

AGENDA

**DES MOINES CITY COUNCIL
STUDY SESSION
City Council Chambers
21630 11th Avenue S, Des Moines, Washington**

October 5, 2017 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

EXECUTIVE SESSION

COMMENTS FROM THE PUBLIC

DISCUSSION ITEMS

Item 1. EMERGING ISSUES

Page 3

a. Van Gasken Property Acquisition Update and Closing Documents Approval

Page 27

b. August Monthly Financial Report

Item 2. 2018 PLANNING WITH COMMUNITY GROUPS:

- Des Moines Legacy Foundation
- Destination Des Moines
- Farmer's Market

NEXT MEETING DATE

October 12, 2017 City Council Regular Meeting

ADJOURNMENT

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Update on Land Acquisition, First Amendment to MOU with Forterra and ratification of financing documents

FOR AGENDA OF: October 5, 2017

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: September 28, 2017

ATTACHMENTS:

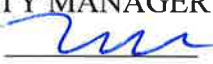
1. First Amendment to MOU with Forterra
2. MOU with Forterra
3. Guaranty Agreement with Commerce Bank

CLEARANCES:

- ☐ Community Development ____
☐ Marina ____
☐ Parks, Recreation & Senior Services ____
☐ Public Works ____

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal 
☐ Finance ____
☐ Courts ____
☐ Police ____

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** 

Purpose and Recommendation

The purpose of this agenda item is to provide an update on the City's acquisition of property at 402 S. 222nd St. in Des Moines and for the City Council to approve the First Amendment to the Memorandum of Understanding with Forterra and ratify the Guaranty Agreement with Commerce Bank.

Suggested Motion

Motion 1: "I move to approve the First Amendment to the Memorandum of Understanding between the City and Forterra, correcting the formula used to determine the City's obligation to Forterra if the City elects not to purchase the property, and to authorize the City Manager to sign the Agreement substantially in the form as attached."

AND

Motion 2: "I move to approve and ratify the Guaranty Agreement with Commerce Bank to authorize the City's guarantee of the loan to facilitate the acquisition of property at 402 S. 222nd St."

Background

The City recently identified the property at 402 S. 222nd St. in Des Moines for acquisition when it was put on the open market for sale. This site of local significance sits above Cliff Avenue overlooking Puget Sound and provides sweeping views of the water and the Marina floor. The parcel contains a gross land area of 28,998 square feet, or about 0.6657 acres, in one assessor's parcel, with frontage on the west side of S. 222nd St., and frontage on the east side of the undevelopable part of the steeply sloped right-of-way of Cliff Ave. S. The site currently supports a single-family residence constructed in 1889, a detached four-bay wood frame garage, and typical residential site improvements.

Discussion

In order to preserve the property, provide additional park and open spaces in the City in accordance with the Comprehensive Plan, and to ensure that the site was not redeveloped in a manner that would further limit public access and views of the Puget Sound, the City partnered with Forterra, (a non-profit committed to land conservation) in order to purchase the property.

On August 24, 2017, the City Council approved a Memorandum of Understanding with Forterra that provided that Forterra would initially fund the \$1,190,000 purchase price while the City works to secure funding through available grants. Since that time, the City has received a "waiver of retroactivity" from the state of Washington Recreation and Conservation Office that will allow the City to be eligible for grants that may not have been available following the acquisition of the property. Additionally, the City has entered into a 3 year "no rent" lease with Forterra to allow the City to operate and control the property while sufficient funding is sought.

The purchase and sale agreement is closing on September 29, 2017 and pursuant to the lease agreement with Forterra the City will be able to take possession on that date. Additional documents that are needed to finalize the process are explained below.

A. First Amendment to MOU

The Memorandum of Understanding that the City Council approved on August 24, 2017 inadvertently contained language from Forterra that was used from a previous MOU in relation to costs owed if the City did not purchase the property from Forterra at the end of the three year term. The City was informed from the beginning of this process that if Forterra purchased the property and the City elected not to exercise the option to purchase, the City would be responsible for any lost value of the property from the time of purchase by Forterra to the time of sale. The language included in the first MOU provided to the City referenced a decrease in value based on the City damaging the property. The MOU needs to be updated to reflect the terms as originally contemplated but not reflected in the MOU.

B. Guaranty Agreement with Commerce Bank

Approval of this Guaranty Agreement provides that the City will guarantee the full loan amount during the term the City has an option to purchase the property. If the City elects not to purchase the property at the end of the three year term, the City's obligation to guarantee the loan amount will cease.

Financial Impact

The purchase price of the property is \$1,190,000.00. By partnering with Forterra and having them initially purchase the property, the City is able to seek grant funds to cover the cost of the purchase. Some potential grants available to the City cannot be applied for after a property is purchased, so by having Forterra purchase the property and hold it for the City, the City will be able to seek all available grant money.

In addition to grant funding, the City has allocated “park in-lieu” fees which the City has already received from current and former development projects within the City to cover a portion of the purchase price. These funds are limited by state law to specific uses including the acquisition of additional park capacity. No funds that could be used for ongoing structural expenses in the General Fund (like additional staff), or for Capital Improvements (like the reconstruction of the Marina bulkhead) are being used for this purchase.

Recommendation

Administration recommends approval of the First Amendment to the MOU and ratification of the Guaranty Agreement.

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**First Amendment to Memorandum of Understanding for Land Acquisition
Between City of Des Moines and Forterra**

This First Amendment to Memorandum of Understanding ("First Amendment") is entered into on _____, 2017, by the City of Des Moines, a Washington municipal government ("City") and Forterra, a Washington non-profit corporation ("Forterra") in order to modify and amend the Memorandum of Understanding between the County and Forterra dated August 31, 2017 ("MOU"). All capitalized terms not defined in this First Amendment shall have the meaning ascribed to them in the MOU.

Whereas, the MOU did not adequately describe and/or account for certain recoverable losses and costs Forterra may incur in the event the City does not ultimately purchase the Property from Forterra as contemplated in the MOU; and

Whereas, the City and Forterra mutually desire to clarify the nature of and the extent to which Forterra may recover such losses and costs from the City.

Now therefore, based on the mutual promises made herein, the Parties agree as follows:

1) Section 5 – City Reimbursement of Costs. Subsection “g” under Section 5 – City Reimbursement of Costs – of the MOU is hereby deleted and replaced in its entirety with the following:

g. In the event the City for any reason does not purchase the Property from Forterra as contemplated in this Agreement, the amount of decrease, if any, from the Forterra Purchase Price to the net price for which Forterra sells the Property to a third party buyer. The net price shall be the gross sale price minus any sale costs including, but not limited to, broker fees, real estate excise taxes and any other taxes.

2) No Further Modification. The Parties agree that, except as specifically modified herein, all terms, covenants and conditions of the MOU shall remain in full force and effect without modification or change.

3) Counterparts. The Parties may execute this First Amendment in counterparts, each of which when executed shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

Entered into this ____ day of _____, 2017.

Forterra, a Washington non-profit corporation

BY: 

Name: TORY LAUGHLIN TAYLOR

Title: EVP-COO

City of Des Moines, a political subdivision of the State of Washington

BY: _____

Name: _____

Title: _____

**Memorandum of Understanding for Land Acquisition
Between City of Des Moines and Forterra**

This Memorandum of Understanding ("MOU") is entered into on August 31st, 2017, by City of Des Moines, a Washington municipal government ("City") and Forterra, a Washington non-profit corporation ("Forterra").

Whereas, the City has identified certain real property comprising approximately 0.67 acres and identified as King County Parcel 200900-3295 (the "Property") for acquisition; and

Whereas the Property possesses important open space, viewshed, scenic, recreational and community values that are of great importance to the people of the City. These values are referred to herein as the "Conservation Values" of the Protected Property; and

Whereas, the Property is available for sale, but the City does not have funding available to complete the transaction at this time; and

Whereas, City requested Forterra to proceed with acquisition of the Property with the understanding that City would exercise best efforts to secure funding to purchase the Property from Forterra and to obtain City Council approval for the purchase of the Property with such funds; and

Whereas, because of the significant Conservation Values associated with the Property and the City's commitment to make best efforts to secure funding as further detailed in this MOU, Forterra is prepared to proceed with acquisition of the Property based on the terms set forth below.

Now therefore, based on the mutual promises made herein, the parties agree as follows:

1) Forterra Property Acquisition. Forterra will accept the assignment of the existing purchase and sale agreement (attached as Exhibit B) from City in order to acquire the Property from the landowners, and will seek to acquire the Property by September 29, 2017 for one million, one hundred-ninety thousand dollars (\$1,190,000) as agreed to by the City and the landowners on August 2, 2017. Forterra will complete this acquisition, provided that Forterra and the City jointly determine to proceed with the acquisition based upon the results of the transactional due diligence, as defined below.

- a. Legal document review: Forterra will review the City's title report, deed, and other due diligence materials (e.g., deed) prior to closing, and will submit its satisfaction or objections in writing 20 days prior to the closing date, and will work with the Title Company and/or Seller to resolve any due diligence concerns prior to close.
- b. Environmental Assessment: Forterra, while it typically completes Phase I Environmental Site Assessments on properties it acquires, will not complete this step. City agrees to release and defend, indemnify and hold Forterra, its agents, directors,

employees, officers, and partners, harmless from and against (1) any and all site contamination existing on or under the Property before or during Forterra's ownership of the Property, and (2) any and all actions, damages, expenses, liabilities, liens, losses, suits, and other claims (including attorneys' fees and costs) arising from or relating to any such site contamination or to Forterra's investigation of the Property and the entry upon the Property by Forterra, its agents, contractors, and employees, except to the extent the same are caused solely by the negligence of Forterra, its agents, directors, employees, officers, and partners.

2) City Funding. City will apply for funding to acquire the Property utilizing appropriate funding sources (e.g., King County Conservation Futures) and will seek approval and authorization from the City Council to spend such grant funds. If City is unsuccessful in its efforts to obtain such grants sufficient to complete the entire purchase, it will pursue other funding opportunities and City and Forterra may mutually agree to an extension of the time for performance of this MOU as further provided below.

3) City Council Authorization. Upon securing sufficient funds to acquire the Property from Forterra, City will request its City Council's authorization to approve and authorize the expenditure of such funds for the acquisition of the Property from Forterra. It is understood by Forterra that the City's acquisition of the Property is contingent upon receipt of sufficient grant funds and approval and authorization by City Council to expend such funds for the acquisition of the Property. In the event the City is for any reason unable to acquire the Property from Forterra as contemplated in this MOU, the City understands and agrees that, given Forterra's commitment of financial resources, Forterra is free to pursue any divestment or use of the Property deemed necessary by Forterra in its sole and absolute discretion.

4) Purchase Price. The purchase price paid by Forterra to the Landowner for the Property (the "Forterra Purchase Price") shall be the agreed-to sale price mutually-established by City and the landowners on August 2, 2017. The Purchase Price paid by the City to Forterra for the Property shall be the same Purchase Price paid by Forterra to the Landowner for the Property (the "City Purchase Price"). If the City and Forterra decide to remove the buildings and/or other structures on the Property, the City will cover any loss in value to the Property resulting from such removal.

5) City Reimbursement of Costs. In addition to the City Purchase Price, the City will reimburse Forterra as follows:

a. Forterra's holding costs, consisting of property taxes and any other governmental fees incurred and paid by Forterra after acquisition and prior to conveyance to the City or termination of this MOU, whichever occurs first ("Holding Costs").

i. In the event Forterra acquires the Property as contemplated in this MOU, the City has determined that it will lease the Property from Forterra beginning on the date Forterra acquires the Property until such time as Forterra sells all of its interest in the Property or termination of this MOU, whichever occurs first. As part of such lease, the City will be responsible for all management, maintenance and insurance of the

Property and all costs related to such responsibilities, and shall be liable for all enforcement costs, including without limitation legal costs, in the event of trespass, damage and/or other negative impacts to the conservation and/or economic values of the Property during Forterra's ownership. Terms of the lease shall be mutually agreed upon by Forterra and the City in writing before Forterra acquires an interest in the Property. In no event shall the lease require the City to pay any rent.

b. Staff labor costs invoiced on a flat fee basis, including without limitation transactional staff time and stewardship during Forterra's ownership of the Property, not to exceed a maximum of \$10,000 without prior written permission from the City. Any amount(s) approved by City in excess of \$10,000 shall be invoiced on an hourly basis with descriptions of work performed.

c. Closing costs related to the transfer of title from landowner to Forterra, including but not limited to escrow service fees, recording fees, and title insurance ("First Closing Costs").

d. Closing costs related to the transfer of title from Forterra to the City, including but not limited to escrow service fees, recording fees, title insurance, and Real Estate Excise Tax ("Second Closing Costs").

e. Loan costs in the event Forterra utilizes a loan or any other interest-accruing financial vehicle from a third party to acquire the Property, consisting of actual loan fees and actual interest accrued at a rate not to exceed prime plus 0.25% per year on the funds provided by the third party to Forterra for the Property (i.e. Purchase Price, Closing Costs, and any interest added to principal) covering the period from Forterra's acquisition until conveyance of the Property to the City or December 31, 2020, whichever occurs first.

f. An opportunity fee equal to the sum of 1) 6% of the Purchase Price on the first one million dollars in value, and 2) 5% of the Purchase Price for the value in excess of one million dollars, paid at the closing of the acquisition by City.

g. In the event the City does not purchase the Property from Forterra as contemplated in this MOU, any decrease in the value of the Property resulting directly from actions taken or directed by the City during the Term of this MOU, including without limitation any decrease in value related to the removal/demolition of structures or other infrastructure on the Property. Such decrease in value shall be determined by an update to the Appraisal using the original appraised value, with such update commissioned and paid for by the City.

The City's reimbursement for items identified in sections 5) d and f is contingent upon (1) Forterra's successful acquisition of the Property from the landowner, and (2) execution of a purchase and sale agreement or assignment agreement ("Transactional Document") by Forterra and the City for conveyance of the Property to the City. The City's reimbursement for items identified in sections 5) a, c, e, and g is contingent upon only Forterra's successful acquisition of

the Property from the landowner. The City shall reimburse Forterra for items identified in section 5) b within thirty (30) days of receipt of written invoice from Forterra regardless of whether or not Forterra has been able to complete the acquisition of the Property.

On a quarterly basis, Forterra shall submit a written invoice to the City for items in sections 5) a, b, and e. Within thirty (30) days after Forterra acquires the Property, Forterra shall submit a written invoice to the City for First Closing Costs under section 5) c. Within thirty (30) days after the City acquires the Property from Forterra, Forterra shall submit a written invoice to the City for the opportunity fee under Section 5) f and the Second Closing Costs under Section 5 d. The City shall pay Forterra within thirty (30) days of receipt of each invoice.

6) Enforceability. This MOU constitutes a binding contract for the City to reimburse Forterra for its costs incurred under above sections 5) a, b, c, and e. This MOU is not and shall not be construed as creating a binding contract with respect to the City's acquisition of the Property, and a binding contract for the City to purchase the Property will not exist unless and until the City and Forterra have executed a Transactional Document with mutual consideration that has been approved as may be necessary by the appropriate authorities; provided, however, that if the City secures funding and appropriate City Council approval to acquire the Property as intended under this MOU, then the City and Forterra will proceed with the necessary steps to negotiate and execute the Transactional Documents whereby, in addition to paying Forterra the Purchase Price, the City shall reimburse Forterra for items 5) d and f.

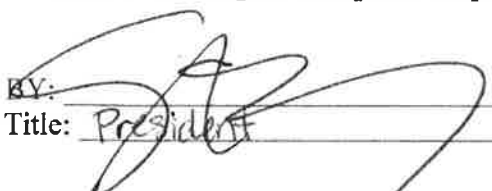
7) Term and Amendment. This MOU anticipates acquisition of the Property by Forterra on or before September 29, 2017. If acquisition of the Property is not completed on or before that date, this MOU will terminate and the City may seek to directly acquire the Property. If Forterra acquires the Property prior to that date, this MOU will terminate on the earlier of execution of a fully authorized Transactional Document by the City and Forterra for conveyance of the Property to the City on or before December 31, 2020. The parties may mutually agree to extend this MOU beyond these dates. Any amendment to this MOU must be in writing and mutually agreed to by the City and Forterra.

8) Limitations on Forterra. Forterra is precluded from disposing of the Property during the term of this MOU.

9) Authority. Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

Entered into this 28th day of August, 2017.

Forterra, a Washington non-profit corporation

BY: 

Title: President

City of Des Moines, a political subdivision of the State of Washington

BY: 

Name, Title

City of Des Moines

Approved to form



City Attorney, Des Moines

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GUARANTY AGREEMENT

FROM

**THE CITY OF DES MOINES,
A political subdivision of the State of Washington**

TO

ZB, N.A., dba THE COMMERCE BANK OF WASHINGTON

DATED: September 29, 2017

This Municipal Guaranty Agreement (“**Municipal Guaranty**” or “**Guaranty**”), dated as of September __, 2017, is executed by and between FORTERRA NW, a Washington non-profit corporation, (“**Borrower**”) and THE CITY OF DES MOINES, a political subdivision of the State of Washington (“**Municipal Guarantor**” or “**City**”), in favor of ZB, N.A. dba THE COMMERCE BANK OF WASHINGTON (“**Lender**”).

RECITALS

WHEREAS, Municipal Guarantor is a non-chartered code city, governed by the provisions of Chapters 35A.02 and 35A.13 of the Revised Code of Washington (“RCW”); and,

WHEREAS, Municipal Guarantor has located for acquisition certain real property comprising approximately 0.6657 acres, located at 402 S. 222nd Street, Des Moines, and identified as King County parcel 200900-3295, (the “Property”); and,

WHEREAS, the City Council of Municipal Guarantor (“City Council”) has determined that the Property should be acquired in order to preserve it for (a) park or recreational purposes, viewpoint or greenbelt purposes, (b) the conservation of land or other natural resources, or (c) historic, scenic, or view purposes, as provided by RCW 36.34.340, and that its preservation is of great importance to the people of the City of Des Moines; and,

WHEREAS, the Property is available for sale, but the City has determined it prudent to seek third-party private financing to facilitate immediate purchase of the Property to allow the City to seek grants and alternative funding sources, which may lower the ultimate cost of the acquisition of the Property, with a savings in cost to the taxpayers of the City; and,

WHEREAS, Municipal Guarantor has requested Borrower to proceed with acquisition of the Property for Borrower’s own account, with the understanding that Municipal Guarantor would exercise its best efforts to secure future funding to purchase the Property from Borrower and to obtain City Council approval for the purchase of the Property with such funds; and,

WHEREAS, Municipal Guarantor and Borrower have executed an agreement on a memorandum of understanding (“MOU”) regarding Borrower’s initial purchase of the Property and the City’s potential future purchase of the Property from Borrower; and,

WHEREAS, Borrower has agreed to an immediate acquisition of the Property, and the potential future sale of the Property to the City, on the terms and conditions set forth in the MOU; and,

WHEREAS, Borrower has requested a loan from Lender (the “Loan”), and has executed a Promissory Note, dated September 27, 2017, in the original amount of \$1,210,000 from Borrower to Lender, (which together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the promissory note or other Loan agreements shall be herein referred to as the “Note”) and other Loan documents memorializing the Loan (collectively the “Loan Documents”) to enable Borrower to finance its immediate purchase the Property; and,

WHEREAS, Lender, as a condition of granting the Loan to Borrower requires Municipal Guarantor to guarantee Borrower's payment of the Loan and performance of obligations under the Loan Documents, under the terms and conditions set forth in this Municipal Guaranty; and,

WHEREAS, Municipal Guarantor shall, in connection with Borrower's performance of its obligations under the MOU, exercise its best efforts to immediately obtain City Council ratification and approval of Municipal Guarantor's guarantee of Borrower's payment of the Loan and performance under the Loan Documents, including ratification and approval of this Municipal Guaranty; and

WHEREAS, in contemplation of such City Council ratification and approval, Municipal Guarantor hereby executes and delivers this Municipal Guaranty to Lender, as an inducement and condition of Lender making the Loan to Borrower;

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, Municipal Guarantor and Borrower, and their successors and assigns, do mutually covenant, promise and agree as follows:

1. **Guaranty of Indebtedness.** For valuable consideration, the receipt of which is hereby acknowledged, Municipal Guarantor shall fully, absolutely, irrevocably and unconditionally guarantee the punctual payment to Lender of the principal and interest and any and all of the Indebtedness of Borrower to Lender arising from or in connection with the Loan. The full faith and credit of the Municipal Guarantor are hereby pledged for the full and punctual performance of the obligations under this Municipal Guaranty. The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from any and all debts, liabilities and obligations that Borrower individually or collectively or interchangeably with others, owes or will owe Lender under the Note and Loan Documents and any renewals, extensions, modifications, refinancings, consolidations and substitutions of the Note and Loan Documents.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Municipal Guarantor, Lender's rights under all guaranties shall be cumulative. This Municipal Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Municipal Guarantor's liability will be Municipal Guarantor's aggregate liability under the terms of this Municipal Guaranty and any such other untermiated guaranties.

2. **Independent Obligations.** Municipal Guarantor's obligations hereunder are independent of the obligations of Borrower, any other guarantor, or any other person, and Lender may enforce any of its rights hereunder independently of any other right or remedy that Lender may at any time hold with respect to the Indebtedness or any security or other guaranty therefor. This is a guarantee of payment and not of collection, and the Municipal Guarantor expressly waives any right that any action must be brought against any other person or

entity, including Borrower. Without limiting the generality of the foregoing, Lender may bring a separate action against Municipal Guarantor without first proceeding against Borrower, any other guarantor or any other person, or any security held by Lender, and regardless of whether Borrower or any other guarantor or any other person is joined in any such action. Municipal Guarantor's liability hereunder shall at all times remain effective with respect to the full amount of the Indebtedness notwithstanding any limitations on the liability of Borrower to Lender contained in the Loan Documents or elsewhere. Lender's rights hereunder shall not be exhausted by any action taken by Lender until all Indebtedness has been fully paid and performed. The liability of Municipal Guarantor hereunder shall be reinstated and revived, and the rights of Lender shall continue, with respect to any amount at any time paid on account of the Indebtedness which shall thereafter be required to be restored or returned by Lender upon the bankruptcy, insolvency or reorganization of Borrower, any other guarantor or any other person, or otherwise, all as though such amount had not been paid.

3. **Authority to Modify Indebtedness.** Municipal Guarantor authorizes Lender, at any time and from time to time without notice and without affecting the liability of Municipal Guarantor hereunder, to (a) alter the terms of all or any part of the Indebtedness and any security and guaranties therefor, including without limitation modification of times for payment of interest; (b) accept new or additional instruments, documents, agreements, security or guaranties in connection with all or any part of the Indebtedness; (c) accept partial payments on the Indebtedness; (d) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Indebtedness and any security or guaranties therefor, and apply any such security and direct the order or manner of sale thereof (and bid and purchase at any such sale), as Lender in its discretion may determine; (e) release Borrower, any other guarantor or any other person from any personal liability with respect to all or any part of the Indebtedness; and (f) assign this Municipal Guaranty in whole or in part.
4. **Deemed Revocation of Guaranty.** Municipal Guarantor's obligation of guarantee of the Indebtedness is continuing and shall remain in full force and effect until all of the Indebtedness is paid in full to Lender. Municipal Guarantor's guarantee obligation shall be deemed to be revoked, as that term is used in the Note and Loan Documents, upon:
(i) Municipal Guarantor's failure to receive City Council ratification or approval of the MOU or the Municipal Guaranty within sixty (60) days of the date of execution of this Municipal Guaranty; or, (ii) Municipal Guarantor's written Notice to Borrower and Lender that the City is relinquishing or forfeiting any and all rights to purchase the Property from Borrower.
5. **Representations and Warranties.** Municipal Guarantor represents and warrants to Lender that:
 - 5.1 **Loan Documents.** Municipal Guarantor has received copies of the Note and the other Loan Documents and is familiar with and fully understands all of their terms and conditions.

- 5.2 **Borrower's Creditworthiness.** Lender has not made any representations or warranties to Municipal Guarantor regarding the creditworthiness of Borrower or the prospects of repayment from sources other than Borrower.
- 5.3 **Executed at Borrower's Request.** This Guaranty is executed at the request of Borrower and not at the request of Lender.
- 5.4 **Authority.** Municipal Guarantor will exercise its best efforts to obtain City Council ratification or approval of this Municipal Guaranty and, after receiving such approval it has full power, right and authority to perform all of its payment and Performance Obligations as set forth in this Municipal Guaranty. Further, the provisions of this Municipal Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Municipal Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Municipal Guarantor.
- 5.5 **Commercial Transaction.** The Loan, this Guaranty, and the transaction evidenced by the Loan Documents is for obligations incurred solely in connection with a commercial transaction and are not connected to or in any way related to a transaction for personal, family or household purposes.
- 5.6 **Enforceability.** This Guaranty, when executed and delivered, shall constitute the valid and binding obligation of Municipal Guarantor, enforceable in accordance with its terms. No representations or agreements of any kind have been made to Municipal Guarantor which would limit or qualify in any way the terms of this Guaranty.
- 5.7 **Litigation.** No litigation, claim, investigation, proceeding or similar action affecting the Property or the giving of this Guaranty, against Municipal Guarantor is pending or threatened.
- 5.8 **No Default.** No Event of Default or condition, event, act or omission which, with the giving of notice or the passage of time, or both, would be an Event of Default, exists under any Loan Document.
- 5.9 **Debt Limit.** Execution and delivery of the Municipal Guaranty shall not cumulatively, together with all other existing legal debt of the Municipal Guarantor at the time of execution and delivery, result in Municipal Guarantor exceeding the legal total indebtedness for general purposes provided by the Washington Constitution, the Revised Code of Washington and the Des Moines Municipal Code.
6. **Financial and Other Information.** Municipal Guarantor shall provide to Lender the City's Comprehensive Annual Financial Report ("Financial Report") within thirty (30) days after the later of: (i) release of the Financial Report to the City Council; or, (ii) completion. The Financial Report shall, be true and correct in all material respects and fairly present Municipal Guarantor's financial condition as of the date the financial information is provided, and certified as true and correct by the City's Finance Director. Municipal Guarantor shall also provide from time to time, as requested by Lender, other financial information reasonably necessary to determine that there has been no material adverse change in the condition, financial or otherwise, of Municipal Guarantor since the

date of the last Financial Report furnished to Lender. All financial information provided to Lender is and will be (a) true and correct in all material respects and fairly present Municipal Guarantor's financial condition as of the dates the financial information is provided; (b) is complete and correct in all material respects; (c) accurately presents the financial condition of Municipal Guarantor; and (d) has been prepared in accordance with generally accepted accounting principles consistently applied.

7. **Notice of Certain Events.** Municipal Guarantor shall give written notice to Lender promptly (in any event within five (5) business days after Municipal Guarantor receives written notice of same) of the institution of any litigation or legal proceeding or investigation pending against or materially affecting Municipal Guarantor, affecting the Property or the giving of this Guaranty.
8. **Events of Default; Remedies.** Each of the following events shall be an Event of Default hereunder:
 - (a) Failure of Municipal Guarantor to pay any of the Indebtedness upon receipt of demand by Lender in the manner set forth in Section 10.1;
 - (b) Failure of the Municipal Guarantor to observe or perform any of the other covenants, conditions or agreements hereunder for a period of thirty (30) days after notice, specifying such failure and requesting that it be remedied, given by the Lender to the Municipal Guarantor;
 - (c) In the event that any representation of Municipal Guarantor shall deemed to be untrue or materially breached.

Whenever an Event of Default hereunder shall have happened and be continuing, the Lender may take whatever action at law or in equity as may appear necessary or desirable to collect payments then due or thereafter to become due hereunder or to enforce observance or performance of any covenant, condition or agreement of the Municipal Guarantor under this Guaranty.

In case the Lender shall have proceeded to enforce this Municipal Guaranty and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Municipal Guarantor and the Lender shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Municipal Guarantor and the Lender shall continue as though no such proceeding had been taken.

9. **Waivers.**
 - 9.1 **Municipal Guarantor's Waiver of Rights.** Except as prohibited by applicable law, Municipal Guarantor waives any right to require Lender (a) to continue lending money or to extend other credit to Borrower; (b) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or non-action on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of

new or additional loans or obligations; (c) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (d) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (e) to pursue any other remedy within Lender's power; or (f) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

9.2 Waiver of Other Defenses and Release of Claims. Municipal Guarantor represents that it has no defenses to or setoffs against any Indebtedness or other obligations owing by Municipal Guarantor to Lender or Lender's affiliates (the "**Obligations**"), nor any claims against Lender or Lender's affiliates for any matter whatsoever, related or unrelated to the Obligations. Municipal Guarantor hereby releases Lender and Lender's affiliates, officers, directors, employees and agents from all claims, causes of action, and costs, in law or equity, known or unknown, whether or not matured or contingent, existing as of the date hereof that the undersigned has or may have by reason of any matter of any conceivable kind or character whatsoever, related or unrelated to the Obligations, including the subject matter of this Agreement. The foregoing release does not apply, however, to claims for future performance of express contractual obligations that mature after the date hereof that are owing to the undersigned by Lender or Lender's affiliates. Municipal Guarantor acknowledges that Lender has been induced to enter into or continue the Obligations by, among other things, the waivers and releases in this paragraph.

9.3 Reasonableness and Effect of Waivers. Municipal Guarantor warrants and agrees that each of the waivers set forth in this Guaranty is made with full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to Municipal Lender's charter, public policy or law. If any of such waivers are determined to be contrary to any applicable charter, law or public policy, such waivers shall be effective only to the maximum extent permitted by law.

9.4 Lender's Cumulative Remedies; No Waiver. The rights, powers and remedies of Lender hereunder are cumulative and not exclusive of any other right, power or remedy which Lender would otherwise have. No failure or delay on the part of Lender in exercising any such right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or under the other Loan Documents.

10. Miscellaneous.

10.1 Notices. All notices required or permitted hereunder shall be deemed given: (1) three Business Days following mailing via regular mail, or (2) one Business Day after deposit with a commercial courier service for "next day" delivery, or (3) upon sending to a facsimile number set forth in this agreement or provided in writing to the party sending the notice by the party receiving the notice, with confirmation of

delivery provided by sender's device, or (4) upon actual receipt of notice, whichever is earlier.

Lender's address for notices:

601 Union Street, Suite 3600
Seattle, WA 98101-9783
Facsimile: (206) 625-9457

Municipal Guarantor's address for notices:

City of Des Moines
Attn: City Attorney
21630 11th Ave S. Suite A
Des Moines, WA 98198
tgeorge@desmoineswa.gov
Facsimile: (206) 870-6872

Borrower's address for notices:

Forterra NW
Attn: Staff Attorney
901 5th Avenue, Suite 2200
Seattle, WA 98164
adraper@forterra.org
Facsimile: (206) 577-9135

The parties shall promptly give written notice to each other of any change of address or facsimile number, and notice to the addresses or facsimile numbers stated herein shall be deemed sufficient unless written notification of a change has been received.

10.2 **Survival.** All covenants, representations, and warranties made by Municipal Guarantor in this Guaranty shall survive the execution and delivery of this Guaranty and the making of the Loan.

10.3 **Dispute Resolution.** This section contains a jury waiver, arbitration clause, and a class action waiver. READ IT CAREFULLY. **This dispute resolution provision shall supersede and replace any prior "Jury Waiver," "Judicial Reference," "Class Action Waiver," "Arbitration," "Dispute Resolution," or similar alternative dispute agreement or provision between or among the parties.**

- (a) **Jury Trial Waiver; Class Action Waiver.** As permitted by applicable law, each party waives their respective rights to a trial before a jury in connection with any Dispute (as "Dispute" is hereinafter defined), and disputes shall be resolved by a judge sitting without a jury. If a court determines that this provision is not enforceable for any reason and at any time prior to trial of the Dispute, but not

later than 30 days after entry of the order determining this provision is unenforceable, any party shall be entitled to move the court for an order compelling arbitration and staying or dismissing such litigation pending arbitration (“**Arbitration Order**”). If permitted by applicable law, **each party also waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.**

- (b) **Arbitration.** If a claim, dispute, or controversy arises between us with respect to this Agreement, related agreements, **or any other agreement or business relationship between any of us whether or not related to the subject matter of this Agreement** (all of the foregoing, a “**Dispute**”), and **only if** a jury trial waiver is not permitted by applicable law or ruling by a court, any of us may require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any party. **By agreeing to arbitrate a Dispute, each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.**

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, JAMS or National Arbitration Forum (“**Administrator**”) as selected by the initiating party. If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters (i) relating to a deposit account, application for or denial of credit, enforcement of any of the obligations we have to each other, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party, (ii) based on or arising from an alleged tort, or (iii) involving either of our employees, agents, affiliates, or assigns of a party. However, Disputes do not include the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. If a third party is a party to a Dispute, we each will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where lender or bank is headquartered.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration

hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. This arbitration provision shall survive any termination, amendment, or expiration of this Agreement. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

- (c) **Reliance.** Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in this section.

11. **Governing Law and Choice of Venue.** This Agreement has been executed and delivered to Lender in the State of Washington. Municipal Guarantor agrees that the law of the State of Washington (including without limitation its Uniform Commercial Code, and exclusive of principles of conflicts of law) shall be applicable for the purpose of construing this Municipal Guaranty and the Loan Documents, determining the validity hereof and enforcing the same. The parties hereto consent to the jurisdiction and venue of the state and Federal courts located in King County, State of Washington, in any action or judicial

proceeding brought to enforce, construe, or interpret this Municipal Guaranty or any of the Loan Documents.

12. **Assignment.** Lender reserves the right to transfer or assign any or all of its right, title and interest under this Municipal Guaranty. This Guaranty may not be assigned by Borrower.
13. **Terms.** Whenever used in this Municipal Guaranty, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Any terms not defined in this Agreement shall be as defined in the Loan Agreement, Note or other Loan Documents.
14. **Captions.** Any captions applied to the sections of this Municipal Guaranty are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Guaranty.
15. **Severability.** If any term, condition or provision of this Municipal Guaranty or the Loan Documents shall be held invalid for any reason, such offending term, condition or provision shall be stricken therefrom, and the remainder shall not be affected.
16. **Joint and Several Liability.** Municipal Guarantor's obligations shall be joint and several with each other guarantor.
17. **Attorneys' Fees; Expenses.** Municipal Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Municipal Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Municipal Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Municipal Guarantor also shall pay all court costs and such additional fees as may be directed by the court.
18. **Entire Agreement.** This Municipal Guaranty and the Loan Documents constitute the complete and final expression of the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings between the parties. In the event of direct conflict between the terms of this Municipal Guaranty and the Loan Documents, the terms of this Municipal Guaranty shall control; provided, however, that the rights and remedies of Lender under such instruments shall be cumulative. This Guaranty may be amended only by a written instrument signed by an authorized representative of Lender.
19. **Statutory Notice.** ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

The undersigned Municipal Guarantor acknowledges having read all the provisions of this Municipal Guaranty and agrees to its terms. In addition, Municipal Guarantor understands that

this Municipal Guaranty is effective upon Municipal Guarantor's execution and delivery of this
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guaranty to Lender, as of the date first written above. No formal acceptance by Lender is
necessary to make this Municipal Guaranty effective.

MUNICIPAL GUARANTOR:

CITY OF DES MOINES,
a political subdivision of the State of Washington

By: _____


Michael Matthias
City Manager

FORTERRA NW
a Washington non-profit corporation

By: _____

Its: _____

Approved to Form:



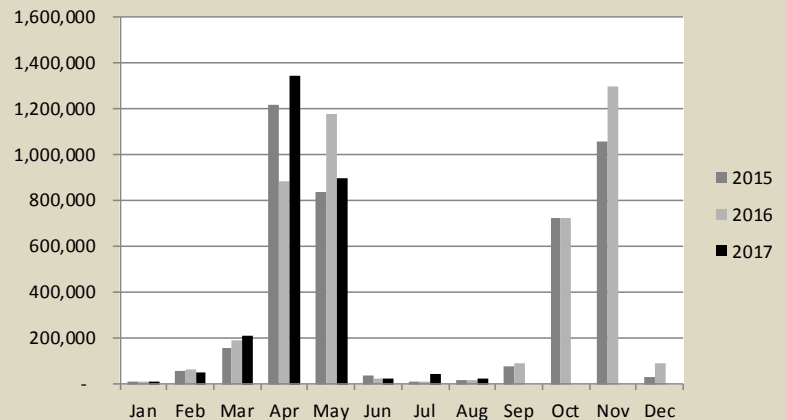
Tim George
City Attorney

GSB:8933122.3 [03646.03001]

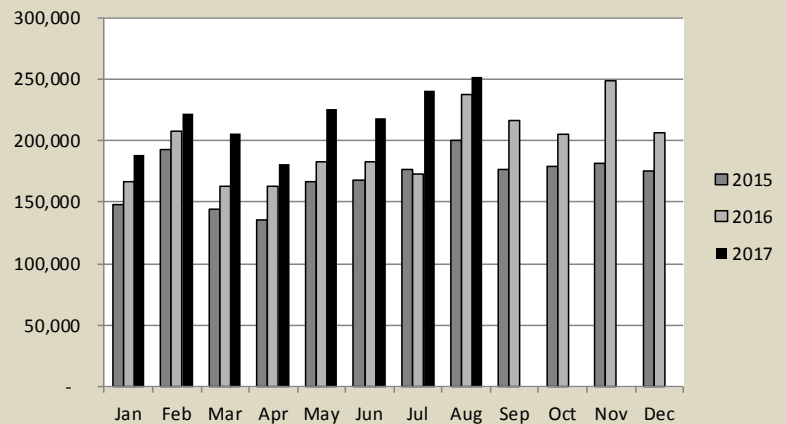
CITY COUNCIL MONTHLY FINANCIAL REPORT

2017 YTD Compared to 2016 YTD:**221,347 9.3%**

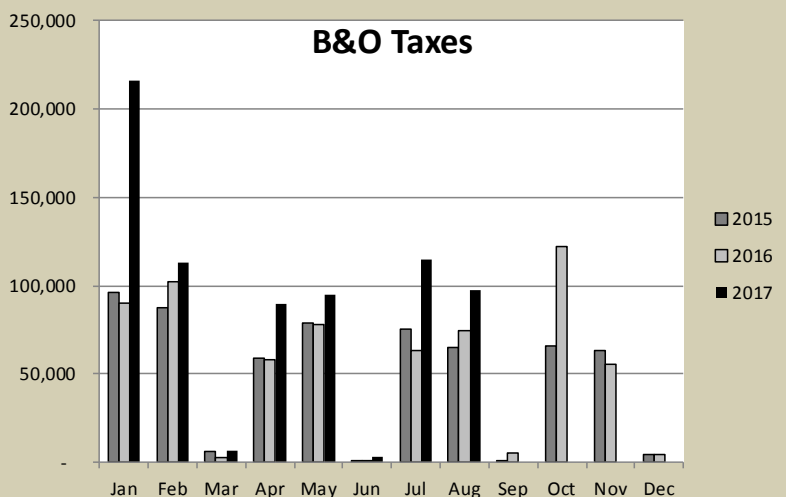
	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>PY YTD</u>
Jan	10,191	9,718	7,766	0.2%
Feb	52,372	62,078	55,462	1.6%
Mar	207,664	192,691	159,802	5.8%
Apr	1,341,941	884,255	1,214,531	25.2%
May	892,976	1,172,679	834,623	50.8%
June	22,136	24,323	34,134	51.4%
Jul	45,386	8,130	12,380	51.5%
Aug	22,470	19,914	15,762	52.0%
Sep		87,561	76,908	53.9%
Oct		721,023	723,002	69.7%
Nov		1,292,382	1,054,756	98.0%
Dec		92,696	29,206	100.0%
Totals	2,595,135	4,567,450	4,218,332	

2017 YTD Compared to Annual Budget: 4,572,060 56.8%**PROPERTY TAXES****2017 YTD Compared to 2016 YTD:****259,591 17.6%**

	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>PY YTD</u>
Jan	188,813	166,482	148,542	7.1%
Feb	222,214	207,580	192,640	15.9%
Mar	206,184	162,512	144,525	22.8%
Apr	180,327	162,783	135,180	29.7%
May	225,772	183,308	166,575	37.5%
Jun	218,517	182,542	167,671	45.3%
Jul	240,702	172,341	176,608	52.6%
Aug	251,535	236,926	200,510	62.7%
Sep		216,225	176,594	71.9%
Oct		205,441	178,690	80.7%
Nov		248,392	181,241	91.2%
Dec		206,295	174,869	100.0%
Totals	1,734,065	2,350,827	2,043,645	

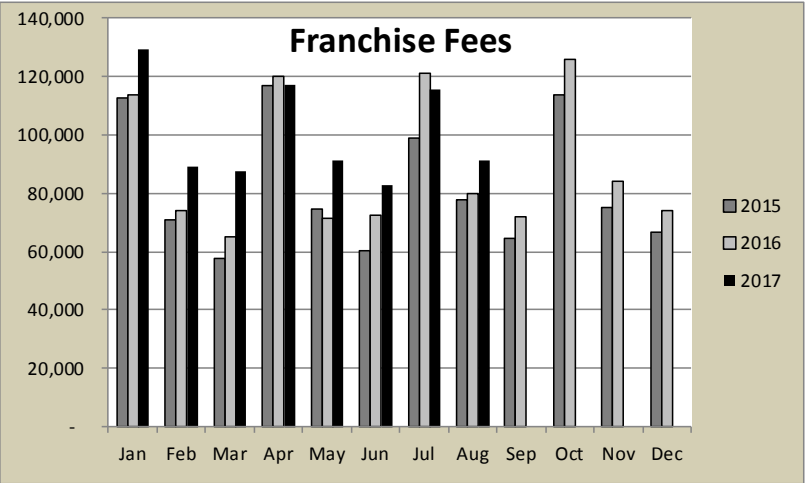
2017 YTD Compared to Annual Budget: 2,244,019 77.3%**SALES TAXES****2017 YTD Compared to 2016 YTD:****263,945 56.0%**

	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>PY YTD</u>
Jan	216,324	89,942	95,787	13.7%
Feb	112,795	101,825	87,424	29.2%
Mar	6,291	3,106	6,095	29.6%
Apr	89,260	58,292	58,723	38.5%
May	94,829	78,035	78,674	50.3%
Jun	3,205	1,262	745	50.5%
Jul	114,496	63,661	75,441	60.2%
Aug	97,730	74,863	64,797	71.6%
Sep		5,211	1,192	72.4%
Oct		122,095	66,238	91.0%
Nov		55,292	63,614	99.4%
Dec		4,217	4,699	100.0%
Totals	734,931	657,801	603,429	

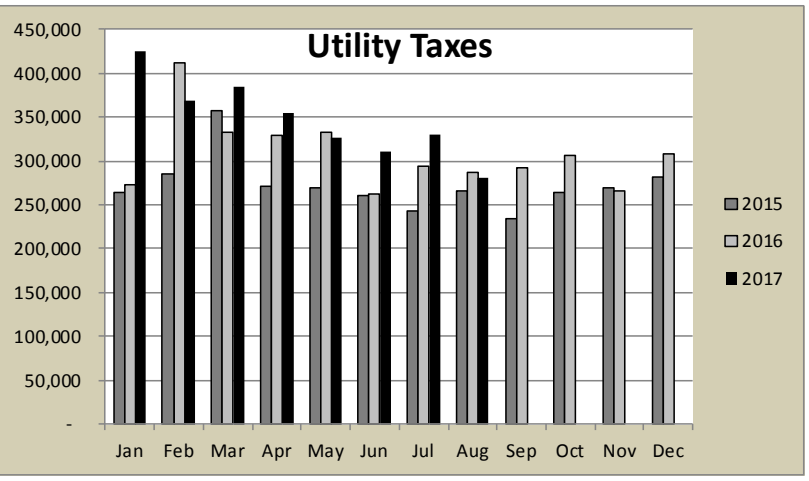
2017 YTD Compared to Annual Budget: 784,182 93.7%**B&O Taxes**

- All revenue sources shown above go to the General Fund.
- The Tax revenues shown in the above graphs EXCLUDE ONE-TIME REVENUES for all years.

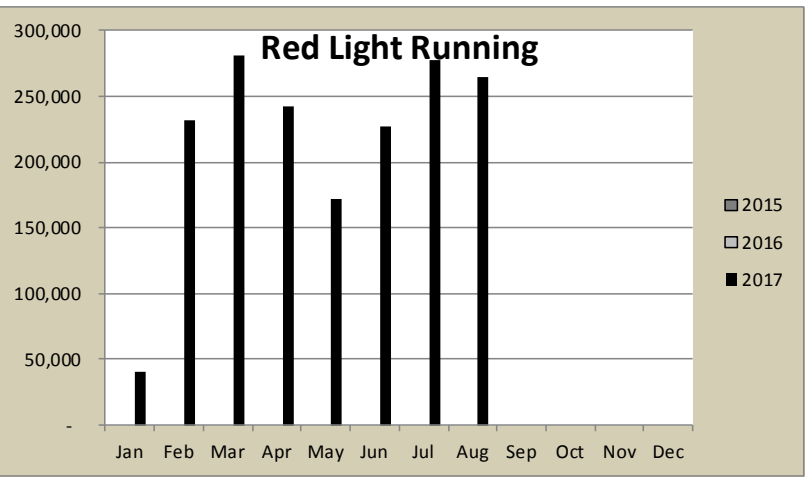
2017 YTD Compared to 2016 YTD:			85,364	11.9%
	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>PY YTD</u>
Jan	129,401	113,463	112,750	10.6%
Feb	89,045	73,834	71,075	17.4%
Mar	87,325	65,347	57,924	23.5%
Apr	116,973	120,207	116,879	34.7%
May	91,363	71,583	74,423	41.4%
Jun	82,575	72,626	60,470	48.1%
Jul	115,316	121,248	99,070	59.4%
Aug	91,478	79,804	77,663	66.8%
Sep		72,099	64,435	73.5%
Oct		126,141	113,761	85.3%
Nov		84,251	74,997	93.1%
Dec		73,899	66,607	100.0%
Totals	803,476	1,074,502	990,053	
2017 YTD Compared to Annual Budget:			1,090,440	73.7%



2017 YTD Compared to 2016 YTD:			258,402	10.2%
	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>PY YTD</u>
Jan	424,753	273,337	264,911	7.4%
Feb	369,100	410,967	284,340	18.5%
Mar	384,143	332,039	357,130	27.5%
Apr	354,597	329,815	270,479	36.4%
May	326,610	333,168	269,809	45.4%
Jun	311,295	262,684	260,950	52.6%
Jul	330,214	293,988	243,353	60.5%
Aug	279,999	286,311	265,630	68.3%
Sep		292,324	233,833	76.2%
Oct		306,464	263,509	84.5%
Nov		266,326	269,275	91.7%
Dec		308,003	281,830	100.0%
Totals	2,780,711	3,695,425	3,265,049	
2017 YTD Compared to Annual Budget:			3,870,139	71.9%



2017 YTD Compared to 2016 YTD:		1,738,611		
	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>PY YTD</u>
Jan	41,052			
Feb	232,138			
Mar	281,581			
Apr	242,435			
May	172,049			
Jun	227,114			
Jul	277,288			
Aug	264,954			
Sep				
Oct				
Nov				
Dec				
Totals	1,738,611	-	-	
2017 YTD Compared to Annual Budget:			1,985,000	87.6%

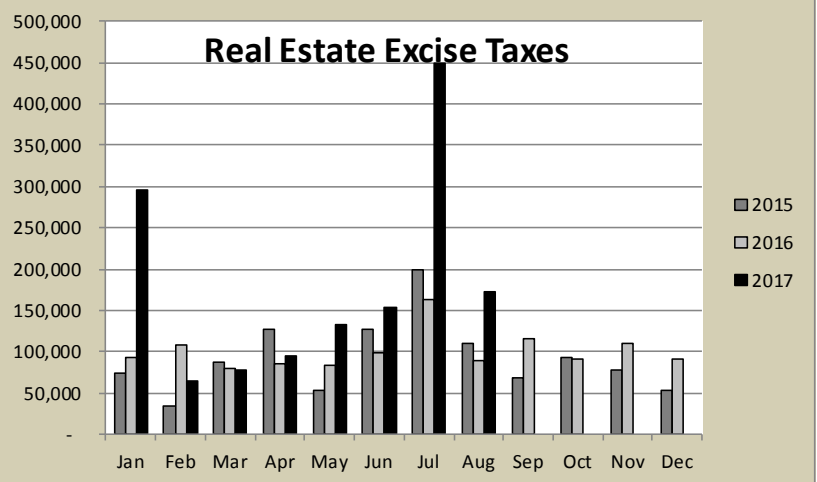


- All revenue sources shown above go to the General Fund.

CIP FUNDING SOURCES

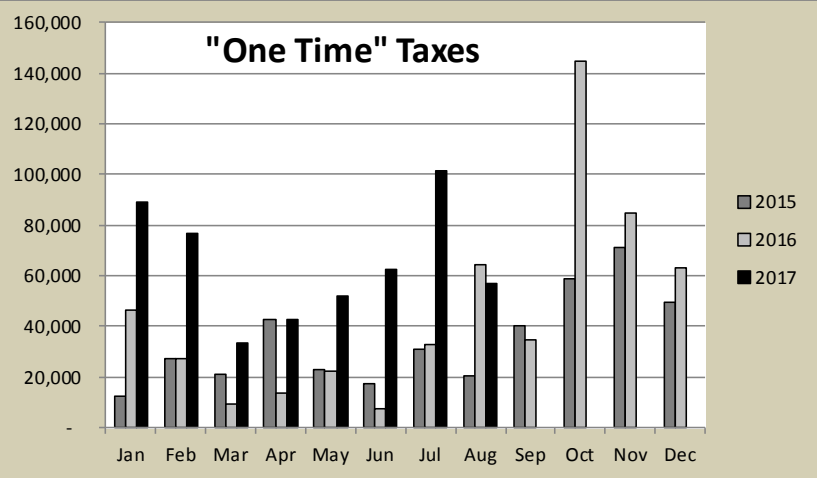
2017 YTD Compared to Annual Budget:

	2017	2016	2015	PY YTD
Jan	296,469	93,909	74,382	7.7%
Feb	64,190	109,153	33,884	16.7%
Mar	78,233	80,623	88,020	23.3%
Apr	95,642	86,005	127,450	30.4%
May	132,598	84,072	53,190	37.3%
Jun	152,999	99,166	127,038	45.5%
Jul	448,867	163,905	199,170	59.0%
Aug	173,469	90,084	110,322	66.4%
Sep		116,119	68,647	75.9%
Oct		91,603	93,478	83.4%
Nov		109,682	78,694	92.5%
Dec		91,594	53,220	100.0%
Totals	1,442,467	1,215,915	1,107,495	
2017 YTD Compared to Annual Budget:			800,000	180.3%



2017 YTD Compared to 2016 YTD:

	2017	2016	2015	PY YTD
Jan	89,266	46,556	12,359	3.8%
Feb	76,783	27,195	27,114	6.1%
Mar	33,370	9,428	20,850	6.8%
Apr	42,775	13,465	42,498	7.9%
May	52,185	22,165	22,862	9.8%
Jun	62,293	7,770	17,170	10.4%
Jul	101,589	32,666	31,104	13.1%
Aug	56,915	64,376	20,237	18.4%
Sep	-	34,407	40,336	21.2%
Oct	-	144,643	58,538	33.1%
Nov	-	84,923	71,022	40.1%
Dec	-	62,874	49,216	45.3%
Totals	515,176	550,468	413,306	
2017 YTD Compared to Annual Budget:			700,000	73.6%



GENERAL FUND 001

2017 BUDGET				2017 Year to Date ACTUAL					
ANNUAL 12 MONTHS				AUGUST					
	REVENUES	EXPENDITURES	NET	REVENUES	%*	EXPENDITURES	%*	NET	
BEGINNING FUND BALANCE			2,933,039					2,933,039	
<u>Unrestricted Revenues</u>									
Unrestricted Taxes	11,650,919		11,650,919	7,984,847	69%				
One Time Sales/B&O Taxes	199,420		199,420	515,177	258%				
Unrestricted Franchise Fees	1,090,440		1,090,440	755,688	69%				
State/City Assistance	90,000		90,000	49,024	54%				
Miscellaneous	41,650		41,650	48,145	116%				
Transfer In	-		-						
Total Unrestricted Revenues	13,072,429		13,072,429	9,352,881	72%			9,352,881	
<u>Policy & Support Services</u>									
Support Services Chargebacks	2,381,924		2,381,924	1,587,950	67%			1,587,950	67%
City Council		91,989	(91,989)	-		48,604	53%	(48,604)	53%
City Manager	26,357	1,212,929	(1,186,572)	26,357	100%	803,381	66%	(777,024)	65%
Financial Services	51,356	1,009,598	(958,242)	6		634,052	63%	(634,046)	66%
Technology Services	835,118	792,022	43,096	556,152	67%	523,351	66%	32,801	76%
Legal (Civil)		298,332	(298,332)	7,956		195,801	66%	(187,845)	63%
Bldg & Facility Maint		351,603	(351,603)			231,823	66%	(231,823)	66%
Total Policy & Support Services	3,294,755	3,756,473	(461,718)	2,178,421	66%	2,437,012	65%	(258,591)	56%
<u>Public Safety Services</u>									
Restricted - Public Safety	3,377,340		3,377,340	2,650,185	78%			2,650,185	78%
Court	121,110	1,187,392	(1,066,282)	80,850	67%	807,054	68%	(726,204)	68%
Probation	69,143	172,116	(102,973)	39,013	56%	108,393	63%	(69,380)	67%
Fire/Jail/Public Defenders	4,358	756,312	(751,954)	3,268	75%	452,575	60%	(449,307)	60%
Legal (Prosecution, DV, etc.)	25,000	345,164	(320,164)	21,668	87%	230,663	67%	(208,995)	65%
Police	225,905	10,413,423	(10,187,518)	137,157	61%	6,718,460	65%	(6,581,303)	65%
Total Public Safety Services	3,822,856	12,874,407	(9,051,551)	2,932,141	77%	8,317,145	65%	(5,385,004)	59%
<u>Community Services</u>									
Planning & Bldg (NonFee Based)		438,678	(438,678)			278,860	64%	(278,860)	64%
Engineering (NonFee Based)		245,096	(245,096)			161,264	66%	(161,264)	66%
Subtotal	-	683,774	(683,774)	-		440,124	64%	(440,124)	64%
Park Maintenance	28,403	855,184	(826,781)	15,215	54%	541,714	63%	(526,499)	64%
Parks & Community Relations	2,825	210,174	(207,349)	9,446	334%	132,453	63%	(123,007)	59%
Senior & Human Services	126,405	484,589	(358,184)	65,208	52%	334,062	69%	(268,854)	75%
Arts Program	17,000	57,221	(40,221)	15,551	91%	36,574	64%	(21,023)	52%
Recreation Programs	1,082,189	1,255,288	(173,099)	685,755	63%	832,553	66%	(146,798)	85%
Beach Park Rentals	297,348	537,877	(240,529)	197,988	67%	340,377	63%	(142,389)	59%
Subtotal	1,554,170	3,400,333	(1,846,163)	989,163	64%	2,217,733	65%	(1,228,570)	67%
Total Community Services	1,554,170	4,084,107	(2,529,937)	989,163	64%	2,657,857	65%	(1,668,694)	66%
<u>Transfers Out</u>									
Capital & Debt		64,440	(64,440)			27,495	43%	(27,495)	43%
One Time Sales/ B&O Tax		700,000	(700,000)			515,177	74%	(515,177)	74%
Total Transfers	-	764,440	(764,440)	-		542,672		(542,672)	
TOTAL GENERAL FUND	21,744,210	21,479,427	264,783	15,452,606	71%	13,954,686	65%	1,497,920	566%
ENDING FUND BALANCE			3,197,822					4,430,959	
<i>*August is month 8 of 12 = 67%</i>									
2 month expenditures target min Ending Fund Balance			3,580,620						

SPECIAL REVENUE FUNDS MONTHLY REPORT
AUGUST

	2017 Budget <u>Annual</u>	2017 Actual <u>Year to Date</u>	%	2016 Actual <u>Annual</u>	2016 Actual <u>Year to Date</u>	%
STREETS						
Begin Fund Balance	463,665	563,269		273,872	273,872	
Revenues	1,636,400	1,098,618	67%	1,650,427	1,004,389	61%
Expenditures	1,730,520	957,022	55%	1,361,030	876,798	64%
Net Activity	(94,120)	141,596		289,397	127,591	
Ending Fund Balance	369,545	704,865		563,269	401,463	
ARTERIAL PAVEMENT						
Begin Fund Balance	156,015	212,146		-	-	
Revenues	1,025,147	701,350	68%	212,146	196,849	
Expenditures	130,185	185,987	143%	-		
Net Activity	894,962	515,363		212,146	196,849	
Ending Fund Balance	1,050,977	727,509		212,146	196,849	
DEVELOPMENT SERVICES						
Begin Fund Balance	1,507,685	1,507,685				
Revenues	3,470,401	2,139,038	62%		3,295,025	
Expenditures	2,187,078	1,392,223	64%			
Net Activity	1,283,323	746,815		-	3,295,025	
Ending Fund Balance	2,791,008	2,254,500		-	3,295,025	
POLICE DRUG SEIZURE						
Begin Fund Balance	4,851	10,376		10,342	10,342	
Revenues	500	40	8%	34	23	68%
Expenditures	3,500		0%	-		
Net Activity	(3,000)	40		34	23	
Ending Fund Balance	1,851	10,416		10,376	10,365	
HOTEL/MOTEL TAX						
Begin Fund Balance	19,239	17,375		9,593	9,593	
Revenues	114,000	87,945	77%	103,113	55,938	54%
Expenditures	114,000	74,595	65%	95,331	47,381	50%
Net Activity	-	13,350		7,782	8,557	
Ending Fund Balance	19,239	30,725		17,375	18,150	
REDONDO ZONE						
Begin Fund Balance	10,858	18,754		22,064	22,064	
Revenues	109,645	70,572	64%	70,733	39,408	56%
Expenditures	113,855	74,129	65%	74,043	52,433	71%
Net Activity	(4,210)	(3,557)		(3,310)	(13,025)	
Ending Fund Balance	6,648	15,197		18,754	9,039	

August is 8 months of 12

67%

- Added prior year to date Revenue information for the Development Services fund as comparison. Both the budget and actuals are less than prior year, but current year to date is running ahead of budget (good news).
- Redondo is still running at a loss, but revenues are picking up for the summer. Keep on the "watch" list.

SPECIAL REVENUE FUNDS MONTHLY REPORT (CONTINUED)

AUGUST

	2017 Budget <u>Annual</u>	2017 Actual <u>Year to Date</u>	%	2016 Actual <u>Annual</u>	2016 Actual <u>Year to Date</u>	%
WATERFRONT ZONE						
Begin Fund Balance	-	-		-	-	
Revenues	300,000	58,707	20%	-	-	
Expenditures	158,790	61,266	39%	-	-	
Net Activity	141,210	(2,559)		-	-	
Ending Fund Balance	141,210	(2,559)		-	-	
AUTOMATION FEES						
Begin Fund Balance	68,871	96,179		22,985	22,985	
Revenues	100,000	134,392	134%	172,920	112,725	65%
Expenditures	101,032	69,836	69%	99,726	68,606	69%
Net Activity	(1,032)	64,556		73,194	44,119	
Ending Fund Balance	67,839	160,735		96,179	67,104	
ABATEMENT						
Begin Fund Balance	1,850	19,121		1,350	1,350	
Revenues	500	688	138%	25,000	-	0%
Expenditures	16,200	15,890	98%	7,229	1,833	25%
Net Activity	(15,700)	(15,202)		17,771	(1,833)	
Ending Fund Balance	(13,850)	3,919		19,121	(483)	
(ASE) AUTOMATED SPEED ENFORCEMENT						
Begin Fund Balance	82,801	152,986		64,389	64,389	
Revenues	350,000	302,385	86%	383,763	254,175	66%
Expenditures	364,586	168,984	46%	295,166	144,018	49%
Net Activity	(14,586)	133,401		88,597	110,157	
Ending Fund Balance	68,215	286,387		152,986	174,546	
(TBD) TRANSPORTATION BENEFIT DISTRICT						
Begin Fund Balance	265,588	263,028		84,349	84,349	
Revenues	880,000	625,708	71%	882,268	509,178	58%
Expenditures	995,522	743,921	75%	703,589	502,032	71%
Net Activity	(115,522)	(118,213)		178,679	7,146	
Ending Fund Balance	150,066	144,815		263,028	91,495	
August is 8 months of 12			67%			

- Waterfront Zone's Paid Parking program went live in July. Revenues above reflect pre-sale of annual passes.
- Automation Fee revenue is over budget. Amounts over budget in one year carryover to cover revenue shortfalls in subsequent years.

DEBT SERVICE FUNDS MONTHLY REPORT

AUGUST

	2017 Budget <u>Annual</u>	2017 Actual <u>Year to Date</u>	%	2016 Actual <u>Annual</u>	2016 Actual <u>Year to Date</u>	%
REET 1 ELIGIBLE DEBT SERVICE						
Begin Fund Balance	12,692	12,692		14,900	14,900	
Revenues	140,639	93,760	67%	140,410	93,608	67%
Expenditures	143,145	7,852	5%	142,114	9,075	6%
Net Activity	(2,506)	85,908		(1,704)	84,533	
Ending Fund Balance	10,186	98,600		13,196	99,433	
REET 2 ELIGIBLE DEBT SERVICE						
Begin Fund Balance	21,245	21,245		21,245	21,245	
Revenues	265,261	172,744	65%	264,864	176,576	67%
Expenditures	263,373	105,104	40%	264,855	108,725	41%
Net Activity	1,888	67,640		9	67,851	
Ending Fund Balance	23,133	88,885		21,254	89,096	
August is 8 months of 12		67%				

Expenditure activity reflects monthly charge for General Fund Administrative Services. In prior years Debt Service funds were not assessed their related costs for General Fund Admin Services. Semi-annual interest payments are made in June and December each year. The principal payment is made once a year in December.

MARINA FUND 401 OPERATIONS MONTHLY REPORT

(Budget Basis/Working Capital Basis)

AUGUST

	2017 Budget Annual	2017 Actual Year to Date	%	2016 Actual Annual	2016 Actual Year to Date	%
REVENUES						
Intergov't Grants		590		8,046	8,046	100%
Charges Goods & Services	105,037	159,922	152%	109,177	71,929	66%
Fuel Sales	1,103,986	710,250	64%	829,454	646,174	78%
Fines & Forefeitures	12,220	10,655	87%	17,039	12,383	73%
Moorage, Parking & Misc	2,876,716	1,940,710	67%	2,779,969	1,901,398	68%
Interfund Maint Services	70,000	2,063	3%	41,474	30,064	72%
TOTAL	4,167,959	2,824,190	68%	3,785,159	2,669,994	71%
Fuel gallons sold	399,349	301,191		383,989	298,332	
EXPENDITURES						
Salaries	671,098	420,390	63%	563,873	388,881	69%
Benefits	245,273	152,151	62%	215,453	148,054	69%
Supplies	159,073	104,005	65%	135,919	98,363	72%
Fuel Purchases	862,710	548,114	64%	723,543	515,847	71%
Services	854,331	476,986	56%	896,016	562,640	63%
Capital Outlay		9,587				
Capital Transfers	716,001	957,985	134%	211,815	46,345	22%
Debt Transfers	820,515		0%	819,828	546,552	67%
TOTAL	4,329,001	2,669,218	62%	3,566,447	2,306,682	65%
REVENUES MORE THAN OR (LESS THAN) EXPENDITURES						
	(161,042)	154,972		218,712	363,312	
Ending Cash & Investments		1,466,311			1,494,936	
Min Reserves - 20%		722,600				
Avail to Xfer to Dock Replace		985,695				
Aug is 8 month of 12		66.7%				
Fuel Profits (using COGS)		94,421			104,802	

- \$73,898 Time spent by Marina employees to install the Paid Parking program was repaid by the Paid Parking construction project (funded by REET rather than Marina Tenants).
- Personnel costs lower than budget due to continued vacant position.

SWM FUND 450 OPERATIONS MONTHLY REPORT

(Budget Basis/Working Capital Basis)

AUGUST

	2017 Budget Annual	2017 Actual Year to Date	%	2016 Actual Annual	2016 Actual Year to Date	%
REVENUES						
Intergov't Grants	-			15,025	15,025	
Charges Goods & Services	3,532,391	2,082,483	59%	3,450,877	2,064,544	60%
Interest & Miscellaneous	5,000	19,563	391%	19,842	13,581	68%
TOTAL	3,537,391	2,102,046	59%	3,485,744	2,093,150	60%

EXPENDITURES						
Salaries	914,844	543,350	59%	801,673	530,621	66%
Benefits	421,390	234,885	56%	359,245	235,903	66%
Supplies	66,900	60,387	90%	78,609	44,503	57%
Services	1,448,299	976,665	67%	1,461,078	935,123	64%
Capital Transfers	236,120	35,997		15,000	-	0%
TOTAL	3,087,553	1,851,284	60%	2,715,605	1,746,150	64%

REVENUES MORE THAN OR (LESS THAN) EXPENDITURES	449,838	250,762	770,139	347,000
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Ending Cash & Investments	2,573,697	1,886,215
Min Reserves - 20% Revenues	707,478	
Waiting for CIP Xfer to Fund 451	1,866,219	

August is 8 months of 12 66.7%

Charges for Goods & Services come through the King County property tax billing system so April/May and October/November are peak revenue months for this fund. This also means a higher fund balance is needed for cash flow purposes.

- Personnel costs are lower than budget due to vacancies. Even with vacancy savings overall costs more than same time prior year.

INTERNAL SERVICE FUNDS MONTHLY REPORT

(Budget Basis/Working Capital Basis)

AUGUST

	2017 Budget Annual	2017 Actual Year to Date	%	2016 Actual Annual	2016 Actual Year to Date	%
EQUIPMENT RENTAL OPS						
Begin Fund Balance	354,851	365,809		253,062	253,062	
Revenues	516,486	350,019	68%	560,010	376,602	67%
Expenditures	497,739	321,026	64%	447,263	273,281	61%
Net Activity	18,747	28,993		112,747	103,321	
Ending Fund Balance	373,598	394,802		365,809	356,383	
EQUIPMENT RENTAL REPLACE						
Begin Fund Balance	1,676,754	3,243,493		2,459,857	2,459,857	
Revenues	922,690	621,815	67%	995,471	586,402	59%
Expenditures	915,810	449,604	49%	211,835	657,941	311%
Net Activity	6,880	172,211		783,636	(71,539)	
Ending Fund Balance	1,683,634	3,415,704		3,243,493	2,388,318	
FACILITY MAJOR REPAIRS						
Begin Fund Balance	37,731	90,776		92,511	92,511	
Revenues	495,144	74,092	15%	85,476	50,809	59%
Expenditures	384,124	9,338	2%	87,211	4,618	5%
Net Activity	111,020	64,754		(1,735)	46,191	
Ending Fund Balance	148,751	155,530		90,776	138,702	
COMPUTER REPLACEMENT						
Begin Fund Balance	598,481	832,303		515,075	515,075	
Revenues	429,555	288,501	67%	496,330	320,779	65%
Expenditures	475,630	259,800	55%	179,102	144,880	81%
Net Activity	(46,075)	28,701		317,228	175,899	
Ending Fund Balance	552,406	861,004		832,303	690,974	
SELF INSURANCE						
Begin Fund Balance	287,372	301,938		138,795	138,795	
Revenues	854,710	582,751	68%	824,678	550,336	67%
Expenditures	699,580	660,613	94%	661,535	599,864	91%
Net Activity	155,130	(77,862)		163,143	(49,528)	
Ending Fund Balance	442,502	224,076		301,938	89,267	
UNEMPLOY INSURANCE						
Begin Fund Balance	353,446	369,859		338,159	338,159	
Revenues	60,545	44,018	73%	58,584	37,500	64%
Expenditures	75,000	149	0%	26,884	17,706	66%
Net Activity	(14,455)	43,869		31,700	19,794	
Ending Fund Balance	338,991	413,728		369,859	357,953	

August is 8 months of 12

67%

[illegible]

Destination Des Moines Profit & Loss Summary

	January- September 2017			January-December 2016		
	Revenues	Costs	Net	Revenues	Costs	Net
Member dues billed	3,780.00		3,780.00	1,270.00		1,270.00
Unpaid A/R \$2015						
Business Operation	1,350.00	(5,821.61)	(4,471.61)	1,610.00	(8,027.84)	(6,417.84)
Miscellaneous Donations				25.00		25.00
Main street Project		(1,350.00)	(1,350.00)			0.00
Fundraiser and Events:						
Community BBQ	4,058.10	(1,177.87)	2,880.23	4,893.11	(2,466.77)	2,426.34
July 4th Fireworks	41,512.58	(36,717.00)	4,795.58	30,494.59	(36,997.71)	(6,503.12)
Waterland festival	13,265.87	(14,820.52)	(1,554.65)	19,030.50	(23,806.63)	(4,776.13)
Wheels & Keels	2,912.00	(1,603.96)	1,308.04	5,741.00	(2,222.40)	3,518.60
						0.00
Concerts in Park	5,710.28	(3,742.17)	1,968.11	5,799.70	(3,836.91)	1,962.79
CIP Tips	129.35	0.00	129.35			0.00
Legacy Beer Garden				1,090.00	(289.69)	800.31
Pancake Breakfast	529.55	(231.11)	298.44			0.00
Art & Wine walk	362.72	(71.35)	291.37			0.00
Trick o treat Path			0.00	230.75		230.75
Christmas Tree Lighting			0.00		(350.00)	(350.00)
Totals	73,610.45	(65,535.59)	8,074.86	70,184.65	(77,997.95)	(7,813.30)

WE ARE LEGACY

A 501c3 charity
making a difference



Serving Des Moines and Normandy Park



Make a difference
DONATE

With unique events

**WE PUT THE FUN
IN FUNDRAISING**





Put on your Boogie Shoes for **DISCO FEVER** the 18th annual Bayside Brunch at Anthony's Homeport, Sunday, November 5th, 9:30am to 12:30pm.

Des Moines Legacy Foundation will fill the first floor of the restaurant with disco balls, disco music and Shake Your Booty fun activities... to benefit programs for seniors and youth! Admission is \$80. To reserve your Disco Fever seats, call Sue Padden, Des Moines Legacy Foundation, 206-878-1642 or email Spadden@desmoineswa.gov.

SUPPORT FOR SENIORS

We help our elderly remain
active and independent

Make a difference
DONATE





You worked hard, you were dedicated, you got up early, you laughed and made everyone around you feel special, you set a happy tone to a special day.

YOU RAISED \$13,250 FOR DES MOINES/NORMANDY PARK SENIOR PROGRAMS AND SERVICES - AND - \$13,546 FOR RECREATION SCHOLARSHIPS FOR LOW INCOME YOUTH!!

**THANK YOU BAYSIDE BRUNCH 2016 MARGARITAVILLE VOLUNTEERS
from - "The Oklahoma Twister"**



EQUAL ACCESS

Parks and Recreation for all,
regardless of economic status

Make a difference
DONATE



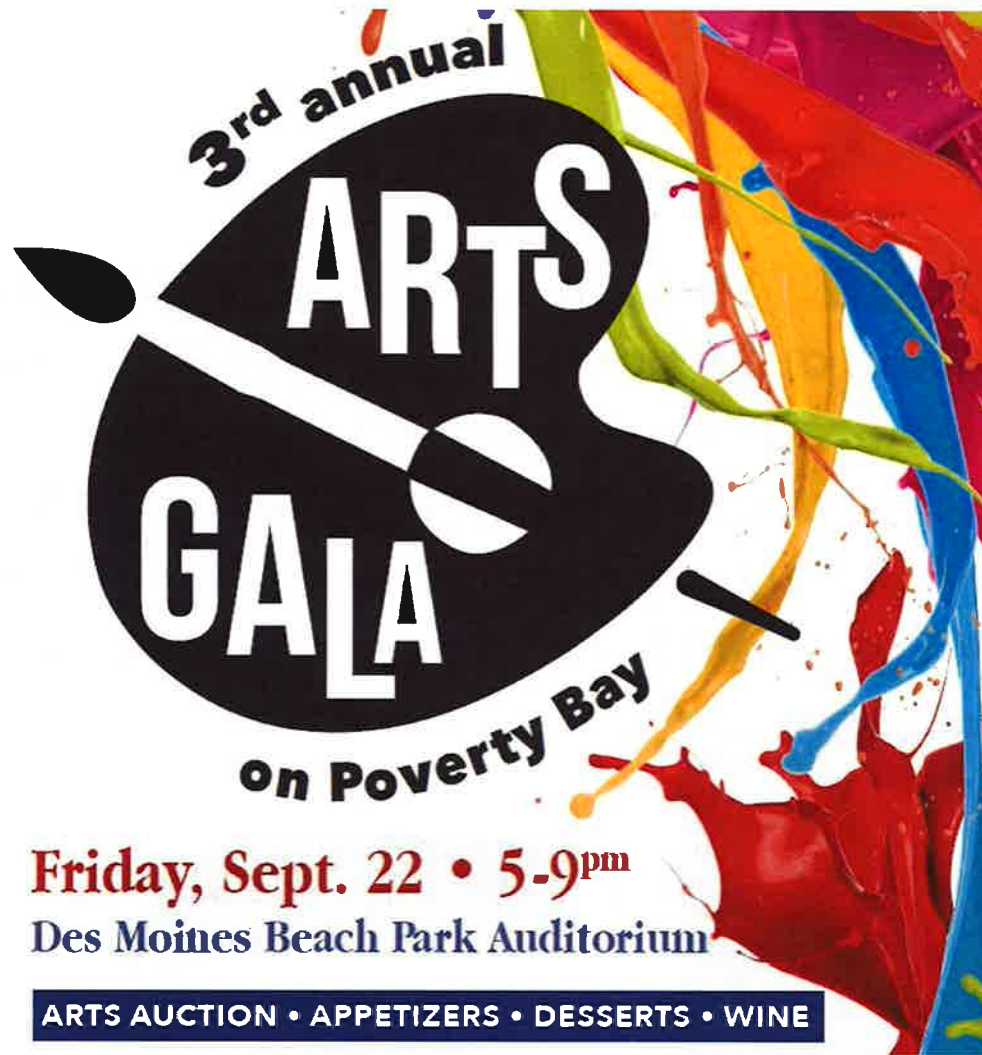
Bids for Kids is held in collaboration with Destination Des Moines' SMOKE ON THE WATER COMMUNITY BBQ and the Des Moines Arts Commission's opening of the DES MOINES SUMMER CONCERT SERIES at the Beach Park Event Center. This Fun, No Fuss and No ticket required auction helped to raise \$4,500 for Low Income Des Moines Kids and Families.



SUPPORT FOR THE ARTS

We help enrich lives
through cultural events

Make a difference
DONATE



The Arts improve and create a sense of community in Des Moines!

The Foundation supports the Des Moines Arts Commission in its mission to provide leadership in establishing cultural opportunities to improve the quality of life, enhance the aesthetic environment and to promote Des Moines as a center for great arts through fundraising and generous patron donations!

Gala Proceeds 2017
\$18,000



The Legacy Foundation has purchased two of the **Art on Poverty Bay** sculptures, “Yakatat” and “The Tree of Life” and facilitated on behalf of the Snure Family the generous donation of “A Gentle Nudge”.

The Foundation commissioned the mural “Celebration Of Life” on behalf of the City and is currently working to procure a new sculpture “Kaliedescope” for the Des Moines Waterfront .



SUPPORT FOR KIDS

We help our children
reach their potential

Make a difference
DONATE



Every child deserves the chance to play outdoors



Help us reach our goal of \$200,000 for new play equipment

Visit DMLegacy.org to learn more and DONATE

No Kids Left Inside, the Legacy Foundation's community fundraiser to support the City's efforts to repair and replace play structures at seven of Des Moines Parks and to create a new play area at Steven J. Underwood Memorial Park is well underway.

Confirmed Partnerships

Playground Leadership (\$50,000+)

- Des Moines Legacy Foundation \$105,000

Playground Champion (\$20,000+)

- Rotary Club of Des Moines
& Normandy Park \$23,000

Playground Builder (\$10,000+)

- Recology Cleanscapes \$15,000

Playground Buddy (\$5,000+)

- King County Youth Sports Grant \$5,000

Playground Pal (\$1,000+)

- South King Fire & Rescue Foundations \$1,000
- Brandie Holmes \$1,000
- AGM Fabric Products, Inc. \$1,000



Partnerships In Development

- Waterview Crossing \$31,000
- Lowes \$25,000
- BECU \$25,000
- Des Moines Senior challenge \$5,000



Sonju Community Orchard and Garden, opened in 2010, is a gathering spot for gardeners, elementary school kids, and our whole neighborhood. The garden offers annual p-patch rentals and grows food for the Des Moines Area Food Bank. Stop by and enjoy our garden paradise patch!

A new community garden is under development at Midway Park through a collaboration with the City and Reach Out Des Moines.

A WAY TO GIVE BACK

We're a conduit for
charitable action

Make a difference
DONATE





Des Moines Legacy Foundation LEGACY Award 2017

Congratulations to Laura Hartema. She was chosen to receive the Foundation's inaugural LEGACY Award for her 20 years of dedicated volunteer service as the leader of the Friends of Des Moines Creek. The award is in the form of a glass flame, signifying the positive force of an outstanding community volunteer in changing the needs of our community through selfless leadership through parks, recreation and senior services.



www.desmoineslegacy.org