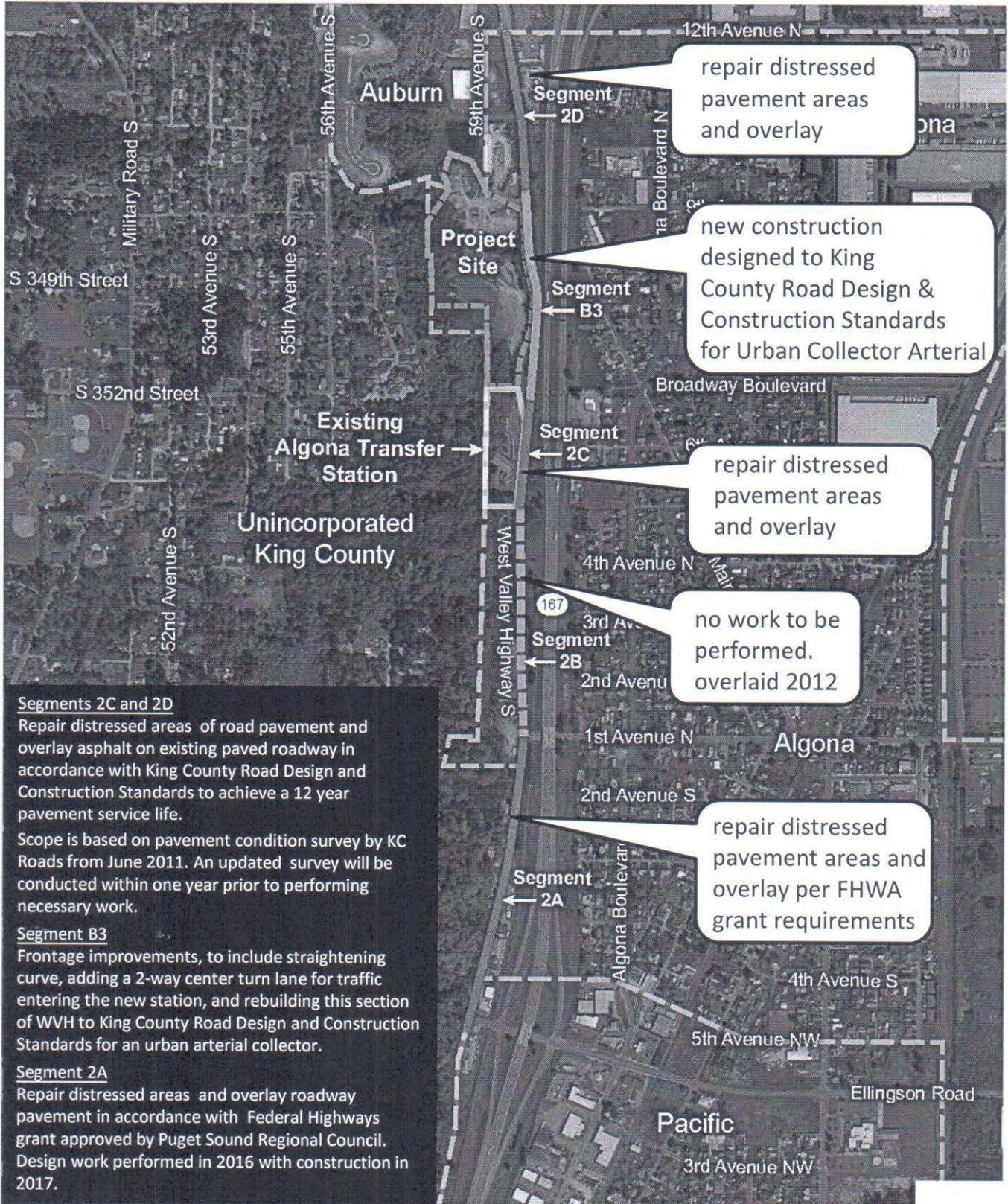
(3) For the purposes of this section, "development standards" includes, but is not limited to:

- (a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
- (b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
- (c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;
- (d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
- (e) Affordable housing;
- (f) Parks and open space preservation;
- (g) Phasing;
- (h) Review procedures and standards for implementing decisions;
- (i) A build-out or vesting period for applicable standards; and
- (j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

EXHIBIT B

Depiction and Description of Improvements, Overlays and Segments



Segments 2C and 2D

Repair distressed areas of road pavement and overlay asphalt on existing paved roadway in accordance with King County Road Design and Construction Standards to achieve a 12 year pavement service life.

Scope is based on pavement condition survey by KC Roads from June 2011. An updated survey will be conducted within one year prior to performing necessary work.

Segment B3

Frontage improvements, to include straightening curve, adding a 2-way center turn lane for traffic entering the new station, and rebuilding this section of WVH to King County Road Design and Construction Standards for an urban arterial collector.

Segment 2A

Repair distressed areas and overlay roadway pavement in accordance with Federal Highways grant approved by Puget Sound Regional Council. Design work performed in 2016 with construction in 2017.

West Valley Highway South Frontage Improvements and Pavement Overlay

EXHIBIT C

Calculation of West Valley Highway Overlay/Repair Costs

EXHIBIT C

Calculation of West Valley Highway Overlay/Repair Costs

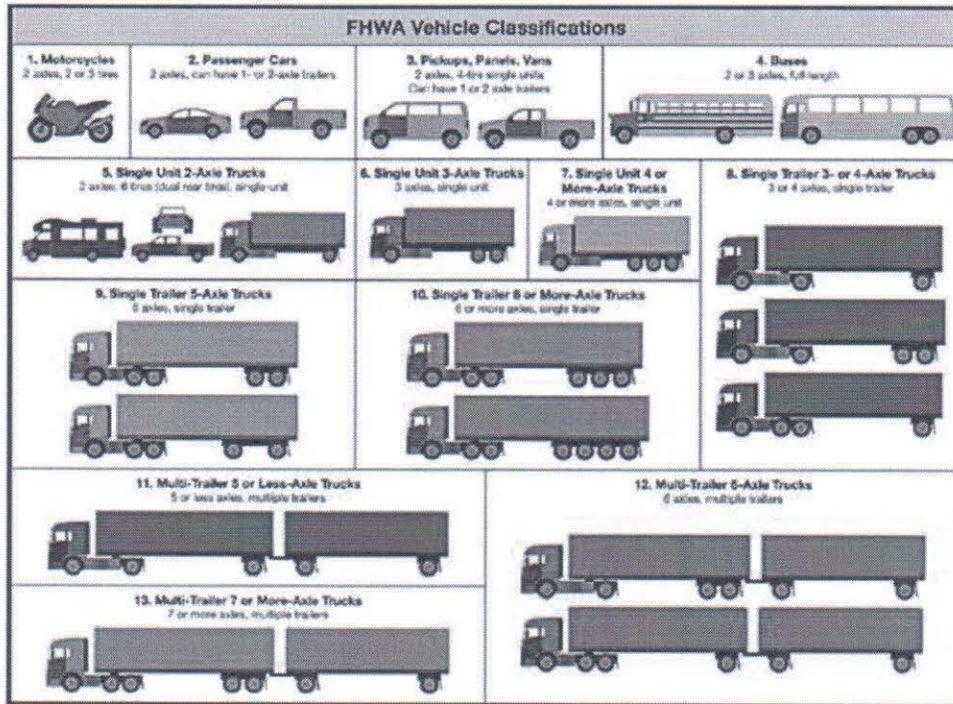
The following estimates the proportional shares of costs if calculated based on currently available information. The Parties estimate that an overlay (overlay means two-inch thick hot mix asphalt overlay with spot repairs to the subgrade) of the Overlay Area will occur every twelve (12) years; however, the City in its sole discretion may determine the actual overlay schedule for all or a portion of the Overlay Area.

The 2015 estimated cost to overlay the entire Overlay Area (Segments 2A, 2B, 2C, B3 and 2D on Exhibit B) is \$1,148,000, and the respective proportionate shares of such estimated cost is shown in the table below:

			Cost	Cost Allocation
North of south boundary of Transfer Station (Segments B3 and 2D)	King County	43.4%	\$444,366	\$192,786
	Algona	56.6%		\$251,580
South of south boundary of Transfer Station (Segments 2A, 2B and 2C)	King County	6.1%	\$703,634	\$43,815
	Algona	93.9%		\$660,819
		TOTAL	\$1,148,000	\$1,148,000

The proportional shares in the table above were established using 2012 traffic counts on West Valley Highway, projected to year 2040 volumes, including counts of all traffic accessing the existing Transfer Station, and using the Equivalent Single Axle Loads (“ESAL”) methodology. The ESAL methodology shall be used to calculate the County’s proportionate share and annual payment to City, and will be revised after each overlay and after each traffic count, as described below.

Under ESAL, traffic counts shall identify vehicles by class in accordance with the Federal Highway Administration (2008) (Figure 1) (see diagram below), unless agreed to otherwise by the Parties:



The traffic counts shall be conducted for a period of one week and shall be representative of typical traffic patterns. If abnormal traffic occurs, such as an accident causing a diversion of traffic to or from West Valley Highway, the traffic counts shall be redone.

The vehicles counted by classification shall be converted to equivalent single axle loads (“ESAL”), using the table below:

FHWA Vehicle Classification	ESALs per Vehicle
1	Negligible
2	Negligible
3	Negligible
4	0.57
5	0.26
6	0.42
7	0.42
8	0.30
9	1.20
10	0.93
11	0.82
12	1.06
13	1.39

The total number of ESAL's utilizing West Valley Highway, both north and south segments, shall be calculated. Utilizing the same methodology, the total number of ESALs accessing the Project from both the north and the south shall be calculated. The percentage of ESALs attributable to the Project shall be calculated as follows:

$$\% \text{ KC Share}_{(N,S)} = \frac{\# \text{ ESALs accessing the SCRTS}_{(N,S)}}{\text{Total ESAL volume on West Valley Highway}_{(N,S)}}$$

Assuming a 12-year overlay cycle, based on this example, the first annual payment to the City from the County would be \$19,716.75:

$$\$ \text{ King County/year} = \frac{(\$192,786 + \$43,815)}{12 \text{ years}}$$

A traffic count shall be completed during the first May after the Project commences operation. A traffic count shall occur every four (4) years during the month of May. After the first 12-year cycle, four traffic counts should have occurred; one each in years 1, 4, 8 and 12. Traffic counts shall continue on a four-year cycle.

The first traffic count after commencement of operation of the Project shall be used to calculate the County's first annual payment, which shall be due in January of the year after the first traffic count. The first traffic count also shall be used to calculate the County's annual payments during the first 12-year cycle. At the end of a 12-year cycle, the ESAL percentages for each of the four traffic counts shall be averaged.

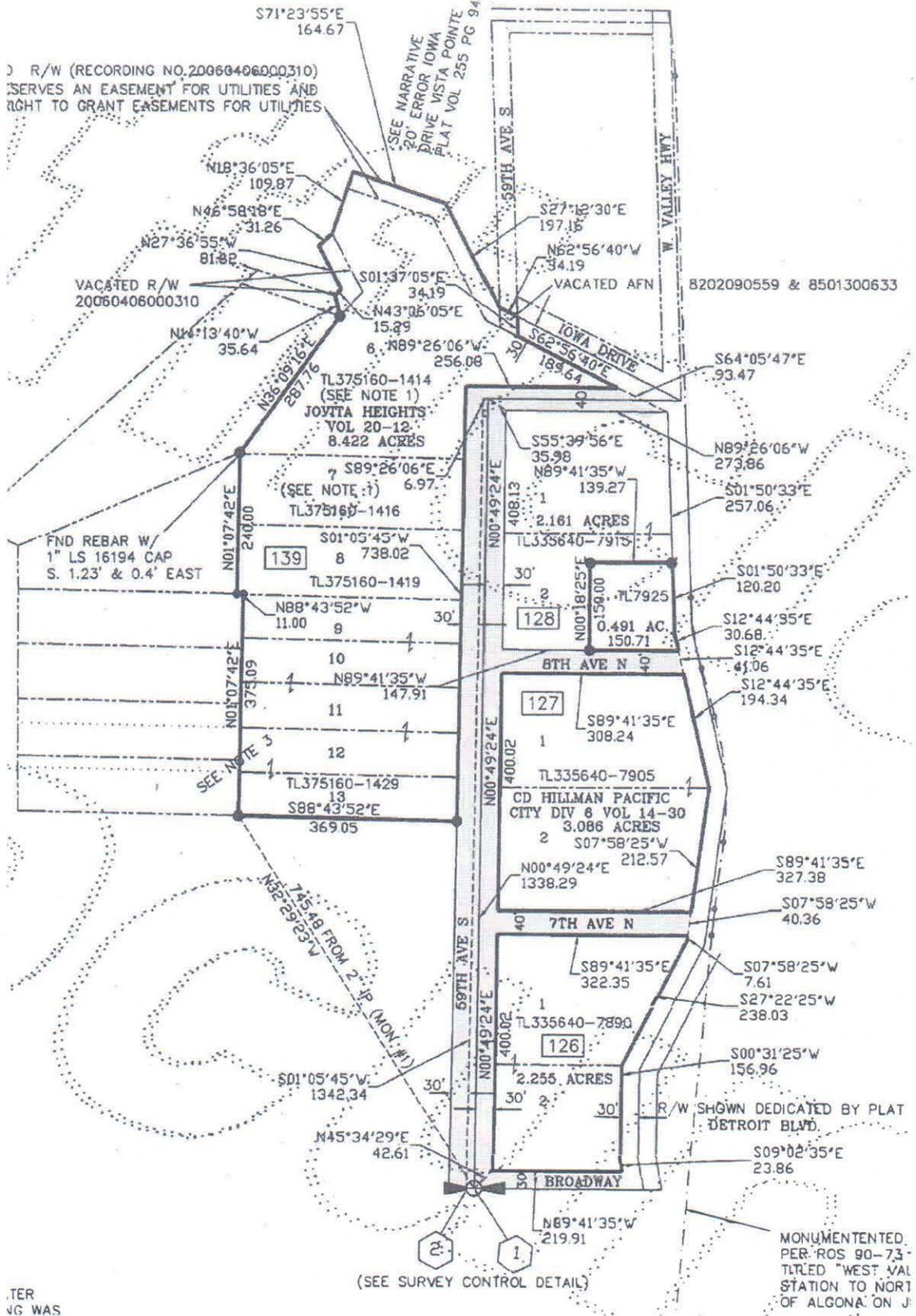
The Overlay Area cost shall be revised after each overlay, using actual Project costs. Actual Project costs and the average ESAL percentage shall be used to calculate the County's annual payment for the next 12-year cycle as shown in the equations above.

The County's annual payments shall continue, regardless of when or whether overlays occur. The City may use the County payments as a "local match" for grant awards.

After an overlay, the applicable percentage share shall be multiplied by the actual overlay cost to determine each Party's respective share of the cost of the overlay. If the total of the County's annual payments are less than the County's share of the overlay cost, the County shall pay the difference to the City in one lump sum within sixty (60) days of the completion of the overlay. If the total of the County's annual payments are more than the County's share of the overlay cost, the excess payments shall be retained in the special City fund or account, to be used on the next overlay. The excess payments shall not change the amount of the County's future annual payments that have been calculated as described above.

EXHIBIT D

**Depiction and legal description of New Station Property indicating City Owned
Street Rights of Way**



LEGEND

Existing City of Algona Street Right of Way