

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
March 11, 2004 - 7:30 p.m.

CALL TO ORDER - Mayor Sheckler

all present

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

*George Petroff - 212th
Pan Joneli - 212th
Lynn Voss - 212th "arbitrarily & capricious"
atty says improper*

COMMENTS FROM THE PUBLIC: At this time you are invited to comment on items that you wish to bring to Council's attention. Please sign in prior to the meeting and limit your comments to three minutes or less.

Bob Ponds - Kings Arms & Fireworks

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

*PST
Economic Develop
NLC*

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the minutes of February 26, 2004.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks # *93254* through # & electronic fund transfers in the total amount of \$ *935,541.96*

Payroll fund transfers in the total amount of \$ *345,709*

3. Motion is to authorize the City Manager to sign the contract with Cascade Design Collaborative for preparation of multifamily and commercial design guidelines. The contract shall be in the amount of \$30,000 and shall be substantially in the form as submitted.

*NOTE: Items on the Consent Calendar are either routine or have been previously discussed. Any item may be removed by a Councilmember.

OLD BUSINESS

Richard + Tim + Loren need to finalize

1. Draft Resolution No. 03-280 Des Moines Creek Basin Interlocal Agreement #4

SUMMARY: The purpose of this report is to seek City Council approval for an interlocal agreement between the parties of the Des Moines Creek Basin Committee for the construction and ongoing operation and maintenance of the Des Moines Creek Restoration Projects. Per Council direction, the interlocal agreements has been reviewed by the Environment Committee and as a result the agreement has been modified.

*Passed
7-0*

*Do contract
in CINDA's
desk*

*Passed
14-3*

NEW BUSINESS

1. Hotel/Motel Ordinance Update

SUMMARY: The purpose of this agenda item is for staff to report on the status and impact of the City Council approval of Ordinance 1320 which became effective in April 2003. The ordinance created a new chapter in Section 5 of Des Moines Municipal Code, establishing a hotel/motel licensing endorsement requirement and implemented procedures for revocation or denial of renewal of a business license for hotel/motel operators who are in violation.

NEXT MEETING DATE - Regular Meeting March 25, 2004

ADJOURNMENT

AGENDA ITEM

SUBJECT: Staff Report on Hotel/Motel
Ordinance No. 1320

ATTACHMENTS:

AGENDA OF: March 11, 2004

DEPT. OF ORIGIN: Police

DATE SUBMITTED: 02-26-04

CLEARANCES:

☒ Police

☐ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: CTL Per JP

Purpose and Recommendation:

Provide a staff-report on the status and impact of the City Council approval Ordinance No. 1320 which became effective in April 2003 and created a new chapter in section 5 DMMC, establishing a hotel/motel licensing endorsement requirement, and implementing procedures for revocation or denial of renewal of a business license for hotel/motel operators who are in violation.

Suggested Motion:

N/A

Background: In the early 2000's the police department identified a growing crime trend occurring at and near some of the motels within the city. This trend resulted in increased calls for police service and reported criminal activity. The police department was spending increasing amounts of resources to respond to these calls for service and also investigate many serious crimes. The police department in trying to develop a new proactive strategy to address this problem sought assistance from the City Council to develop new tools to help remedy this growing malady.

The police department in March of 2003 requested the City Council to adopt additional licensing restrictions on motels and hotels to help reduce criminal activity and help improve community perception and quality of life within the City of Des Moines. The proposal put forth by the police department and unanimously adopted by the City Council included a number of provisions requiring these business operations to take ownership and responsibility for activities occurring on their premises. Ordinance 1320 adding a new chapter to Title 5 of the Des Moines Municipal Code became effective on April 26, 2003.

Key elements included requiring these establishments to identify and record who were patronizing their businesses. Businesses are now required to obtain approved identification from guests. The intent being to provide a deterrent to fugitives and persons engaged in

criminal activity such gangs, drug dealers, prostitutes and others who would not want their identity known to the police. Many of these persons set up criminal enterprises at our local motels. We also sought to deter owners who poorly managed their property and who had numerous calls for police services by requiring them to employ mandated crime prevention strategies based on a ratio of a 12 month annualized calls for police services. This ratio is determined by the number of rooms for rental in comparison to annualized calls for service. These requirements are graduated depending on the annualized calls for service ratio.

This ordinance requires the police department to compile the calls for service and crime statistics for each hotel and motel for a 12-month period ending June 30th of each calendar year. Each of these businesses must be notified of their annual calls for service per unit ratio no later than July 31st. The following six month period allows businesses an opportunity to comply with all the crime prevention requirements, if any to receive a businesses license endorsement for the following year as required by this ordinance. The first full reporting cycle will be June 2004.

We are reporting back on what we feel is important progress made as a result of the ordinance the City Council passed putting these restrictions in place.

<u>Calls for Service Pre-Ordinance</u>		<u>Calls for Service Post-Ordinance</u>	
Six-Month Period		Six-Month Period	
Motel A	100	Motel A	14 (-86)
Motel B	13	Motel B	20 (+7)
Motel C	141	Motel C	42 (-99)
Motel D	0	Motel B D	0 (0)
Motel E	15	Motel E	22 (+7)
Motel F	29	Motel F	32 (+3)
Motel G	36	Motel G	9 (-27)
Total	303	Total	139 (-164)

Discussion:

N/A

Alternatives:

N/A

Financial Impact:

In dispatch fees alone at a contract call rate of \$22.46 per call the six-month reduction of 164 calls the city has saved \$3,683.44. Greater savings are realized in labor hours saved which are more difficult to track. Although some of these labor hours are still expended they can be redirected to other activities. If a major investigation was averted untold hundreds of labor hours may have been saved.

Recommendation/Conclusion:

Staff wishes to thank the City Council for their approval of this ordinance and their willingness to assist the Police Department in developing innovative measures to reduce crime and improve the quality of life in our community.

Concurrence:

N/A

*Richard +
Cresent can need to finalize*

AGENDA ITEM

SUBJECT: Des Moines Creek Restoration
Projects - Construction,
Operation and Maintenance
Interlocal Agreement

ATTACHMENTS:

- A. Draft Resolution No. 03-280
- B. Draft Interlocal Agreement

AGENDA OF: March 11, 2004

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: March 2, 2004

CLEARANCES:

[X] Finance *pl*

[X] Public Works *[Signature]*

[X] Legal *[Signature]*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *CTC 4-10*

Purpose and Recommendation:

The purpose of this report is to seek City Council approval for an interlocal agreement between the parties of the Des Moines Creek Basin Committee for the construction and ongoing operation and maintenance of the Des Moines Creek Restoration Projects. Per Council direction, the interlocal agreement has been reviewed by the Environment Committee and as a result the agreement has been modified in areas detailed in the Discussion section.

- passed 4-3 Scott Magee - Richard Sheehy
2d Benjamin*
- Suggested Motion:**
- 1) "I move to adopt Draft Resolution No. 03-280 regarding the Interlocal Agreement between the City of Des Moines, King County, the City of SeaTac, the Port of Seattle, and the Washington State Department of Transportation, and authorize the City Manager to sign such Agreement substantially in the form as submitted."

Background:

Delegate appt by Tony passed 7-0

Since 1995, staff from the City of Des Moines, the City of SeaTac, King County, the Port of Seattle and the Washington State Department of Transportation, have worked towards the betterment of the Des Moines Creek watershed. Because of extensive development (with little or no flow controls) within the basin, increasing storm flows have caused severe erosion within the upper sections of the creek and major flooding in the lower sections (mainly Des Moines Beach Park). Valuable fish resources have also been impacted by the deposition of scour material in the lower sections and by man-made barriers to passage, such as the Des Moines Creek culvert below Marine View Drive. Because of this inter-jurisdiction approach, a Basin Plan was developed to stabilize the stream, thereby greatly reducing scour from high flows and to dramatically reduce the flooding that now occurs in Des Moines Beach Park. The plan also calls for eliminating a significant fish barrier at Marine View Drive by replacing the undersized and dilapidated culvert with a bridge, thereby opening up nearly 2 miles of viable stream for fish habitat.

It should be clearly understood, that this basin plan addresses existing problems and does not nullify the need for mitigation for future development within the basin. Major projects will still need to meet the drainage standards set forth by the regulating agencies to maintain the goals of this basin plan.

In 1996, the first interlocal agreement was approved by City Council to develop a basin plan for Des Moines Creek. Completed in 1997, the Basin Plan was funded by the jurisdictions of SeaTac, Des Moines, the Port of Seattle, and King County. The plan identified key watershed problems and issues and developed a prioritized list of capital improvement recommendations. In 1998, a second agreement was approved by City Council to prepare a preliminary design report and financing plan for projects listed in the Basin Plan, such as the regional storm water detention facility, the bypass pipeline, flow augmentation facility and stream restoration projects. The Marine View Drive (MVD) Bridge was being designed and managed separately by the City of Des Moines. In 2001, a third agreement was approved by City Council to prepare a final design of the four projects (excluding the MVD Bridge). In recognition of the effort being made by Des Moines for the design and permitting of the MVD Bridge on behalf of the Committee, Des Moines participated only in the project management element of the third interlocal agreement. Also, because of the existing and proposed highways in the basin, the Washington State Department of Transportation (WSDOT) became a Committee member, with the third interlocal agreement.

The attached document is the fourth interlocal agreement between the parties of the Des Moines Creek Basin Committee. The agreement covers construction as well as ongoing operation and maintenance of the major capital improvements recommended in the 1997 Des Moines Creek Basin Plan. The construction projects include the Regional Detention Facility (RDF), the Stream Bypass Pipe, Low Flow Augmentation Facility, Habitat Enhancement and Restoration Projects, and the Marine View Drive Culvert Replacement (Marine View Drive Bridge).

Following approval of this interlocal agreement by all of the parties, the Marine View Drive Bridge project will be the first of the projects to start construction. Following completion of the design of the bridge and the renewal of permits, construction of the Marine View Drive Bridge could start as early as July, 2004.

Discussion:

At the February 12, 2004 Council Meeting, the Council remanded the fourth interlocal agreement to the Environment Committee to review the document in detail. A Committee meeting was held February 19. Several issues of primary concern were raised by Council Members at the meeting. They fell into four categories:

- 1) Making sure that the document clearly stated that the level of delegation of the appointed City Representative was at the direction of the City Council;
- 2) That there was a lack of specificity as to how each party authorizes the construction and other contracts for which they are responsible;
- 3) If the Basin Committee came to an impasse, that an option for Mediation would be available before Binding Arbitration; and

- 4) The easement language needed to be clarified such that if a party chose to discontinue their Basin Committee membership, their easements would stay in affect for the remaining members.

In response to these issues of the Environment Committee, seven areas of the interlocal agreement have been modified. It is our hope that all of the changes will be deemed unsubstantial, meaning that the City of SeaTac, who have already approved the interlocal agreement, will not need to have their City Council re-approve the document. The changes are as follows:

Page 6 – additional language has been added to empower each Party's representative as the jurisdiction directs.

Page 7 – additional language has been added to allow professional mediation services at the request of two or more of the Parties in order to settle a dispute before an issue is submitted to binding arbitration.

Pages 21-23 – additional language is added to clarify that a withdrawing Party may not terminate easements granted to the other Parties. This is added in sections pertaining to SeaTac, Des Moines, Port of Seattle, and the State.

Pages 25-26 – additional language was added to acknowledge that the Operations and Maintenance Fund and the Replacement and Improvement Fund are subject to authorization of each Party's legislative authority.

Page 27 – language was added to clarify billing responsibility of the State.

Page 28 – language was added to start the Operation and Maintenance Fund and Replacement and Improvement Fund in calendar year 2005.

Page 29 – funding responsibility when withdrawing is clarified.

The scope of work and budgets for each of the five projects are described in Attachments 6 through 10 of the Agreement. Attachment 14 of the Agreement shows the anticipated operation and maintenance costs and Attachment 15 shows the replacement costs over a 30-year period. Attachment 13 shows the total project cost for construction, operation and maintenance (O&M), and replacement.

In addition to the construction, O&M costs, and facility replacement costs, the Agreement outlines duties for a Treasurer, a Construction Coordinator, an Oversight and Compliance Coordinator, an O&M Coordinator, and the Project Managers.

Under this Agreement, SeaTac is proposed as the Treasurer and all funds for the construction of the projects, O&M, and facility replacement will be managed through the Treasurer. The cost for the Treasurer is included in the O&M Fund.

SeaTac is also proposed as the Construction Coordinator and will be responsible for the construction coordination of the five projects, keeping the Committee informed of construction issues and changes, recommending payment for work, and recommending final acceptance of projects. The cost for the Construction Coordinator is included in the Construction Fund.

King County is proposed as the Oversight and Compliance Coordinator and will be responsible for ensuring that the individual projects are in compliance with permits, and provide oversight of construction inspection to ensure that uniform standards are being met and that the projects fulfill their design goals. The cost for the Oversight and Compliance Coordinator is included in the Construction Fund. Although it is feasible that one coordinator could perform both construction coordination as well as oversight and compliance duties, the Committee felt that two separate coordinators should be used to resolve potential decision conflicts, especially costly design changes and change orders. A decision process is shown in Attachment 11 of the Agreement of this process.

King County is also proposed as the O&M Coordinator and shall be responsible for overseeing and coordinating ongoing facility operation and maintenance following construction. The cost for the O&M Coordinator is included in the O&M Fund.

Des Moines will be the Project Manager for construction of the Marine View Drive Bridge; SeaTac will be the Project Manager for the Bypass Pipeline project; King County will be the Project Manager for the Flow Augmentation project and Fish Habitat projects; and the Port of Seattle will be the Project Manager for the Regional Detention Facility. The cost for the Project Managers are included in the individual project budgets.

Attachment 4 is a chart showing the Committee staffing needs.

Alternatives:

To proceed with this Interlocal Agreement, all five parties must agree to its terms. However, City Council may reject this Agreement in its current form or make substantial changes. If so, the Des Moines Creek Committee would need to restructure the Agreement and reroute the Agreement through each party's Board or Council. As of March 2nd, the agreement has been approved by the City Council of SeaTac.

Financial Impact:

The total construction cost to the Committee is estimated at roughly \$18.1M. This amount also includes a contingency for each individual project. WSDOT is prepared to contribute an amount matching that of the contribution by the Port, not to exceed \$9M. Des Moines would be contributing \$300,000 as full payment toward the construction of the Basin Projects (the 2004 Des Moines Capital Improvement Program includes \$100,000 going toward the MVD Bridge and \$200,000 going toward the remaining projects). Therefore, with the \$18M contributed by WSDOT and the Port, the total construction budget is \$18.3M, allowing for an additional \$200,000 beyond the contingencies of the individual projects. Because SeaTac paid the majority of the costs for the design of the projects (other than the bridge), SeaTac will only be participating in the O&M and Facility Replacement Funds.

The anticipated cost for operation and maintenance of the projects is estimated at \$3.9M over a 30-year period (in 2003 dollars). The annual amount is estimated at \$129,300. Under this Agreement, the annual budget for the first five years of maintenance will be \$130,000, with Des Moines funding 18% of that amount (\$19,500). The Des Moines contribution rate is roughly the proportion of the drainage basin located within the city limits.

The anticipated cost for facility replacement and improvements is estimated at \$1.87M over a 30-year period (in 2003 dollars). The annual amount is estimated at \$62,250. Under this Agreement, the annual budget for the first five years for the replacement and improvement fund will be \$65,000, with Des Moines funding 18% of that amount (\$11,700).

Attachment 3 of the Agreement shows costs that were necessary to complete the final design and obtain permits in a timely manner and were authorized by the Committee. The total cost for this work is estimated at \$182,454. Under this Agreement, Des Moines will be funding 15% of the cost (\$27,368), which is the cost share specified in the 1997 interlocal agreement.

Attachment 2 of the Agreement shows costs that were incurred by King County for doing early actions for construction related activities. The cost is estimated at \$96,395 and is included in the construction fund total of \$18.1M. The cost for the Oversight and Compliance Coordinator (\$495,000), Construction Coordinator (\$300,000) and project monitoring (\$330,000) is also included in the construction fund total of \$18.1M. Attachment 13 shows the total project costs.

The 2004 SWM Capital Improvement Program costs for the Des Moines Creek Basin Projects does not include the Des Moines contributions for the completion of the design of the Basin Projects (\$27,368). Finance is planning to bring before Council in March a 2004 budget amendment ordinance for capital improvement projects requiring re-appropriation of unspent funds from 2003. The approximately \$28,000 in additional funds for the design costs would be included in this 2004 budget amendment ordinance. The funds for the first year of O&M and Facility Replacement (\$19,500 and \$11,700) would be included in next year's 2005 SWM budget.

Recommendation/Conclusion:

Staff recommends approval of this Interlocal Agreement.

Concurrence:

The Legal Department has reviewed the draft Agreement and Resolution as to form and the Finance Department concurs with the methodology for funding the construction, O&M and replacement funds of the projects and using SeaTac as the Treasurer. The City of SeaTac has already approved the Interlocal Agreement and WSDOT, King County and the Port of Seattle are expected to approve the Interlocal Agreement by the first week of April.

PUBLIC WORKS DEPARTMENT'S FIRST DRAFT

02/05/04

DRAFT RESOLUTION NO. 03-280

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing an interlocal agreement between King County, the city of Des Moines, the city of SeaTac, the Washington State Department of Transportation and the Port of Seattle, collectively referred to as the "parties," for the purpose of constructing and operating of, projects to implement the Des Moines Creek Basin Plan.

WHEREAS, the parties share interests within the Des Moines Creek Basin ("basin") and recognize that it contains an extensive natural resource system including streams, lakes, and wetlands which is worthy of restoration and protection to promote water quality, fish habitat, recreation, and flood storage values in the basin, and

WHEREAS, the parties desire to address drainage, flooding, erosion and sedimentation, fish habitat degradation, and water quality problems throughout the basin, and

WHEREAS, existing development in the basin threatens the stability and function of the natural resource system of the basin and has exacerbated flooding, erosion and sedimentation problems, fish habitat degradation, and water quality problems, and

WHEREAS, much of the existing development in the basin was put in before current storm water regulations were in place and thus did not mitigate for the related stream damage, and

WHEREAS, the Des Moines Creek Basin Plan is intended to provide mitigation and storm water improvement for past development and not planned or intended to provide mitigation for future expansion at SeaTac International Airport, and

WHEREAS, present and future development will be constructed with the related storm water facilities to meet current regulations, independent of the projects to implement the Des Moines Creek Basin Plan, and

WHEREAS, the parties recognize that cooperative effort is the most effective and efficient way to protect the basin's natural resource system and to address surface water-related problems, and

ATTACHMENT A

✓ WHEREAS, through previous interlocal agreements, King County, SeaTac, Des Moines and the Port formed the Des Moines Creek Basin Committee ("basin committee") to jointly address stream issues and to develop and implement the Des Moines Creek Basin Plan ("basin plan") which was endorsed by the pertinent legislative bodies, including the Des Moines City Council, and

✓ WHEREAS, the basin plan proposed the construction of capital projects to control damaging stream flows and improve water quality and fish habitat in the basin, and

✓ WHEREAS, King County, SeaTac, Des Moines and the Port previously authorized preparation of a preliminary design report, which identified a series of capital projects to address surface water needs identified in the basin plan, and

✓ WHEREAS, the Washington State Department of Transportation wishes to contribute to Des Moines Creek basin planning efforts to reduce the effects of surface water runoff from State Routes 509 and Interstate Route 5, which it owns and maintains, and SR 99, which it previously developed, and the effects of future improvements to those routes, and

✓ WHEREAS, the parties wish to cooperate to now construct the proposed capital projects, and to provide the necessary operation and maintenance for those projects and secure a facility repair and replacement fund for the proposed projects, and

✓ WHEREAS, these projects are identified as Des Moines Creek Regional Detention Facility (RDF), Des Moines Creek Bypass Pipeline, Marine View Drive Bridge, Des Moines Creek Low Flow Augmentation Facility, and Habitat Enhancement and Restoration,

✓ WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the parties are each authorized to enter into an agreement for cooperative action; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

✓ Sec. 1. The City Manager is hereby authorized to enter into an interlocal agreement, in substantially the same form attached, for the purpose of constructing and operating of, projects to implement the Des Moines Creek Basin Plan.

✓ Sec. 2. The total construction cost share for Des Moines, as outlined in the interlocal agreement, shall not exceed \$300,000.00. 14 15

✓ Sec. 3. The cost share for the Operation and Maintenance Fund and for the Replacement and Improvement Fund for Des Moines, as outlined in the interlocal agreement, shall be 18%.

Sec. 4. The cost share for Amendments to the Previous Scope and Budget for Des Moines, as outlined in Attachment 3 of the interlocal agreement, shall be 15% and shall not exceed \$30,000.

ADOPTED BY the City Council of the City of Des Moines,
Washington this _____ day of _____, 2004 and signed in
authentication thereof this _____ day of _____, 2004.

MAYOR

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

p:\users\linda\doc\agenda\Draft Resolution No. 03-280

Des Moines Creek Restoration Projects Interlocal Agreement
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ATTACHMENT B

**Des Moines Creek Basin Restoration Projects
Interlocal Agreement**

This Agreement is entered into by the City of Des Moines, hereinafter referred to as "Des Moines," the City of SeaTac, hereinafter referred to as "SeaTac," the Port of Seattle, hereinafter referred to as the "Port," the Washington State Department of Transportation, hereinafter referred to as the "STATE", and King County, hereinafter referred to as the "County", and collectively referred to as the "Parties," for the purpose of constructing and operating several projects to implement the Des Moines Creek Basin Plan, jointly prepared by the Parties ("Agreement").

WHEREAS, Des Moines, SeaTac, the Port and the STATE share jurisdiction and services within the Des Moines Creek Basin ("Basin") and recognize that it contains an extensive natural resource system including streams, lakes, and wetlands which are worthy of restoration and protection to promote water quality, fish habitat, recreation, and flood storage values in the Basin; and

WHEREAS, the Parties have worked diligently over the years to protect and preserve the natural resources and aquatic life in Des Moines Creek; and

WHEREAS, the Parties desire to address drainage, flooding, erosion and sedimentation, fish habitat degradation, and water quality problems throughout the Basin; and

WHEREAS, existing development in the Basin has resulted in conditions that threaten the stability and function of the natural resource system of the Basin; and

WHEREAS, the Parties have recognized that cooperative effort is the most effective and efficient way to protect the Basin's natural resource system and to address surface water-related problems across jurisdictions, and have worked through previous interlocal agreements (identified in Attachment 1) to form the Des Moines Creek Basin Committee ("Committee") to

Des Moines Creek Restoration Projects Interlocal Agreement

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jointly address stream issues and to develop the Des Moines Creek Basin Plan ("Basin Plan");
and

WHEREAS, the Basin Plan proposes the construction of capital projects to control
stream flows and improve water quality and fish habitat in the Basin; and

WHEREAS, the Parties' legislative authorities, excepting the STATE, have endorsed the
Basin Plan and have authorized preparation of Final Design documents and application for
permits; and

WHEREAS, the Basin Plan projects are an integral part of the stormwater strategy for
the SR 509 extension and will be submitted by the STATE to meet requirements imposed on
the SR 509 project by permit and/or by law; and

WHEREAS, if the Basin Plan Restoration Projects are not completed, storm water
management facilities will be built for the SR 509 project as required by the WSDOT Highway
Runoff Manual, and the Basin Plan Restoration Projects are therefore a highway purpose; and

WHEREAS, the Basin Committee has secured permits to authorize initial construction of
the proposed Basin Restoration Projects and has applied for other necessary permits; and

WHEREAS, the Parties have in good faith taken early actions to assist in completing
project designs, providing information needed to obtain permits and to allow timely
construction; and

WHEREAS, the Basin Committee intends to reimburse those Parties who funded early
actions on behalf of the Basin Restoration Projects; and

WHEREAS, the Basin Committee intends to reimburse those Parties who funded
ongoing activities approved by the Committee as necessary to complete work and secure
permits authorized by the previous Interlocal Agreement for Final Design and Permitting; and

WHEREAS, the Parties recognize and appreciate the contribution made by King County
in funding five percent of the planning and engineering costs for development of the Basin Plan
and in making available the expertise and assistance of County staff; and

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WHEREAS, the Parties recognize and appreciate the contribution made by the Port of Seattle in providing easements to construct the Regional Detention Facility and portions of the Bypass Pipe; and

WHEREAS, the Parties recognize and appreciate the contribution made by SeaTac in providing easements to construct portions of the Bypass Pipe and significant funding for project development; and

WHEREAS, the Parties recognize and appreciate the contribution made by the STATE in providing easements to construct portions of the Bypass Pipe; and

WHEREAS, the Parties recognize and appreciate the contribution made by Des Moines in performing the planning, engineering, and permitting for construction of the Marine View Drive Bridge, and for providing the easements necessary to construct portions of the Bypass Pipe; and

WHEREAS, the Parties recognize and appreciate the donation of the abandoned sewer line and outfall by the Midway Sewer District; and

WHEREAS, pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, the Parties agree as follows:

I. PURPOSE

The purpose of this Agreement is to provide the means by which the Parties, acting through a joint board under the authority of RCW 39.34.030(4)(a), hereinafter referred to as "the Basin Committee" or the "Committee", will cooperate to conduct and fund the following Basin Plan implementation activities as more fully described herein:

A. Funding and managing the construction of capital projects, known as the Des Moines Creek Basin Restoration Projects (hereinafter referred to as "Projects"), addressing surface water and fish habitat issues within the Basin. Specific projects include the Regional Detention Facility, the Bypass Pipe, the Flow Augmentation Facility, the Habitat Enhancement and Restoration Projects, and the Marine View Drive Culvert Replacement.

Des Moines Creek Restoration Projects Interlocal Agreement

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- 1 B. Funding and managing ongoing operation and maintenance (O&M) of the Projects. O&M
2 activities are intended to maintain compliance with permit conditions, to optimize operation
3 of the Projects to maximize environmental benefits, to respond effectively to emergency
4 conditions, and to provide for funding of necessary annual operations and maintenance
5 including short-term adaptive management and long-term major maintenance due to aging
6 or unforeseen circumstances.
- 7 C. Ongoing monitoring of project effectiveness to document compliance with permitting
8 conditions and to quantify effectiveness of the projects in meeting environmental
9 improvement, hydrologic and engineering design goals. Monitoring results will serve as the
10 basis for any changes proposed to the Projects as part of an adaptive management program
11 addressing ongoing O&M issues.
- 12 D. Authorize reimbursement for some of the Parties, as shown in Attachment 2, for early
13 actions taken to complete tasks which were not included in any previously approved scope
14 of work but that were needed to complete project design, provide information needed to
15 obtain permits and/or allow timely progress towards construction.
- 16 E. Authorize amendment of the Scope and Budget approved under the previous Interlocal
17 Agreement for Final Design and Permitting of the Basin Restoration Projects ("Design
18 Interlocal Agreement") as shown in Attachment 3. This budget amendment is for actions
19 which were beyond the Scope and Budget of the Design Interlocal Agreement, and were
20 previously approved by the Committee as necessary to complete work and obtain permits in
21 a timely manner.
- 22 F. Creation and management of a Replacement and Improvement Fund, a Construction Fund,
23 and an O&M Fund to provide for collection and distribution of funds necessary for
24 construction and ongoing operation and maintenance of the Projects.
- 25 G. Establishment of an administrative structure to continue the Basin Committee and to provide
26 it with the mechanisms needed to manage the construction and operation of the Basin Plan
27 Restoration Projects.

II. PROJECT ADMINISTRATION AND COORDINATION

30 All construction and ongoing operation and maintenance activities shall be performed under the
31 management of the Des Moines Creek Basin Committee.

Des Moines Creek Restoration Projects Interlocal Agreement

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A. Basin Committee Organization

1. Overall project management and direction will be performed by the Committee, which will meet once a month or as otherwise scheduled to review project work products and approve necessary changes to project activities including amending the Scope of Work and Budget, authorizing the Treasurer to make payments, approving design changes, and other necessary oversight activities related to the construction and operation of the Projects.
2. The Committee will be composed of one voting member each from SeaTac, Des Moines, the Port, the STATE, and King County. A quorum for a meeting is representation or a proxy from all Committee voting members. Upon the end of construction and final acceptance of all Projects by the Basin Committee, the memberships of the STATE and King County shall terminate, and all rights, obligations, duties, and liabilities of the STATE and King County under this Agreement shall terminate and cease to exist except that King County retains the right to collect costs previously incurred hereunder. Both the STATE and King county may continue to provide input to the Basin Committee, but not as members of the Committee. Midway Sewer District shall be invited to participate as a non-voting member of the Basin Committee.
3. Each Party shall appoint one representative to serve on the Committee who shall be empowered as their jurisdiction shall direct. The SeaTac and Des Moines representative shall be appointed by the City Manager, the STATE representative shall be appointed by the Urban Corridors Administrator, the Port representative shall be appointed by the Aviation Division Deputy Managing Director, and the King County representative shall be appointed by the Director of King County Department of Natural Resources and Parks. Additional staff persons of the Parties are welcome to attend Basin committee meetings to support Committee activities.
4. The Committee shall continue to operate as a project management team, reaching decisions by consensus with all parties represented at the meeting, except that in the case of emergency meetings decisions will be by consensus of the Parties present. Consensus shall mean a unanimous agreement of all the voting Parties to proceed in a specified manner. Issues that cannot be decided by consensus ~~of~~by the Basin Committee will be referred as needed to each of the officials appointing the representatives for resolution.

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Should two or more Parties request, professional mediation services will be retained to assist these officials in reaching a decision. In the event that these officials do not reach agreement within 30 days, the issue shall be submitted to binding arbitration.

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5. The Committee shall elect a Chairperson from among the voting members to serve a two year term.

B. Committee Powers and Responsibilities

1. The Committee shall meet regularly to consider issues relating to the construction and operation of the Projects, and to reach timely decisions on proposed project changes as described in Section IV (Project Changes).

2. The Committee shall approve a Scope of Work and Budget for all activities relating to the construction and operation of the Projects.

3. The Committee shall manage and direct each of the Parties that are authorized under this Agreement to enter into contracts, as more fully set forth below, to accomplish specific project activities as outlined further in this Agreement.

4. The Committee shall hold all permits for the Projects, except for the Marine View Drive Culvert Replacement project permits which shall be held by Des Moines.

5. The Committee shall serve as the final authority for any proposed design changes, except the Committee may delegate approval of certain change orders and design changes to the Construction Coordinator and the Oversight and Compliance Coordinator or Project Managers as identified in section IV (Project Changes)

6. The Committee shall annually review a proposed Scope of Work and Budget submitted by the Operations and Maintenance Coordinator to fund O&M activities for the following year.

7. The Committee shall set an annual charge for each Party's contribution to the Operation and Maintenance Fund, except that neither the STATE nor King County shall be required to contribute to this Fund. The Committee shall establish the annual charge for each calendar year by September 1st of the preceding year.

8. The Committee shall establish an annual charge for each Party's contribution to the Replacement and Improvement Fund, except that neither the STATE nor King County shall be required to contribute to this Fund. The Committee shall establish the charge for each calendar year by September 1st of the preceding year.

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1 9. The Committee shall authorize the Treasurer to make payments for approved activities as
2 described in Section II.F.1 (Staff Duties - Treasurer).

3 10. The Committee shall elect a Chair.

4 11. The Committee may authorize a Party to hire a coordinator on behalf of the Committee.

C. Committee Member Duties

5
6 1. The Committee member of each Party shall make every effort to attend all regular
7 meetings of the Basin Committee.

8 2. When an appointed member cannot attend a Committee meeting the appointing Party
9 shall send a substitute fully authorized to act on behalf of the Party, or provide another
10 Party with a proxy vote for any decisions before the Committee. To exercise a proxy,
11 the absent Party must notify the Chair orally or in writing prior to the meeting of their
12 intended absence, the Party to which they have assigned their proxy, and any limits on
13 that proxy. The Chair may be designated as proxy. No member may vote more than
14 one proxy.

15 3. The Parties shall make every effort to support timely decision-making by the
16 Committee. Should a Committee decision be held in abeyance for two of more
17 regularly scheduled meetings due to consecutive absences of one Party, the Committee
18 may at their discretion choose to proceed with decision-making for any or all of the
19 issues held in abeyance by the absences.

20 4. Each of the Parties shall make every effort to have their appointed representative attend
21 emergency meetings of the Committee or to send a substitute authorized to take action.
22 Given the inherent time-sensitive nature of emergency meetings, decisions shall be
23 made by consensus of the Parties in attendance. Members are authorized to delegate
24 proxy authority to any of the other Parties, providing the chair is notified by the absent
25 Party prior to the start of the meeting.

D. Committee Chair Duties

26
27 1. The Chair of the Committee shall serve as the primary contact person for the Committee
28 for communications relating to the construction and operation of the Projects. The
29 Chair shall serve as the recipient of mail and other forms of communication intended for
30 the Committee and shall provide copies of such communications in a timely manner to
31 the appropriate Parties and staff.

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2. The Chair shall schedule regular meetings of the Committee and shall communicate the time and location of the scheduled meetings to other Parties and affected staff at least two weeks prior to any regular meeting.
3. The Chair shall call emergency meetings whenever an emergency situation calls for rapid decisions by the Committee. Emergency meetings may be called with 24 hour notice.
4. The Chair shall set the agenda for regular and emergency meetings and shall prepare minutes for all meetings of the Committee.
5. The Chair shall recognize the proxy of any Party which has requested proxy representation prior to the start of a meeting. For instances where the Chair has been assigned the proxy for the absent member, the Chair shall vote the proxy.
6. The Chair's term shall be 2 years.
7. The Chair is authorized to sign documents on behalf of the Committee.

E. Committee Staffing

1. The Parties hereby authorize one or more of the Parties to act on their behalf in order to accomplish specific project activities as described herein, and authorize the Committee to compensate those Parties for their activities on behalf of the Parties. The Parties so authorized may, on behalf of all the Parties, under the Committee's management and direction, provide staff and let contracts as necessary to carry out the specific project activities assigned. Attachment 4 shows identified Committee staff positions and their reporting structure.
2. The Committee shall appoint one Member to serve as Treasurer which may be a single individual or an entity. A Scope of Work and Budget for the duties of Treasurer shall be developed and approved by the Committee, and the Committee is hereby authorized to approve funding for this position, which funding shall be included in the Operations and Maintenance Fund, and which funding shall not exceed the actual costs incurred in performing the duties of this position. The Treasurer for the Committee shall be SeaTac, until such time as the Committee appoints another Party to serve as Treasurer.
3. The Committee shall appoint a Construction Coordinator which may be a single individual or an entity. The position of Construction Coordinator shall be dissolved upon completion of construction and final acceptance of the projects. A Scope of Work and

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Budget for the duties of Construction Coordinator shall be developed and the Committee is hereby authorized to approve the funding for this position, which funding shall be included in the Construction Fund and which funding shall not exceed the actual costs incurred in performing the duties of this position. The Construction Coordinator shall be SeaTac until such time as the Committee appoints another Party to serve as Construction Coordinator.

4. The Committee shall appoint an Oversight and Compliance Coordinator which may be a single individual or an entity. The position of Oversight and Compliance Coordinator shall be dissolved upon the completion of construction and final acceptance of the projects. A Scope of Work and Budget for the duties of Oversight and Compliance Coordinator shall be developed and the Committee is hereby authorized to approve the funding for this position, which funding shall be included in the Construction Fund and which funding shall not exceed the actual costs incurred in performing the duties of this position. The Oversight and Compliance Coordinator shall be King County until such time as the Committee appoints another Party to serve as Oversight and Compliance Coordinator.
5. The Committee shall appoint an Operations and Maintenance Coordinator which may be a single individual or an entity. A Scope of Work and Budget for the duties of Operations and Maintenance Coordinator shall be developed and the Committee is hereby authorized to approve the funding for this position, which funding shall be included in the Operations and Maintenance Fund and which funding shall not exceed the actual costs incurred in performing the duties of this position. The Operations and Maintenance Coordinator shall be King County until such time as the Committee appoints another Party to serve as Operations and Maintenance Coordinator.
6. The Committee shall appoint a Regional Detention Facility (RDF) Project Manager which may be a single individual or an entity. A Scope of Work and Budget for the duties of RDF Project Manager shall be developed and the Committee is hereby authorized to approve the funding for this position, which funding shall be included as an RDF project cost and which funding shall not exceed the actual costs incurred in performing the duties of this position. The RDF Project Manager shall be the Port until such time as the Committee appoints another Party to serve as RDF Project Manager.

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- 1 7. The Committee shall appoint a Bypass Pipe Project Manager which may be a single
2 individual or an entity. A Scope of Work and Budget for the duties of Bypass Pipe
3 Project Manager shall be developed and the Committee is hereby authorized to approve
4 the funding for this position, which funding shall be included as a Bypass Pipe project
5 cost and which funding shall not exceed the actual costs incurred in performing the duties
6 of this position. The Bypass Pipe Project Manager shall be SeaTac until such time as the
7 Committee appoints another Party to serve as Bypass Pipe Project Manager.
- 8 8. The Committee shall appoint a Habitat Enhancement and Restoration Project Manager
9 which may be a single individual or an entity. A Scope of Work and Budget for the
10 duties of Habitat Enhancement and Restoration Project Manager shall be developed and
11 the Committee is hereby authorized to approve the funding for this position, which
12 funding shall be included as a Habitat Enhancement and Restoration project cost and
13 which funding shall not exceed the actual costs incurred in performing the duties of this
14 position. The Habitat Enhancement and Restoration Project Manager shall be King
15 County until such time as the Committee appoints another Party to serve as Habitat
16 Enhancement and Restoration Project Manager.
- 17 9. The Committee shall appoint a Flow Augmentation Project Manager which may be a
18 single individual or an entity. A Scope of Work and Budget for the duties of Flow
19 Augmentation Project Manager shall be developed and the Committee is hereby
20 authorized to approve the funding for this position, which funding shall be included as a
21 Flow Augmentation project cost and which funding shall not exceed the actual costs
22 incurred in performing the duties of this position. The Flow Augmentation Project
23 Manager shall be King County until such time as the Committee appoints another Party
24 to serve as Flow Augmentation Project Manager.
- 25 10. The Committee shall appoint a Marine View Drive Culvert Replacement Project
26 Manager which may be a single individual or an entity. A Scope of Work and Budget for
27 the duties of Marine View Drive Culvert Replacement Project Manager shall be
28 developed and the Committee is hereby authorized to approve the funding for this
29 position, which funding shall be included as a Marine View Drive project cost and which
30 funding shall not exceed the actual costs incurred in performing the duties of this

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position. The Marine View Drive Project Manager shall be Des Moines until such time as the Committee appoints another Party to serve as Marine View Drive Project Manager.

11. The Committee may, at its discretion, appoint a Party to hire a Basin Committee Coordinator. A Scope of Work and Budget shall be developed and the Committee is hereby authorized to approve the funding for this position, which funding shall be included in the Operations and Maintenance Fund.

F. Staff Duties

1. Treasurer

- a) The Treasurer shall set up, manage, and oversee the management of the Replacement and Improvement Fund, the Construction Fund and the O&M Fund.
- b) The Treasurer shall provide the Committee with a quarterly update of the status of the Construction Fund, and a semi-annual update of the status of the Replacement and Improvement Fund and the O&M Fund.
- c) The Treasurer shall bill the Parties for their contributions to the Construction Fund as provided for in this Agreement, and their annual contributions to the Replacement and Improvement Fund and the O&M Fund, as described in Section VI (Costs) of this agreement.
- d) The Treasurer shall hold moneys collected for each Fund in separate accounts. Any interest collected shall remain in that account for that Fund.
- e) The Treasurer shall issue payments to Parties or their contractors for work performed in accomplishing the duties and responsibilities identified by an approved project Scope of Work, provided such payment requests are within the approved project Budget and for work within the scope of the contract. Approval of payments shall be certified by one of the following: the Construction Coordinator, the Committee Chair or the Committee.
- f) The Treasurer shall issue payments within 30 days of receiving an approved invoice.
- g) The Treasurer shall maintain records and reports sufficient to satisfy state audits and shall retain records for at least six years after completion of each contract

2. Construction Coordinator

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- a) The Construction Coordinator shall serve as a single point of contact for construction related activities, acting under the direction and management of the Committee.
- b) The Construction Coordinator in cooperation with the designated Project Managers shall prepare recommendations to the Committee on the number of contracts, the Scope of Work and Budget for each contract, and the management and oversight conditions of specific contracts needed to construct the Projects as directed by the Committee.
- c) The Construction Coordinator shall obtain Committee approval of a Scope and Budget prior to any contracts for construction being entered into by any of the designated Parties through their appointed Project Manager
- d) The Construction Coordinator shall oversee the change order and design change processes, as described in Section IV (Project Changes).
- e) The Construction Coordinator shall provide certification to the Treasurer indicating the Construction Coordinator's approval to proceed with making payments for specific Project costs.
- f) The Construction Coordinator shall provide the Committee with a monthly update of the status of all Projects and a report listing approved change orders and design changes, current schedule for completion, costs to date, budget status and trends, identification of any coordination difficulties, current status of all contracts, a summary of contractor performance, forecast cost to complete the projects, lessons learned, and other such information as requested by the Committee.
- g) The Construction Coordinator shall recommend to the Committee when to proceed with final acceptance of Projects.
- h) Upon completion of construction and final acceptance of the Projects, the position of Construction Coordinator shall be dissolved and any remaining responsibilities shall be turned over to the O&M Coordinator

3. Oversight and Compliance Coordinator

- a) The Oversight and Compliance Coordinator shall assist the Construction Coordinator in the management of the change order and design change process as described in section IV (Project Changes).

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- b) The Oversight and Compliance Coordinator shall prepare a monthly report to the Committee detailing the effectiveness of permit compliance and monitoring activities for the Projects both individually and collectively.
- c) The Oversight and Compliance Coordinator shall provide oversight of erosion control and monitoring to ascertain that construction of the Projects individually and collectively adheres to permit and reporting requirements and design goals.
- d) The Oversight and Compliance Coordinator shall work in cooperation with the Construction Coordinator and the Project Managers to develop a monitoring program sufficient to provide data needed for permit compliance, to document the effectiveness of the Projects in fulfilling their hydrologic design and natural resource restoration goals, and to serve as the basis of an adaptive management program.
- e) The Oversight and Compliance Coordinator shall provide oversight of construction inspection and testing to ascertain that there are uniform standards and reliable results among the Projects,
- f) The Oversight and Compliance Coordinator shall monitor the individual Project Managers to ensure that the Projects are consistent with permit requirements and are well integrated with other construction activities in the vicinity.
- g) The Oversight and Compliance Coordinator shall work in cooperation with the Construction Coordinator and affected local public works, fire and safety officials, to develop an Emergency Response Plan detailing how the Projects will be operated in the event of emergencies, detailing how decision-making will occur during emergencies, and detailing specific roles and responsibilities for carrying out the actions necessary to protect public health and safety and assure the safe and effective ongoing operation of the Projects. The Emergency Response Plan shall be completed and approved prior to final acceptance of the projects.
- h) The Oversight and Compliance Coordinator shall be responsible for arranging for regular meetings and field reviews by the resource agencies.
- i) The Oversight and Compliance Coordinator shall recommend to the Committee when to proceed with final acceptance of Projects.

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- j) Upon completion of construction and final acceptance of the Projects, the position of Oversight and Compliance Coordinator shall be dissolved and any remaining responsibilities shall be turned over to the O&M Coordinator.

4. Operations and Maintenance Coordinator

- a) The O&M Coordinator shall oversee the ongoing operation and maintenance of the Projects upon completion of construction and final acceptance of the Projects.
- b) The O&M Coordinator shall oversee operations and ascertain whether the ongoing operation of the Projects complies with permit conditions, including all long term monitoring and reporting responsibilities, and provide the Committee with timely advice on the status of Project operations.
- c) The O&M Coordinator shall develop an annual budget and scope of work addressing O&M activities for the following year, which shall be submitted to the Committee for approval prior to July 1st each year. The budget shall include the estimated Operation & Maintenance budget, estimated annual contributions for each Party, forecasted expenditures for current year and any remaining balance from previous years. This budget shall be forwarded to each of the Parties for review and for appropriation action, if required by the legislative or administrative processes and procedures of that Party.
- d) The O&M Coordinator shall adhere to the approved Scope and Budget for annual O&M activities.
- e) The Parties hereby authorize the O&M Coordinator, under the direction and management of the Committee, to enter into the contracts necessary to accomplish ongoing operation and maintenance of the Projects. The O&M Coordinator shall obtain committee approval of a Scope and Budget for each contract, and the management and oversight conditions of specific contracts needed to carry out the purposes of the Committee. A list of anticipated O&M contracts is given in Attachment 5.
- f) The O&M Coordinator shall prepare annual recommendations on the number of contracts, the tasks within each contract, and the management and oversight of specific contracts needed to provide for the ongoing operation and maintenance of the Projects.

- g) The O&M Coordinator shall prepare updates to the Emergency Response Plan as needed. All updates to the Emergency Response Plan shall be approved by the Committee prior to implementation.
- h) The O&M Coordinator shall bring all proposed changes in approved O&M activities to the Committee for their approval prior to implementation, excepting emergency actions which may be implemented immediately providing the changes in emergency activities adhere to the adopted Emergency Action Plan whenever possible.
- i) The O&M Coordinator shall oversee all Adaptive Management efforts associated with the ongoing operation and maintenance of the Projects, and shall prepare a report to the Committee at no more than 5 year intervals with specific recommendations for any changes to Project O&M suggested by the results of the adaptive management program.
- j) The O&M Coordinator shall oversee the implementation of the Emergency Response Plan, and shall work with appropriate local public works, fire and safety officials to perform an annual emergency response training event.
- k) The O&M Coordinator shall prepare a semi-annual report to the Committee detailing the status of Projects, any suggested operational changes, and a record of maintenance activities undertaken in the half-year. The report shall be submitted as part of the annual O&M budget review.
- l) The O&M Coordinator shall assume any remaining duties of the Oversight and Compliance Coordinator and the Construction Coordinator when those positions are dissolved at the completion of construction and final acceptance of Projects.

5. Project Managers

- a) The Parties hereby authorize Project Managers, under the direction and management of the Committee, to enter into contracts for the construction of their respective individual project, provided such contracts adhere to the approved Scope and Budget for their Project.
- b) Project Managers shall be responsible for the administration of contracts and agreements necessary to accomplish the construction of their Project in a timely fashion.

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- c) Project Managers shall work in cooperation with the Construction Coordinator and the Oversight and Compliance Coordinator to ensure that contracts and agreements for their Project are consistent with permit requirements and other agreements, are within the Committee approved Scope and Budget for the Project and are consistent with the Committee's design goals.
- d) Project Managers shall work in cooperation with the Oversight and Compliance Coordinator to ensure that construction inspection and testing are uniform and reliable across all Projects, and are performed in a timely manner.
- e) Project Managers shall work in cooperation with the Oversight and Compliance Coordinator and the Construction Coordinator to ascertain that Committee staff and their representatives (to include contractors) have the necessary access to the site to confirm that specific Projects are being constructed in compliance with permit conditions, monitoring needs, design goals, and contract plans and specifications.
- f) Project Managers shall perform or arrange for appropriate construction inspection and testing as called for by the Scope of Work.
- g) Project Managers shall adhere to the design change and change order process described in Section IV (Project Changes) and shall obtain permission through the Construction Coordinator and the Oversight and Compliance Coordinator for any change orders or proposed design changes that exceed their authority.
- h) Project Managers shall provide a monthly progress report to the Construction Coordinator which shall include all change orders approved under the Project Manager's authority, current schedule for completion, costs to date, budget status and trends, identification of any coordination difficulties, current status of all contracts, a summary of contractor performance, forecast cost to complete the project, lessons learned, and other such information as requested by the Construction Coordinator.

6. Basin Committee Coordinator

- a) A Basin Committee Coordinator may be authorized by the Committee to be appointed and funded by one of the Parties. If so appointed, the Basin Committee Coordinator shall serve as a meeting facilitator for the Committee, prepare agenda

and meeting notes, prepare issue papers and other documents as needed to assist the Committee in analyzing issues and reaching decisions.

- b) The Basin Committee Coordinator shall serve at the discretion of the Committee.
- c) The Basin Committee Coordinator shall perform other duties as assigned by the Committee.

III. PROJECT ACTIVITIES

All plans, specifications and cost estimates shall be prepared in accordance with the current State of Washington Standard Specifications for Road, Bridge and Municipal Construction, and amendments thereto, and adopted design standards, unless otherwise noted. The following activities will be accomplished under the direction and management of the Committee:

- A. Construction of a Regional Detention Facility (RDF) to increase the ability of the wetland to store excess stream flows, to replace invasive and non-native wetland plants with native wetland plants and to provide conditions conducive to water quality improvements and improvements in stream flows. The RDF will consist of excavations around the perimeter of the Northwest Ponds wetlands, plantings in excavated areas, construction of two berms and associated control structures, construction of diversion piping, relocation and restoration of 2100 feet of stream channel and restoration of the riparian corridor along both existing and relocated creek segments north of South 200th Street. Construction of the RDF is described in the attached Scope of Work and Budget (Attachment 6).
- B. Construction of the Bypass Pipe to allow destructive volumes of existing stream flows to be removed from sensitive natural stream sections and conveyed through a single-use stream Bypass Pipe directly to Puget Sound, where it will discharge on the slope of the stream delta at a depth of approximately 135 feet below sea level. Construction of the Bypass Pipe is described in the attached Scope of Work and Budget (Attachment 7).
- C. Construction of a Flow Augmentation Facility to allow for addition of groundwater to the stream during times of extremely low stream flows, for the purpose of sustaining a minimal level of aquatic life in the streams low flow channel. Final design and construction of the Flow Augmentation Facility is described in the attached Scope of Work and Budget (Attachment 8).

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- D. Construction of the Habitat Enhancement and Restoration Projects to stabilize habitat structures and increase the quantity and quality of aquatic habitat within Des Moines Creek, between South 200th Street and Puget Sound. Final design and construction of the Habitat Enhancement and Restoration Projects is described in the attached Scope of Work and Budget (Attachment 9).
- E. Construction of the Marine View Drive Culvert Replacement to remove the existing culvert, which constrains the stream and blocks migration of fish, and replace it with a bridge. Construction of the Marine View Drive Culvert Replacement is described in the attached Scope of Work and Budget (Attachment 10).
- F. Oversight and monitoring of the Projects during the construction phase to ascertain compliance with design goals, permit requirements, monitoring requirements, erosion control requirements, and appropriate guidelines.
- G. Ongoing Operation and Maintenance of the Projects after construction and final acceptance of the Projects, including but not limited to maintenance and operation of constructed structures, maintenance and replanting of wetland plantings, maintenance and replanting of streamside vegetation, bank protection activities, maintenance of aquatic habitat structures, control of invasive plant species, preparation and implementation of emergency action plans, control of wildlife hazards in the vicinity of the projects, and the administration of the adaptive management program once construction is completed.
- H. Creation and ongoing management of a Construction Fund to collect and manage funds necessary to pay for construction of the Projects.
- I. Creation and ongoing management of a Replacement and Improvement Fund to collect and manage funds necessary to pay for replacement of project features which suffer damage, and to pay for any improvements found necessary as a result of the monitoring and adaptive management program or as the result of changing watershed conditions.
- J. Creation and ongoing management of an Operation and Maintenance Fund to collect and manage funds necessary to pay for the ongoing operation of the projects and to fund normal maintenance activities for the Projects.

IV. PROJECT CHANGES

- A. Changes to Project designs which change the fundamental functioning of a significant project feature, as determined by the Engineer of Record, and so risk altering the delicate compromise of design issues which were considered during the design of the Restoration Projects, shall be known as Design Changes.
- B. Changes to the Project designs which do not change the fundamental functioning of project features, but instead affect contracting agreements for the projects such as quantities, materials chosen or the specific technique used to accomplish a task, shall be known as Change Orders.
- C. The Design Change and Change Order process is shown on Attachment 11. Project Managers are authorized to approve Change Orders which do not exceed the lesser of \$25,000 or 10% of project contingency, or which do not extend the completion date of the project by 7 days or more. All other requests for Change Orders and all Design Changes will be forwarded to the Construction Coordinator.
- D. The Construction Coordinator is authorized to approve Change Orders that are within the Scope and Budget of the individual projects provided that they do not exceed 10% of the project contingency, providing the Oversight and Compliance Coordinator concurs with the recommended change.
- E. The Construction Coordinator shall forward to the Committee all requests for change orders that are out-of-scope, or out-of-budget, or exceed 10% of Project contingency, or where the Construction Coordinator and the Oversight and Compliance Coordinator could not reach consensus on a recommended action. The Construction Coordinator shall prepare a written report summarizing the proposed change, the affect on Project budgets and schedules, and include any recommendations from the Oversight and Compliance Coordinator. The Committee shall have final authority for all Change Orders that do not meet the requirements of paragraph D (above).
- F. The Construction Coordinator and the Oversight and Compliance Coordinator will consult on all requested Design Changes to determine if review by the Engineer of Record is warranted. The requested Design Change will be forwarded to the Engineer of Record if either or both of the Coordinators requests such review. Upon receipt of the Engineer of Record's review, or if neither Coordinator requests review by the Engineer of Record, the

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Coordinators shall prepare a written report for the Committee as described in paragraph G below.

G. The Construction Coordinator shall forward to the Committee all requests for Design Changes along with a report containing an analysis of the affects of the proposed change on the functioning of the Restoration Projects, the effect on Project budgets and schedules, and a recommended course of action. The Oversight and Compliance Coordinator shall review all proposed Design Changes with the Construction Coordinator to seek consensus on a recommendation to the Committee. When consensus can not be reached, the Oversight and Compliance Coordinator shall independently present their recommendation to the Committee for resolution. The Committee shall have the final authority for approval of Design Changes.

H. The Committee is authorized to modify the Project Change Process as needed to efficiently administer project management responsibilities, provided the proposed changes are approved by all Parties.

V. PARTY RESPONSIBILITIES

A. SeaTac shall:

1. Provide a representative to serve on the Basin Committee and any necessary staff support needed by the Committee member.

2. Provide water quality, fisheries and stream flow data that is collected in the normal course of business and that is relevant to the design, construction or ongoing operations and maintenance of the Projects.

3. Provide necessary easements at no cost for the construction, operation and maintenance of the projects identified in Attachment 12. Title for all property will remain with the original owner. Should any Party withdraw from this agreement, all easement rights granted to ~~of~~ that Party shall terminate and be void A withdrawing Party may not terminate easements granted to other Parties for construction, operation and maintenance of the Projects.

4. Provide Committee approved staff to fulfill the duties of Treasurer for the Basin Committee.

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5. Provide Committee approved staff to fulfill the duties of Construction Coordinator for the Basin Committee.

6. Provide Committee approved staff to fulfill the duties of Bypass Pipe Project Manager.

B. Des Moines shall:

1. Provide a representative to serve on the Basin Committee and any necessary staff support needed by the Committee member.

2. Provide water quality, fisheries and stream flow data that is collected in the normal course of business and that is relevant to the design, construction or ongoing operations and maintenance of the Projects.

3. Provide necessary easements at no cost for the construction, operation and maintenance of the projects identified in Attachment 12. Title for all property will remain with the original owner. Should any Party withdraw from this agreement, all easement rights granted to of that Party shall terminate and be void. A withdrawing Party may not terminate easements granted to other Parties for construction, operation and maintenance of the Projects.

4. Provide Committee approved staff to fulfill the duties of Marine View Drive Project Manager for the Basin Committee.

C. Port of Seattle shall:

1. Provide a representative to serve on the Basin Committee and any necessary staff support needed by the Committee member.

2. Provide water quality, fisheries and stream flow data that is collected in the normal course of business and that is relevant to the design, construction or ongoing operations and maintenance of the Projects.

3. Provide the Committee with all relevant and timely information relating to the potential design and construction of the airport related projects in the vicinity of the Regional Detention Facility for the purpose of coordinating construction and operation of the surface water management facilities.

4. Provide necessary easements at no cost for the construction, operation and maintenance of the projects identified in Attachment 12. Title for all property will remain with the original owner. Should any Party withdraw from this agreement, all easement rights granted to of that Party shall terminate and be void. A withdrawing Party may not

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terminate easements granted to other Parties for construction, operation and maintenance of the Projects.

5. Provide Committee approved staff to fulfill the duties of Regional Detention Facility Project Manager.

D. STATE shall:

1. Provide a representative to serve on the Basin Committee until the completion of construction and any necessary staff support needed by the Committee member. At the completion of construction and final acceptance of the projects, the membership of the STATE on the Committee shall terminate, and all rights, obligations, duties and liabilities of the STATE under this Agreement shall terminate and cease to exist. The STATE may continue to provide input and advice to the Committee, but not as a Committee member.

2. Provide water quality, fisheries and stream flow data that is collected in the normal course of business and that is relevant to the design, construction or ongoing operations and maintenance of the Projects.

3. Provide the Committee with all relevant and timely information relating to the potential design and construction of the SR 509 extension projects in the vicinity of the Regional Detention Facility for the purpose of coordinating construction and operation of the surface water management facilities.

4. Provide necessary easements at no cost for the construction, operation and maintenance of the projects identified in Attachment 12. Title for all property will remain with the original owner. Should any Party withdraw from this Agreement, all easement rights granted to ~~of~~ that Party shall terminate and be void. A withdrawing Party may not terminate easements granted to other Parties for construction, operation and maintenance of the Projects.

5. The STATE may, if it desires, furnish an inspector for the Projects. Any costs for such inspection will be borne solely by the STATE. All contact between said inspector and the Des Moines Creek Basin Restoration Projects shall be through the Construction Coordinator.

6. The STATE agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands

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of any nature resulting from the performance of the work under this Agreement.

Projects shall be in permit compliance at the time of this letter. WSDOT is released

from performance of all permit obligations upon delivery of this letter.

E. King County shall:

1. Provide a representative to serve on the Basin Committee and any necessary staff support needed by the Committee member. At the completion of construction and final acceptance of the Projects by the Committee, the membership of the County on the Committee shall terminate. In addition, at the completion of construction and final acceptance of the Projects by the Committee all rights, obligations, duties and liabilities of the County under this Agreement except for the right to collect costs previously incurred under this Agreement shall terminate and cease to exist. The County may continue to provide input and advice to the Committee, but not as a Committee member. Upon termination of the County's membership on the Committee, the County may enter into contracts for services to fill positions and accomplish activities described herein.
2. Provide water quality, fisheries and stream flow data that is collected in the normal course of business and that is relevant to the design, construction or ongoing operations and maintenance of the Projects.
3. Provide Committee approved staff to fulfill the duties of Oversight and Compliance Coordinator for the Basin Committee.
4. In the event a contract for services is entered into, provide Committee approved staff to fulfill the duties of Operations and Maintenance Coordinator for the Basin Committee.
5. Provide Committee approved staff to fulfill the responsibilities of Fish Habitat Improvements Project Manager for the Basin Committee.
6. Provide Committee approved staff to fulfill the responsibilities of Flow Augmentation Project Manager for the Basin Committee.

F. Midway Sewer District

1. Midway Sewer District shall be welcomed to participate as a non-voting member of the Committee, should it choose to do so.

VI. COSTS

Des Moines Creek Restoration Projects Interlocal Agreement

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The Parties agree to share costs incurred by the Committee for the final permitting, construction and ongoing operation and maintenance of the Des Moines Creek Restoration Projects as described below:

A. Construction Costs

1. All costs shown in Attachment 2, Reimbursement for Early Actions, shall be considered construction costs and shall be included as a portion of the overall project costs authorized by this agreement.
2. Total estimated project costs are shown as Attachment 13.
3. STATE agrees to provide up to \$9,000,000 to support the construction of the Basin Restoration Projects provided that the STATE's contribution does not exceed 50% of the overall construction costs and that the STATE's contribution does not exceed the Ports contribution. STATE contributions made before July 1st 2005 are not to exceed \$6,800,000. The Committee acknowledges that STATE may receive mitigation credit for portions of this contribution.
4. The Port agrees to provide up to \$9,000,000 to support the construction of the Basin Restoration Projects provided that the Port's contribution does not exceed 50% of the overall construction costs and that the Port's contribution does not exceed the STATE's contribution.
5. Des Moines is acknowledged for providing significant monetary support, staff time and effort on behalf of the Committee in order to secure the design and permitting for the Des Moines Creek Culvert Replacement. In addition, Des Moines agrees to provide \$300,000 to support the construction of the Basin Restoration Projects.
6. SeaTac is acknowledged for providing more than \$860,000 in funding needed to complete the design and permitting of the Des Moines Creek Restoration Projects.
7. Funds will be paid to the Treasurer and will be deposited in the Construction Fund account, to be disbursed in accordance with the Committee approved Scopes of Work and Budgets.
8. Parties shall reimburse the Treasurer within 30 days of receipt of invoice.
9. The Parties agree to submit a final bill to the STATE within forty-five (45) days after completion of construction and final acceptance of Projects.

B. Operations and Maintenance Costs

Des Moines Creek Restoration Projects Interlocal Agreement

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1. The Committee shall approve an annual Operation and Maintenance budget, which shall identify the funds necessary to fund ongoing O&M of the Basin Restoration Projects, excepting the Marine View Drive Bridge which shall continue to be operated and maintained by Des Moines and the STATE as long as it remains a State Highway. In the event Marine View Drive is no longer a state highway, the operation and maintenance of the Marine View Drive Bridge shall be performed by Des Moines.
2. The Port of Seattle, SeaTac and Des Moines shall be responsible for funding the annual O&M budget. Costs for the operation and maintenance of the Projects, excepting Marine View Drive Bridge, shall be paid 41% by the Port, 41% by SeaTac and 18% by Des Moines. Funding for the Operations and Maintenance budget shall be subject to any necessary authorization by each Party's legislative authority.
3. Annual O&M contributions shall be paid to the Treasurer. 40% of the annual amount shall be paid by April 30th, another 40% by July 1st, and the remaining 20% by October 15th. The initial O&M Fund budget is described in Attachment 14. For the initial 5 years of the project, the annual O&M budget shall be \$130,000. All funds remaining at the end of the year shall remain in the O&M Fund and shall be carried forward for use on O&M activities in future years.
4. Ongoing O&M funding and Replacement and Improvement funding by the cities of the Basin Restoration Projects shall be deemed to be eligible for compliance with RCW Chapter 90.03.525, which requires jurisdictions to annually report on the use of STATE surface water fees. Funds for annual O&M activities and funds for the Replacement and Improvement costs for the Projects, at the discretion of the Cities, may be considered to be from STATE surface water fees paid to the Cities, and successful ongoing operation and annual maintenance of the Projects is considered to show valid and appropriate use of the STATE's surface water fees for roadway impacts.
5. Funds will be paid to the Treasurer and will be deposited in the O&M Fund account, to be disbursed at the direction of the Committee.

C. Replacement and Improvement Costs

1. The Committee shall establish an annual charge for the purpose of accumulating a Replacement and Improvement Fund.

Des Moines Creek Restoration Projects Interlocal Agreement

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2. The Port, SeaTac and Des Moines shall be responsible for funding the annual contribution to the Replacement and Improvement Fund. Costs for the Replacement and Improvement Fund shall be paid 41% by the Port, 41% by SeaTac and 18% by Des Moines. Funding for the Replacement and Improvement Fund shall be subject to any necessary authorization by each Party's legislative authority.

3. Committee shall review the supporting documentation that determines the amount of the annual charge for Replacement and Improvement funding every 5 years, and shall consider such changes as are necessary to provide ongoing protection to Des Moines Creek and its biological community. The initial Replacement and Improvement Fund budget is described in Attachment 15. For the initial 5 year period, the annual budget for the Replacement and Improvement Fund shall be \$ 65,000.

4. Funds will be paid to the Treasurer and will be deposited in the Replacement and Improvement Fund account, to be disbursed at the direction of the Committee.

D. Costs Associated with Amendment of the Previous Interlocal Agreement

1. All costs shown in Attachment 3, having been previously approved by the Committee as necessary to complete final design and obtain permits in a timely manner, shall be paid 67% by SeaTac, 13% by Port, 15% by Des Moines and 5% by King County.

E. Cost Over-runs

1. In the unlikely event that construction funds prove insufficient to complete the Projects as scheduled, the Committee may phase construction, seek additional funding or request a renegotiation of this Agreement.

F. Grants

1. Should grants for any of the work become available the Committee is authorized to include and expend the funds and reduce the overall costs of the affected Projects.

VII. BILLING AND PAYMENT

A. Construction Costs

1. The Treasurer shall bill all Parties excepting the STATE 25% of their contribution to the Construction Fund immediately upon the execution of this agreement. The Treasurer shall bill all Parties excepting the STATE 50% of their contribution one year after the execution of this agreement depending upon progress of the construction of the Basin

Des Moines Creek Restoration Projects Interlocal Agreement

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Projects. The Treasurer shall bill all Parties excepting the STATE the remaining 25% of their contribution at the second anniversary of the execution of this agreement depending upon progress of the construction of the Basin Projects.

2. The STATE, in consideration of the faithful performance of work done by the Basin Committee, agrees to reimburse the Basin Committee for the actual direct and related indirect cost of the work. Estimates of the cost for work to be performed by the Basin Committee at the STATE's expense are included as attachments to this agreement. Partial payments shall be made by the STATE, upon request of the Basin Committee, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.
3. All Parties shall forward payment to the Treasurer within 30 days of receipt of the invoice.

B. Operation and Maintenance Costs

1. The Treasurer shall bill SeaTac, Port and Des Moines 40% of their annual contribution to the Operation and Maintenance Fund by March 30th of each year. The Treasurer shall bill SeaTac, Port and Des Moines 40% of their contribution by June 1st of each year. The Treasurer shall bill SeaTac, Port and Des Moines the remaining 20% of their contribution by September 15th of each year.
2. SeaTac, Port and Des Moines shall forward payment to the Treasurer within 30 days of receipt of the invoice.
3. The first payment shall be made in calendar year 2005.

C. Replacement and Improvement Costs

1. The Treasurer shall bill SeaTac, Port and Des Moines 50% of their annual contribution to the Replacement and Improvement Fund by May 1st of each year. The Treasurer shall bill SeaTac, Port and Des Moines the remaining 50% of their contribution by November 1st of each year.
2. SeaTac, Port and Des Moines shall forward payment to the Treasurer within 30 days of receipt of the invoice.
3. The first payment shall be made in calendar year 2005.

Des Moines Creek Restoration Projects Interlocal Agreement

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D. Costs Associated with Amendment of the Previous Interlocal Agreement

1. The Treasurer shall bill SeaTac, Port, King County and Des Moines for their portion of the costs shown in Attachment 3 as soon as practicable after execution of this Agreement.

2. SeaTac, Port, King County and Des Moines shall forward payment to the Treasurer within 30 days of receipt of the invoice, and the Treasurer shall forward payment to King County as soon as practicable thereafter..

VIII. DURATION, TERMINATION AND AMENDMENT

A. This Agreement is effective upon signature by the Parties and remains in effect until December 31, 2024.

B. A Party may not end its participation in the Project and withdraw from this Agreement without the written consent of all other parties, and such consent shall not be unreasonably withheld. To end participation a Party shall provide 1 year notice and pay all unpaid funding amounts that have been committed through the 20 year duration of this Agreement. Should a Party withdraw the remaining members shall decide whether to continue with the implementation of this Agreement or whether to renegotiate this Agreement.

C. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto. An equitable adjustment in cost or period of performance or both may be made if required by the change.

D. This Agreement is not assignable by any Party, either in whole or in part.

E. This Agreement is a complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. The parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification

of the terms of the Agreement unless stated to be such through written approval by the parties which shall be attached to the original Agreement.

IX. COUNTERPARTS

This Agreement may be executed in counterparts.

X. INDEMNIFICATION AND HOLD HARMLESS

The Parties agree to the following:

To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless any other Party and all of its officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property which are connected with, or are attributable to any negligent acts or omissions of the indemnifying Party, its contractor, and/or employees, agents, and representatives in performing the Party's responsibilities and other work referred to in this Agreement; provided however, that if the provisions of RCW 4.24.115 apply to any work under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of two or more of the Parties or those Parties' contractors or employees, agents, or representatives, the indemnification applies only to the extent of the negligence of each Party, its contractor or employees, agents, or representatives.

Each Party specifically assumes potential liability for actions brought by its own employees against the other Parties and for that purpose the indemnifying Party specifically waives, as respects the other Parties only, any immunity under the Worker's Compensation Act, RCW Title 51; and each Party recognizes that his waiver was the subject of mutual negotiation and specifically entered into pursuant to the provision of RCW 4.24.115, if applicable.

Des Moines Creek Restoration Projects Interlocal Agreement

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IN WITNESS WHEREOF, the Parties hereto have executed this amendment on the

_____ day of _____, 20_____.

Approved as to Form

City of Des Moines:

By: _____
Title: _____

By: _____
Title: _____

Approved as to Form

City of SeaTac:

By: _____
Title: _____

By: _____
Title: _____

Approved as to Form

Port of Seattle:

By: _____
Title: _____

By: _____
Title: _____

Approved as to Form

**Washington State
Department of Transportation:**

By: _____
Title: _____

By: _____
Title: _____

Approved as to Form

King County:

By: _____
Title: _____

By: _____
Title: _____

Des Moines Creek Restoration Projects Interlocal Agreement
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ATTACHMENTS

Attachment 1 – List of Previous Interlocal Agreements

Attachment 2 - Reimbursement for Early Action

Attachment 3 – Costs Associated with Amendments to Scope and Budget of the Interlocal Agreement for Final Design and Permitting

Attachment 4 - Committee Staffing

Attachment 5 – Anticipated Operation and Maintenance Contracts

Attachment 6 - Regional Detention Facility Scope of Work and Budget

Attachment 7 - Bypass Line Scope of Work and Budget

Attachment 8 - Flow Augmentation Facility Scope of Work and Budget

Attachment 9 - Fish Habitat Improvements Scope of Work and Budget

Attachment 10 - Marine View Drive Culvert Replacement Scope of Work and Budget

Attachment 11 - Design Change and Change Order Process

Attachment 12- Rights of Way Map

Attachment 13- Total Project Cost

Attachment 14 – Initial O&M Fund Budget

Attachment 15 – Initial Replacement and Improvement Fund Budget

**Des Moines Creek Basin Restoration Projects
Attachment 1
Previous Interlocal Agreements**

Des Moines Creek Basin Plan Development Interlocal Agreement
executed 1/16/96

**Development of Basin Committee
Development of hydrologic model
Analysis of current and future conditions
Analysis of alternative responses
Development of Basin Plan Conceptual Design**

Amendment to agreement #I

executed 1/15/97

**Continuation of Basin Committee
Change in Cost Sharing Agreement
Preliminary Engineering**

Des Moines Creek Basin Plan Implementation Interlocal Agreement
Executed 6/17/98

**Continuation of Basin Committee
Ongoing Project Management
Development of Preliminary Engineering and Design
Financing Plan**

Des Moines Creek Basin Plan Implementation Interlocal Agreement
(GCA-2712) executed 7/30/01

**Continuation of Basin Committee
Development of Final Engineering and Design
Preparation of Plans and Specifications
Initial Permitting**

Des Moines Creek Basin Restoration Projects
Attachment 2
Reimbursement for Early Actions

These expenditures were incurred, on prior approval by the Basin Committee, by King County as logical early actions to the implementation effort.

These actions were taken in order to resolve technical permitting and final design issues in a sufficiently timely fashion to allow implementation to begin during 2004. Some of these tasks, such as coordination and sampling, are ongoing.

Per Basin Committee agreement, King County is to be reimbursed for these expenditures on behalf of the Committee under the cost-sharing formula in this Interlocal Agreement.

ACOE, DOE, HPA Permit coordination	\$14,871
Additional water level fluctuation reports as required by ACOE	\$4,860
Consultant management and coordination	\$2,929
FAA permit coordination	\$2,899
On-going project management	\$11,000
Develop construction water quality monitoring plan	\$4,000
Technical assistance with value engineering process	\$37,435
Finalize construction cost estimate	\$5,000
Technical assistance with ILA-IV development	\$13,402
TOTAL	\$96,395

Des Moines Creek Basin Restoration Projects
Attachment 3
Amendments to Previous Scope and Budget

These expenditures were incurred, on prior approval by the Basin Committee, by King County to cover costs not anticipated by the Des Moines Creek Basin Plan Implementation Interlocal Agreement.

These actions were taken in order to keep resolve technical permitting and final design issues in a sufficiently timely fashion to allow implementation to begin during 2004.

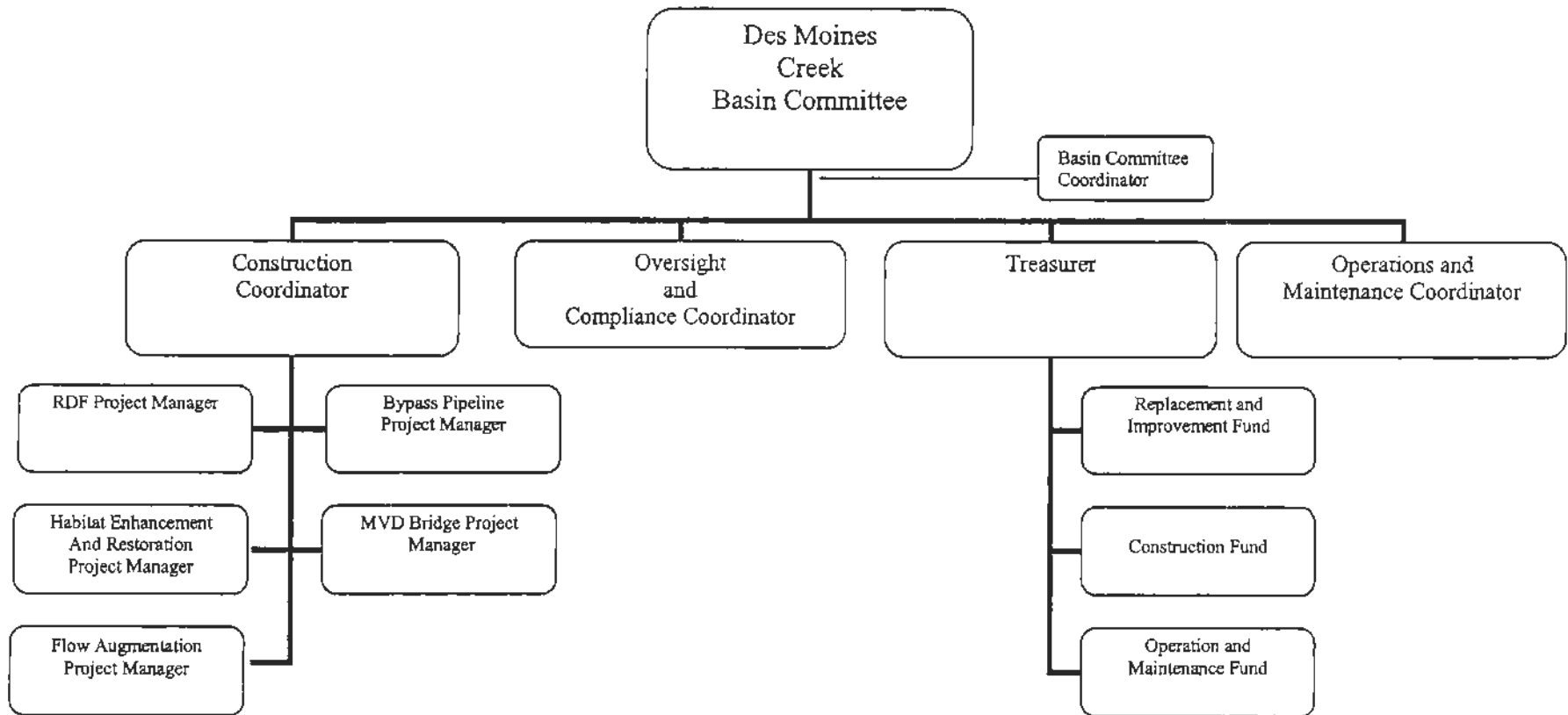
Per Basin Committee agreement, King County is to be reimbursed for these expenditures made on behalf of the Committee under the cost-sharing formula in the Des Moines Creek Basin Plan Implementation Interlocal Agreement GCA-2712 (July 2001).

Additional Survey	\$20,003
Additional Gauging	\$18,275
Geotechnical exploration	\$12,500
Level-I site assessment	\$30,000
Consultant management	\$15,000
Public workshop	\$14,907
Sewer line TV inspection	\$7,500
Basin committee support	\$5,000
SWPPP preparation	\$10,000
Groundwater monitoring	\$10,000
Extensive Coordination with Port of Seattle	\$10,407
Technical Assistance – development of watershed standard	\$5,763
Easement preparation support	\$9,697
Support for ILA-IV scope development	\$13,402
TOTAL	\$182,454

Des Moines Creek Basin Restoration Projects

Attachment 4

Committee Staffing



Des Moines Creek Basin Restoration Projects
Attachment 5
Anticipated Operation and Maintenance Contracts

<u>Permit and Adaptive Management Monitoring</u>	King County
<u>Invasive Plant Control</u>	
– North of S. 200 th St.	Port of Seattle
– South of S. 200 th St.	King County
<u>Wetland Plant Maintenance</u>	
– North of S. 200 th St.	Port of Seattle
– South of S. 200 th St.	King County
<u>Wildlife Management</u>	Port of Seattle
<u>Operation of Regional Facilities</u>	King County
(subject to emergency management plan to be prepared prior to final acceptance of projects)	
<u>Maintenance of Regional Detention Facility</u>	
- Control Structure, outlet	King County
- Grounds, other features	Port of Seattle
<u>Maintenance of Bypass Pipe</u>	King County
<u>Maintenance of Channel & Habitat Features</u>	
- initial structural features	King County
- plantings north of S. 200 th St.	Port of Seattle
- plantings south of S. 200 th St.	King County
<u>Maintenance of Flow Augmentation Facility</u>	King County
<u>Maintenance of Trail</u>	Cities of SeaTac & Des Moines
<u>Maintenance of Marine View Drive Bridge*</u>	Des Moines, WSDOT

* covered by RCW rather than contract

Des Moines Creek Restoration Projects

Attachment 6

Scope of Work For Des Moines Creek Regional Detention Facility

PURPOSE

The purpose of this document is to generally describe the project goals and the major tasks required for the construction of the Regional Detention Facility (RDF). This is not intended to be a detailed scope of work.

PROJECT GOAL

The construction of the RDF is intended to meet the performance goals for the project established during the basin planning and design efforts previously undertaken by the Des Moines Creek Basin Committee. Implementation of the RDF must comply with the design, specifications, contracts, and permit conditions for this project.

WORK DESCRIPTION

The following is a general summary of tasks that will need to be accomplished to construct the RDF, based on detailed cost estimates developed during final design and permitting. The project will be implemented in a series of coordinated actions to allow for establishment of vegetation in wetland and stream areas prior to activating flow control devices. The order and timing of specific tasks will be established by permit and contract conditions.

Final Plan & Specifications

- Finalize construction plans and specifications per plan sets for Des Moines Creek Regional CIP –Retention/Detention Facility Phase 1 (dated August 20, 2003) and Phase 2 (dated September 17, 2003), as modified by permit conditions.

Easements and Right-of-ways

- Obtain all necessary easements and right-of-ways for construction.

Bid Package & Contract Document Preparation

- Prepare bid packages and contract documents.

Contract Administration

- Advertise construction contract(s).
- Select a contractor and award the contract(s).
- Administer construction contract.

Construction Management

- Manage daily construction activities of the contractors.
- Coordinate project activities with permit agencies and stakeholders.
- Ensure compliance with project schedule and budget.
- Report construction progress to Construction Coordinator.

Pre-construction Survey & Coordination

- Complete construction surveys and field staking.
- Hold construction coordination meetings.
- Establish haul route, traffic control, staging area, clearing and excavation limits, etc.
- Notify permit agencies.
- Relocate utilities as needed for construction.
- Identify sensitive features on site to minimize construction impacts.
- Finalize spill containment and emergency response plan.
- Coordinate safety manual protocols with appropriate personnel.

Site Preparation

- Construct construction access road per plan.
- Install construction fencing, signage, and other necessary steps per the contract.
- Mobilize equipment and construction materials to the site.
- Complete clearing and grubbing of the site per the contract.

Temporary Erosion & Pollution Control

- Install and maintain temporary erosion and pollution control measures.
- Implement street sweeping and dust control measures per the contract.
- Maintain spill clean and containment measures on-site for emergency response.

Construction Elements

- Implement dewatering and flow diversion measures per plan.
- Construct new stream channel per plan.
- Re-grade existing stream channel per the plans and specifications.
- Pre-load and monitor berm site per the plan and specifications.
- Excavate soil from the site per the plan.
- Stockpile excavated soil on-site per the contract.
- Dispose of unsuitable materials per the contract.
- Complete grading per the plan.
- Install flow diversion pipelines in coordination with High Flow Bypass Project.
- Construct berms per the plans and specifications.
- Install flow control structures per the plan and specifications.
- Complete RDF construction of the RDF per the plans and specification.

Construction Inspection

- Inspect temporary erosion and pollution control facilities.
- Provide engineering inspection and testing to ensure project compliance with plans and specifications.
- Ensure regulatory compliance by following the permit conditions.
- Coordinate with monitoring and oversight compliance staff.

Site Restoration

- Establish ground cover to minimize erosion potential per the contract.
- Install landscaping plants per the contracts.
- Place stream habitat structures.

Wildlife Management Facilities

- Install wildlife management facilities per the plan and specifications.
- Coordinate with FAA to ensure compliance.

Project Closeout

- Conduct final inspections
- Survey the completed project and prepare an As built.
- Meet requirements of the contracts for closeout.
- Obtain final approval from the permitting agencies and the Basin Committee.

TOTAL PROJECT COST ESTIMATE

RDF Phase-I	\$2,071,334
RDF Phase-II	\$6,087,986
Construction Management	\$223,350
Total RDF Project Cost	\$8,382,670

The construction cost estimate is based on the “permit ready” plans and subject to changes when 100% final plans are complete.

Des Moines Creek Restoration Projects

Attachment 7

Scope of Work and Budget For Des Moines Creek Bypass Project

PURPOSE

The purpose of this document is to generally describe the project goals and the major tasks required for the construction of the High Flow Bypass Pipeline (Bypass) Project. This is not intended to be a detailed scope of work.

PROJECT GOAL

The construction of the Bypass is intended to meet the performance goals for the project established during the basin planning and the design efforts previously undertaken by the Des Moines Creek Basin Committee. Implementation of the Bypass must comply with the design, specifications, contracts, and permit conditions for this project

WORK DESCRIPTION

The construction of Bypass will require a series of coordinated effort as indicated in construction plans, specifications, bid package, and the contracts. The following is a general summary of tasks that will need to be accomplished to construct the Bypass, based on detailed cost estimates developed during final design and permitting. The project will be implemented in a series of coordinated actions to allow for establishment of vegetation in wetland and stream areas prior to activating flow control devices. The order and timing of specific tasks will be established by permit and contract conditions.

Final Plan & Specifications

- Finalize construction plans and specifications per plan sets for the Des Moines Creek Regional CIP Bypass Installation – Treatment Plant Reach (dated August 20, 2003) and Tyee Reach (dated August 20, 2003).

Easements and Right-of-ways

- Obtain all necessary easements and right-of-ways for construction.

Bid Package & Contract Document Preparation

- Prepare bid packages and contract documents.

Contract Administration

- Advertise construction contract(s).
- Select a contractor and award the contract(s).
- Administer construction contract.

Construction Management

- Manage daily construction activities of the contractors.
- Coordinate project activities with permit agencies and stakeholders.

- Ensure compliance with project schedule and budget.
- Report construction progress to Construction Coordinator.

Pre-construction Survey & Coordination

- Complete construction surveys and field staking.
- Coordinate with proper authorities for closure of parks and trails during construction.
- Coordinate construction schedule with Midway Sewer District.
- Perform pothole survey to locate Midway Sewer Treatment pipelines.
- Hold construction coordination meetings.
- Establish haul route, traffic control, staging area, clearing and excavation limits, etc.
- Notify permit agencies.
- Relocate utilities as needed for construction.
- Finalize spill containment and emergency response plan.
- Coordinate safety manual protocols with appropriate personnel.

Site Preparation

- Construct construction access road per plan.
- Install construction fencing, signage, and other necessary steps per the contract.
- Mobilize equipment and construction materials to the site.
- Complete clearing and grubbing of the site per the contract.

Temporary Erosion & Pollution Control

- Install and maintain temporary erosion and pollution control measures.
- Implement street sweeping and dust control measures per the contract.
- Maintain spill clean and containment measures on-site for emergency response.

Construction Elements

- Install bypass pipeline and manholes per the plans and specifications.
- Construct a bridge on Tyee Golf Course for pipe crossing the creek per the contract.
- Connect new pipe segments with the abandoned sanitary sewerage line to function as the bypass system.
- Coordinate plumbing of the Bypass project with the RDF construction to ensure functionality.
- Construct emergency overflow system per the plan and specifications.
- Decontaminate the abandoned sanitary sewerage system for the use of bypass line.
- Complete construction of the Bypass Project per the plans and specification.

Construction Inspection

- Inspect temporary erosion and pollution control facilities.
- Provide engineering inspection and testing to ensure project compliance with plans and specifications.
- Ensure regulatory compliance by following the permit conditions.
- Coordinate with monitoring and oversight compliance staff.

Site Restoration

- Establish ground cover to minimize erosion potential per the contract.
- Install landscaping plants along the stream buffer per the contract.
- Repair damaged roadway surfacing during construction
- Restore stream channel as needed to protect pipeline.

Project Closeout

- Conduct final inspections
- Survey the completed project and prepare an As built.
- Meet requirements of the contracts for closeout.
- Obtain final approval from the permitting agencies and the Basin Committee.

ESTIMATED PROJECT COST

By-Pass (Tye)	\$1,055,398
By-Pass (Midway)	\$313,288
Construction Management	\$150,000
TOTAL BYPASS CONSTRUCTION COSTS	\$1,518,686

The construction cost estimate is based on the “permit ready” plans and subject to changes when 100% final plans are complete.

Des Moines Creek Basin Restoration Projects

Attachment 8

Scope of Work For Des Moines Creek Low Flow Augmentation Project

PURPOSE

The purpose of this document is to generally describe the project goals and the major tasks required for the design, permitting, and construction of the Low Flow Augmentation Project. This is not intended to be a detailed scope of work.

PROJECT GOAL

The project goal design permit and construct a low flow augmentation facility. This facility is intended to protect fish and other aquatic organisms by augmenting low flows during critical low flow periods.

WORK DESCRIPTION

In order to use a groundwater well for low flow augmentations, a Water Rights permit from the Washington State Department of Ecology (DOE) will be required. Hydrogeologic studies, reports, and other supporting documents for obtaining DOE Water Rights and various permits will be prepared. The Low Flow Augmentation Project will be constructed per the plans, specifications, and the permit conditions developed during final design and permitting. The following is a general summary of tasks that will need to be accomplished to implement the Low Flow Augmentation Project.

DOE Water Rights

- Obtain Water Rights from DOE.

Groundwater Studies & Reports

- Conduct groundwater investigations and studies as required by DOE.
- Hire and manage consultant, if needed, for hydrogeologic modeling.
- Prepare necessary reports.

Project Design

- Prepare project designs for permitting.
- Prepare final design for construction.

Easements and Right-of-ways

- Obtain all necessary easements and right-of-ways for well and construction.

Project Management

- Oversee field data collection, survey, design, and other project activities.
- Hire and manage consultant.
- Coordinate Water Rights and permit applications.

Permitting

- Apply & obtain necessary projects permits.
- Ensure compliance with permit conditions.

Bid Package & Contract Document Preparation

- Prepare bid packages and contract documents.

Contract Administration

- Advertise construction contract(s).
- Select a contractor and award the contract(s).
- Administer construction contract.

Construction Management

- Manage daily construction activities of the contractors.
- Coordinate project activities with permit agencies and stakeholders.
- Ensure compliance with project schedule and budget.
- Report construction progress to Construction Coordinator.

Pre-construction Survey & Coordination

- Complete construction surveys and field staking.
- Hold construction coordination meetings.
- Notify permit agencies.
- Coordinate safety manual protocols with appropriate personnel.

Site Preparation

- Construct construction access per plan.
- Mobilize equipment and construction materials to the site.
- Complete clearing and grubbing of the site per the contract.

Temporary Erosion & Pollution Control

- Install and maintain temporary erosion and pollution control measures.
- Maintain spill, cleanup and containment measures on-site for emergency response.

Construction Elements

- Drill and establish the groundwater well per the plans and specifications.
- Construct aeration system for the groundwater per the plans and specifications.
- Complete construction of Low Flow Augmentation Project per the contracts.

Construction Inspection

- Inspect temporary erosion and pollution control facilities.
- Ensure regulatory compliance and adherence to permit conditions.
- Coordinate with monitoring and oversight compliance staff.

Site Restoration

- Establish ground cover to minimize erosion potential per the contract.
- Install landscaping plants along the stream buffer per the approved plans and specifications.

Project Closeout

- Conduct final inspections
- Survey the completed project and prepare an As built.
- Meet requirements of the contracts for closeout.
- Obtain final approval from the permitting agencies and the Basin Committee.

ESTIMATED COST

TOTAL LOW FLOW AUGMENTATION COSTS	\$540,370
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Total costs include designing, permitting, and construction costs. This is a preliminary cost estimate and subject to changes based on the complexity of the DOE Water Rights approval requirements.

Des Moines Creek Restoration Projects

Attachment 9

Scope of Work For Des Moines Creek Habitat Enhancement & Restoration

PURPOSE

The purpose of this document is to generally describe the project goals and the major tasks required for the construction of the Stream Habitat Restoration (Habitat) Project. This is not intended to be a detailed scope of work.

PROJECT GOAL

The goal of this project is to create a series of stream habitat restoration projects to create suitable habitat for fish and other aquatic organisms. This will be accomplished by designing, permitting, and constructing the projects consistent with the goals and objectives of the basin plan and applicable permit conditions.

WORK DESCRIPTION

The Habitat projects will be designed to enhance fish habitat by placing logs, boulders, and other stream enhancement elements in areas of the stream identified as suitable for habitat improvement. The stream restoration projects will also be designed to stabilize the channel to mitigate in-stream erosion. Ecological studies, reports and other supporting documents for obtaining permits will be prepared. Projects will be constructed per the plans, specifications, and the permit conditions developed during final design. The following is a general summary of tasks that will need to be accomplished to implement the Habitat projects.

Data Collection & Project Planning

- Collect field data to plan project.
- Identify specific sites for required restoration measures and/or stabilization.
- Develop conceptual stream habitat restoration plans.

Environmental Studies & Reports

- Conduct stream survey and other ecological investigations
- Prepare stream studies & other environmental studies for regulatory requirements.
- Prepare Biological Assessment.

SEPA Process Compliance

- Prepare SEPA documents.
- Complete SEPA process.

Project Design

- Prepare project designs for permitting.
- Prepare final designs, plans, and specifications for construction.

Easements and Right-of-ways

- Obtain all necessary easements and right-of-ways for construction.

Project Management

- Oversee field data collection, survey, design, and other project activities
- Coordinate project permitting process.
- Coordinate design with the Committee.

Permitting & Biological Assessment

- Complete biological review process by the agencies.
- Apply & obtain necessary projects permits.
- Ensure compliance with permit conditions.

Bid Package & Contract Document Preparation

- Prepare bid packages and contract documents.

Contract Administration

- Advertise construction contract(s).
- Select a contractor and award the contract(s).
- Administer construction contract.

Construction Management

- Manage daily construction activities of the contractors.
- Coordinate project activities with permit agencies and stakeholders.
- Ensure compliance with project schedule and budget.
- Report construction progress to Construction Coordinator.

Pre-construction Survey & Coordination

- Complete construction surveys and field staking.
- Coordinate with proper authority for closure of parks and trails during construction.
- Hold construction coordination meetings.
- Establish haul route, traffic control, staging area, clearing and excavation limits, etc.
- Notify permit agencies of construction schedule and progress.
- Finalize spill containment and emergency response plan.
- Coordinate safety manual protocols with appropriate personal.

Site Preparation

- Construct construction access ~~road~~ per plan.
- Install construction fencing, signage, and other necessary steps per the contract.
- Mobilize equipment and construction materials to the site.
- Complete clearing and grubbing of the site per the contract.

Temporary Erosion & Pollution Control

- Install and maintain temporary erosion and pollution control measures.
- Implement street sweeping and dust control measures per the contract.
- Maintain spill clean and containment measures on-site for emergency response.

Construction Elements

- Install stream habitat structures per the plans and specifications.
- Plant stream corridor per plan and specifications.
- ~~Complete Habitat project~~ Restore/stabilize all disturbed areas per the plans and specifications.

Construction Inspection

- Inspect temporary erosion and pollution control facilities.
- Provide on-site biological support for compliance with plans and specifications.
- Ensure regulatory compliance by following the permit conditions.
- Coordinate with monitoring and oversight compliance staff.
- Oversee construction of instream structures per the plan and permit conditions.

Site Restoration

- Establish ground cover to minimize erosion potential per the contract.
- Install landscaping plants along the stream buffer per the ~~contract~~ approved plans, permit conditions and contract.

Project Closeout

- Conduct final inspections
- Survey the completed project and prepare As-built drawings.
- Meet requirements of the contracts for closeout.
- Obtain final approval from the permitting agencies and the Basin Committee.

ESTIMATED COST

TOTAL HABITAT ENHANCEMENT AND RESTORATION COSTS	\$938,848
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Total costs include designing, permitting, and construction costs. This is a preliminary cost estimate and subject to changes based on the complexity of the DOE Water Rights approval requirements.

Des Moines Creek Restoration Projects

Attachment 10

Scope of Work For Marine View Drive Bridge

PURPOSE

The purpose of this document is to generally describe the project goals and the major tasks required for the construction of the Marine View Drive (MVD) Bridge. This is not intended to be a detailed scope of work.

PROJECT GOAL

The construction of the MVD Bridge is intended to meet the performance goals for the project established during the basin planning and design efforts previously undertaken by the Des Moines Creek Basin Committee. Implementation of the MVD Bridge must comply with the design, specifications, contracts, and permit conditions for this project.

WORK DESCRIPTION

The following is a general summary of tasks that will need to be accomplished to construct the MVD Bridge, based on detailed cost estimates developed during final design and permitting. The project will be implemented in two phases in order to coordinate relocation of utilities within the road during the bridge construction phase and to meet Hydraulic Permit Approval conditions for the stream areas during the mass excavation phase. The order and timing of specific tasks will be established by permit and contract conditions.

Final Plan & Specifications

- Finalize construction plans and specifications.

Renew Existing Permits

- Review existing permits obtained for project and update for 2004-2005 construction timeframe.

Obtain Utility Interlocal Agreements

- Obtain Seattle Public Utility (SPU) interlocal agreement for relocation of 18-inch SPU watermain – a separate bid schedule will be added and SPU will provide all necessary inspection oversight for this work. SPU to pay all associated construction and administration costs for their pipe relocation. This work will be done under a separate bid schedule.
- Obtain Midway Sewer District (MSD) interlocal agreement. MSD to pay into the project fund an amount equivalent to boring through the fill area for their outfall pipe plus the cost of installing the segment of outfall pipe – a separate bid schedule will be added for the installation of the outfall pipe. The cost for boring and the installation of the pipe is estimated at \$400,000.
- All other utility work will be done in accordance to utility franchise agreements with Des Moines or by existing agreements between the City and the utilities.

Easements and Right-of-ways

- A construction easement may be needed for access during the excavation phase through the Midway Sewer Treatment Plant. All permanent easements and right-of-way have been obtained.

Bid Package & Contract Document Preparation

- Prepare bid packages and contract documents.
-

Contract Administration

- Advertise construction contracts.
- Select a contractor and award the contracts.
- Administer construction contracts.

Project Management

- Hire and manage consultant.
- Review and approve contractor submittals for compliance with contract documents.
- Oversee daily construction activities of the contractor.
- Review and make recommendations for design changes and construction change orders – per Attachment 11, Design Change/Change Order Process.
- Coordinate project activities with permit agencies and stakeholders.
- Ensure compliance with project schedule and budget.
- Report construction progress and pay estimates to Construction Coordinator.
- Arrange construction inspection and testing for compliance with contract documents and permits.

Pre-construction and Construction Coordination

- Hold a utility pre-bid utility coordination meeting.
- Hold a pre-construction meeting with contractor and stakeholders.
- Hold weekly construction coordination meetings.
- Establish haul route, traffic control, staging area, clearing and excavation limits, etc.
- Notify permit agencies of project schedule and key project stages.
- Review all sensitive area/environmental features on site to minimize construction impacts.
- Coordinate safety manual protocols with appropriate personnel.

Site Preparation

- Prepare spill control plan.
- Prepare emergency response plan.
- Implement traffic control plan.
- Construct/identify construction access road/haul route/staging and coordinate with Des Moines Parks Department, Harbormaster and Midway Sewer District.
- Install construction fencing, signage, and other necessary steps per the contract.
- Mobilize equipment and construction materials to the site.

- Complete clearing and grubbing of the site per the contract and permit.

Temporary Erosion & Pollution Control

- Install and maintain temporary erosion and pollution control measures.
- Implement street sweeping and dust control measures per the contract.
- Maintain spill and containment measures on-site for emergency response.

Major Construction Elements

- Drill over 100 piles for bridge abutments and wing walls per plan.
- Remove 90 feet of existing road section and existing west-side retaining wall.
- Place bridge abutments and bridge girders per plan.
- Place cast-in-place bridge deck.
- Relocate underground utilities to underside of bridge deck.
- Restore roadway and markings and replace west-side sidewalk.
- Implement dewatering and flow diversion measures per plan.
- Excavate, haul and dispose of 25,000 cubic yards of road embankment.
- Place support struts and restore fracture fin finish of bridge headwalls.
- Construct Midway Sewer Outfall pipe through bridge corridor.
- Shotcrete finish bridge abutment walls and wing walls.
- Construct 20-foot wide pedestrian path on the north side of corridor over utilidor per plan.
- Construct 40-wide stream channel with weirs, landscaping, stream features per plan.
- Relocate existing stream and abandon existing culvert.

Construction Inspection

- Inspect temporary erosion and pollution control facilities.
- Provide engineering inspection and testing to ensure project compliance with plans and specifications.
- Ensure regulatory compliance by following the permit conditions.
- Coordinate with monitoring and oversight compliance staff.

Project Closeout

- Conduct final inspections
- Survey the completed project and prepare As-built drawings.
- Meet requirements of the contracts for closeout.
- Obtain final approval from the permitting agencies and the Basin Committee.

TOTAL PROJECT COST ESTIMATE

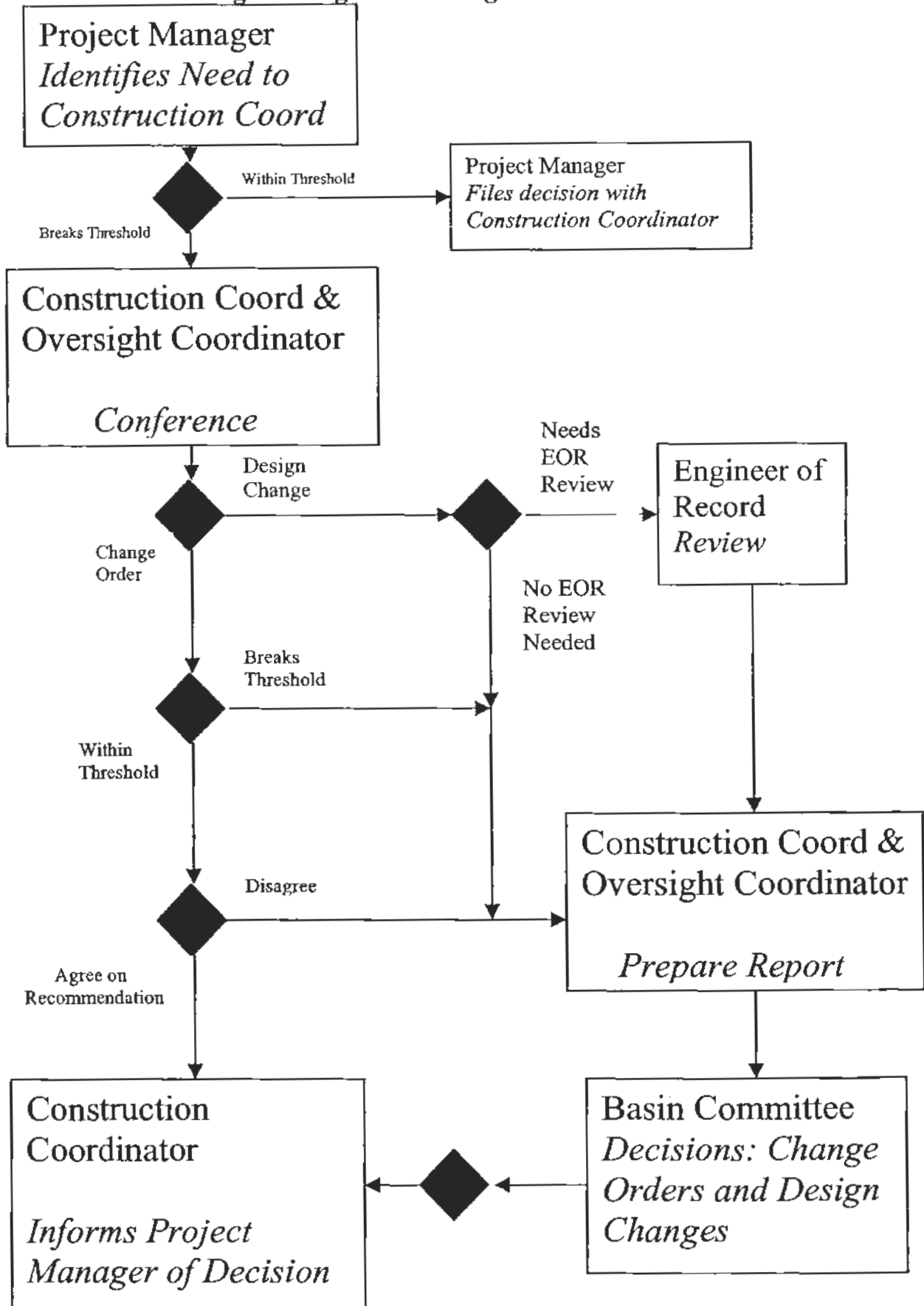
MVD Project Improvements	\$4,791,000
Contingency -20%	\$958,000
Contract Administration (Exc. Water Main) – 12%	\$534,000
City Administration –2.5%	\$120,000
Finalize Plans, Specifications, Bid Package	\$100,000
Total MVD Project Cost	\$6,503,000

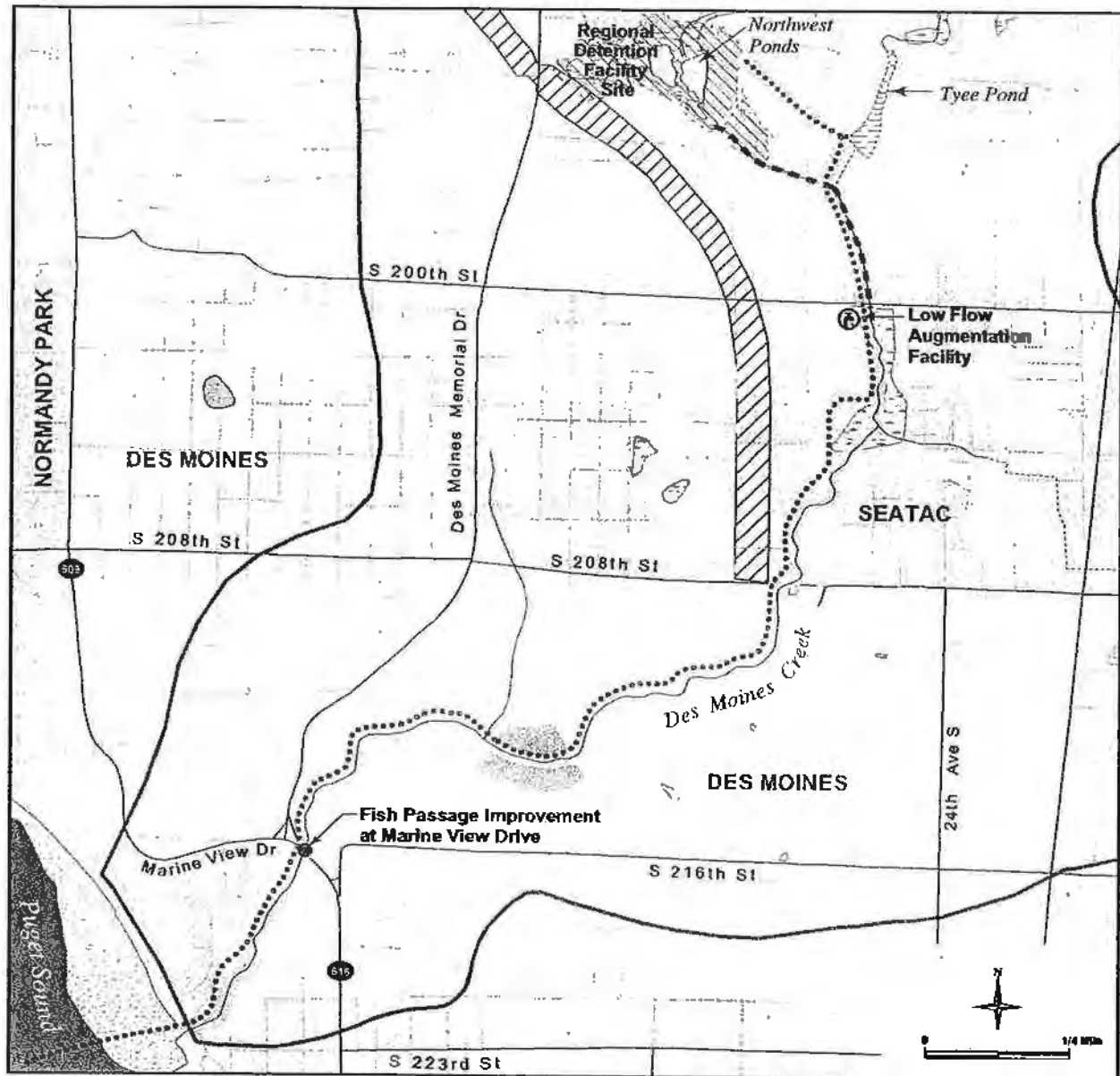
The construction cost estimate is based on the “permit ready” plans and subject to changes when 100% final plans are complete.

Total MVD Project Costs	\$6,503,000
Grants – Fish Passage	-\$200,000
Anticipated Contribution from Seattle Public Utilities	-\$419,000
Anticipated Contribution from Midway Sewer District	-\$400,000
Total DC Basin Committee Cost	\$5,484,000

The total cost to the Committee is preliminary. Interlocal agreements with Midway Sewer District and Seattle Public Utilities need to be made.

Des Moines Creek Basin Restoration Projects
Attachment 11
Design Change and Change Order Process





Attachment 12

DES MOINES CREEK RESTORATION PROJECTS

Rights-of-Ways & Easements Necessary for Project Implementation - by Jurisdiction

Jurisdictions to Provide Easements or Rights-of-Ways

- City of Des Moines
- Midway Sewer District
- City of SeaTac
- Port of Seattle
- WSDOT

Rights-of-Ways and Easements needed for these Proposed Basin Plan Projects

- Fish Passage Improvement at Marine View Drive
- Low Flow Augmentation Facility
- In-stream Fish Habitat Improvements
- Stream Channel Reconstruction
- Flow Bypass Pipe
- Regional Detention Facility Site

- Basin Boundary
- Stream
- Piped Stream
- Wetland
- R/D Facility
- Shoreline

Des Moines Creek Basin Restoration Projects
Attachment 13
Total Project Cost

Summary of Scope and Budget for Des Moines Creek Restoration Projects

Regional Detention Facility Project	\$8,382,670
Stream Bypass Project	\$1,518,686
Flow Augmentation Project	\$540,370
Habitat Restoration and Enhancement Project	\$938,840
Marine View Drive Culvert Replacment	\$5,484,000
Oversight and Compliance Coordinator	\$495,000
Construction Coordinator	\$300,000
ILA-4 Early Actions	\$96,395
Project Monitoring	\$330,000
Construction Fund Total	\$18,085,961
O&M Fund Annual Total*	\$3,879,080
Total Annual Charge	\$130,000
Replacement and Improvement Fund Total*	\$1,867,000
Total Annual Charge	\$65,000

* Total over 30 year project life

Des Moines Creek Restoration Projects
Attachment 14
Initial O + M Fund Budget

Total Assumed Project Life is 30 years

O & M ITEMS	Frequency	Unit Cost	Total Cost (2003 Dollars)	Note
Annual inspection cost	Per year	\$1,000	\$30,000	One inspection per year
Sewerline TV inspection	Every 10 year	\$7,500	\$22,500	To determine pipe conditions
Outfall diffuser inspection	Every 10 year	\$2,500	\$7,500	Diffuser inspected by scuba divers
Annual maintenance & operation of RDF and Bypass	Per year	\$3,500	\$105,000	Includes CB cleaning and minor repairs
Annual maintenance & operation of Low Flow Augmentation	Per year	\$500	\$15,000	Pump maintenance as needed
Landscape maintenance (mowing west berm once per year)	Per year	\$1,200	\$36,000	Golf course would maintain east berm
Flow control structure inspection by an Engineer	Every two year	\$1,500	\$22,500	To assess facility performance per design
Dam safety inspection by an engineer	Every two year	\$1,500	\$22,500	To observe structural changes
Repair damages caused by significant storm events	Once every 10 yr	\$25,000	\$75,000	Minor repairs to restore the facilities
Plant maintenance (weed control & watering)	Per year	\$10,000	\$300,000	WCC Crew will do this task.
Sub-Total			\$636,000	
Repair damaged facility caused by vandalism	5% of O&M	\$31,800	\$31,800	Extent of vandalism can not be predicted
10 % Contingency			\$66,780	
Operation and Maintenance Cost for 30 Years in 2003 Dollars			\$734,580	
Vegetation monitoring for 10 years (every other year)	Every other year	\$10,000	\$50,000	To meet permit conditions
Groundwater monitoring for 10 years	Every year	\$8,000	\$80,000	To meet permit conditions
Reporting to permit agencies for 10 years (every other year)	Every other year	\$5,000	\$25,000	To meet permit conditions
Flow gauging for 10 years (three gauges)	Every year	\$10,000	\$150,000	Three flow monitoring gauges
Project Management & coordination for 10 years	Per year	\$5,000	\$150,000	
Wildlife control and monitoring as required by FAA	Per year	\$5,250	\$157,500	
Sub-Total			\$612,500	
10% Contingency			\$77,000	
Monitoring Cost in 2003 Dollars			\$689,500	
Operations and Maintenance Coordinator - after construction	27 years	\$50,000	\$1,350,000	
Treasurer - during construction	3 years	\$50,000	\$150,000	
Treasurer - after construction	27 years	\$25,000	\$675,000	
Committee Coordinator	4 years	\$70,000	\$280,000	
Staffing Costs			\$2,455,000	
Total Fund Budget			\$3,879,080	
➤ Estimated Operation and Maintenance Fund Annual Cost			\$129,303	

Des Moines Creek Restoration Projects
Attachment 15
Replacement and Improvement Fund Budget

Replacement Costs for 30 Year Project Life

Projects	Items	Assumed Quantity	Unit Cost	Total Cost	Note
RDF	Dam Spill-way repair	Three incidents	15,000	\$45,000.00	May be caused by flooding
	Dam side slope restoration	Three incidents	5,000	\$15,000.00	Soil erosion or gully formation
	Embankment Backfill & Compaction to maintain designed elevation	Three incidents	10,000	\$30,000.00	Dam elevation may changed due to settlement
	Filter Diaphragm replacement	3	5,000	\$15,000.00	
	Gabion Outfall Pad repair/installation	3	3,000	\$9,000.00	
	Overflow Structure 120 In. Diam. Repair	3	1,000	\$3,000.00	
	Energy Dissipator replacement	6	5,000	\$30,000.00	
	Flow Control Vault w/ baffle replacement	2	15,000	\$30,000.00	
Bypass	Replace Lined Corrugated Polyethylene Storm Sewer Pipe 18 In. Diam	300	55	\$16,500.00	
	Replace Lined Corrugated Polyethylene Storm Sewer Pipe 24 In. Diam	300	75	\$22,500.00	
	Replace Lined Corrugated Polyethylene Storm Sewer Pipe 30 In. Diam	300	90	\$27,000.00	
	Replace Lined Corrugated Polyethylene Storm Sewer Pipe 36 In. Diam	300	110	\$33,000.00	
	Construct New Bypass Line/replace old line including Manholes	7,000	150	\$1,050,000.00	Assumes existing pipeline no longer available
	Bank Stabilization for Pipe Protection	Six incidents	20,000	\$120,000.00	Protecting pipe from stream bank scouring
	48" Type 3 MH repair or installation	6	750	\$4,500.00	
	54" Type 3 MH	6	750	\$4,500.00	
	60" Type 3 MH	6	750	\$4,500.00	
	Replacement Manholes	Four incidents	2,500	\$10,000.00	
Stream	Remove/modify difuser	One incident	50,000	\$50,000.00	
	Replace Bed Control logs	10	1,000	\$10,000.00	
	Replace Stream Bed Gravel	LS	5,000	\$5,000.00	
	Logs 20 In. Diam by 25 ft long, Supply and Place	10	1,000	\$10,000.00	
	Sediment Management	Three incidents	5,000	\$15,000.00	Sediment buildup may need to be removed
Low-Flow	Weir Replacement	Three incidents	10,000	\$30,000.00	
	Replace Pump	Three incidents	15,000	\$45,000.00	
	Repalce Intake pipeline	Three incidents	10,000	\$30,000.00	
	Rebuild Pump Housing	1	7,500	\$7,500.00	
	Electric Supply Line Replacement	1	30,000	\$30,000.00	
Planting	Repair Bid Exclusion System	Three incidents	5,000	\$15,000.00	
	Replant Native Vegetation	5,000	10	\$50,000.00	
	Adaptive Management Implementation	LS	100,000	\$100,000.00	

Approximate Total in 2003 Dollars: \$1,867,000.00

Estimated Total Annual Contribution \$62,233.33

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

February 26, 2004

The regular meeting of the Des Moines City Council was called to order at 7:30 p.m. by Mayor Sheckler in the City Council Chambers, 21630 11th Avenue South, #B.

PLEDGE OF ALLEGIANCE to the Flag was led by Councilmember Petersen.

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Richard Benjamin, Gary Petersen, Dan Sherman, Maggie Steenrod and Susan White. Also in attendance was City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Warren Elfstrom, 20801 7th Place South

Mr. Elfstrom referenced the safety and liability issues in regards to re-opening South 212th Street. He suggested that a small area at the bottom of 212th be widened and to reposition the stop sign to increase visibility. He spoke in opposition to closing the street as it will add 2 minutes to any emergency response time which can be critical during an emergency.

Janna Zabrodsky, 21008 7th Place South

Ms. Zabrodsky spoke in support of permanently closing South 212th Street. She noted that the street was a one-way courtesy street that came about in the 1950's, and since that time the population has grown considerably and this street is no longer conducive to be used as a such. She strongly recommended that the street be closed for the safety and well being of the residents in the neighborhood.

Orest Zabrosky, 21008 7th Place South

Mr. Zabrosky addressed Council expressing concern over public safety if 212th Street is kept open. He noted that 7th Place South has become a "speed way" as more people have discovered 212th as a convenient short-cut. He requested that 212th Street be closed to improve the quality of life for neighborhood residents.

Lynda Sharp, 20809 7th Place South

Ms. Sharp requested that 212th Street be re-opened as it is convenient and safe.

Lynn Voss, 20810 7th Place South

Ms. Voss stated that she is very upset that Council is reconsidering their decision to re-open 212th Street. She requested the street be kept open for the following reasons:

- 208th is even a steeper grade, therefore 212th is a safer alternative
- Liability was not a concern when the street was open, therefore there should be no concern now
- There is no need to construct a 100' retaining wall

She questioned the procedure to reconsider, citing Council Rule 28 that notes reconsideration can only occur by motion of a person that voted on the prevailing side to re-open the street. She concluded by stating the street had been existence for over 40 years and should be re-opened.

Pam Joneli, 21024 7th Place South

Ms. Joneli noted that Councilmembers White and Sherman were not in attendance at the meeting where the decision was made to re-open 212th and therefore they did not hear the public testimony in regards to the issues. She informed Council that one of the reasons she built her home 16 years ago was because of the easy access that 212th Street provided. She stated that this is the only street she can use when the streets are icy. She suggested that if there on speeders on 7th Place South, speed bumps could be installed. She concluded by noting she strongly opposes the closure of 212th and also would oppose making it a one-way street.

Councilmember White stated for the record, that she viewed the City Council Public Hearing video tape regarding the potential closure of 212th Street.

Brent Oliver, 20831 7th Place South

Mr. Oliver expressed disappointment that Council is reconsidering its decision to re-open 212th Street. He noted that the Fire Chief had stated that fire department emergency vehicles do use 212th and that the Police had commented that any additional access is good. He stated that in regards to the City's liability, he has never seen any problems. He stated that it is his opinion that sight distance on 208th is worse than 212th. He further noted that he has seen no issue of speeders in the neighborhood as a result of access from 212th.

Dan Doulan, 20830 7th Place South

Mr. Doulan informed Council that he has seen no accidents on 212th. He advised that cars do speed up and down the neighborhood and that the Police should patrol the area and issue appropriate tickets. He concluded by requesting that 212th be re-opened.

Don Kelson, 21027 7th Place South

Mr. Kelson advised that he has lived here for 44 years and that the 212th access is much easier to use in the winter than South 208th.

Betty Cissell, 21017 7th Place South

Ms. Cissell spoke in support of re-opening 212th. She noted that she not only drives on this access but uses it for walking and biking.

Michael Brown, 21000 7th Place South

Mr. Brown spoke in support of closing 212th. He stated the street is unsafe as it is one-lane, unmarked and many drivers are not courteous and cannot backup. He felt the closure of 212th would make 7th Place safer by reducing vandalism, speeders and car theft. He felt that since 212th is a substandard street people could sue the City over accidents and Des Moines citizens would be paying for legal fees which is not fair. He stated he personally has never seen a Medic One or an ambulance use 212th. He encouraged Council to close the street for the safety of residents over the convenience of a few. He concluded by advising Councilmembers to listen to the advice of the City Attorney and the City's engineering staff, and close 212th.

George Petoff, 21035 7th Place South

Mr. Petoff spoke in support of re-opening 212th Street. He noted the following:

- Zero cost to the City as Highline Water District must do the restoration
- Re-opening will incur no liability to the City that did not already exist
- Post signage that states "Use at Own Risk - Substandard Street"

- Re-opening will maintain emergency response needed by the Fire Department
- Felt there was inconsistency in City staff conclusions

In conclusion, he requested Council consider the human side of the issue and restore 212th.

Michael Snyder, 704 South 212th Street

Mr. Snyder spoke in support of re-opening 212th. He noted that Sea Tac Disposal is not picking up his garbage as they claim there is not enough room to turn around since the street has been closed. He informed Council that he has personal knowledge of three different times that ambulances have used 212th in an emergency response.

BOARD & COMMITTEE REPORTS

Mt. Rainier Boys Swim Club

Councilmember Benjamin offered congratulations to the Mt. Rainer Boys Swim team for winning the State Championship last week-end.

Economic Development Committee

Councilmember Steenrod announced that there will be a meeting of the Committee tomorrow.

Councilmember Steenrod noted a press release advising that a Lowes Garden Center will be constructed at the current site of the Midway Swap Meet. She felt that with this proposed development along with a other development at this location is a window of opportunity for promoting the Pacific Ridge area in Des Moines. She suggested that a study session be held to receive citizens comments on what focus to take in the development of the Pacific Highway South area. Some areas she felt should be discussed included how to capitalize on the new business development and to review other zoning issues along Pacific Highway South, in particular, height restrictions.

Councilmember Steenrod questioned a rumor she had heard that there is a moratorium on development along Pacific Highway South. [ED NOTE: This was addressed by the City Manager under Administration Reports.]

Councilmember Sherman commented that he is excited about the proposed development at the Midway Swap Meet site, but noted that Highline Community College has used this site for overflow parking and he is concerned this will create parking problems on the residential streets around the College.

Transportation Issues

Councilmember Sherman noted that the Pacific Highway South project needs a Public Works loan and \$5 million is listed in the State Legislative Bill that, hopefully, will be available.

South County Transportation Board

Councilmember Sherman noted there was a meeting on February 17th. One of the items from that meeting noted that the Sound Transit Project has been moved-up and this will create a mess from the bus tunnel project.

He noted upcoming proposal regarding the Regional Transportation Improvement District financing plans will include the viaduct, and SR 509 requiring increased bonding capacity.

Senior Services Advisory Committee

Councilmember White stated that this is a very successful Committee thanks to the volunteer Committee members. She reported that a new patio and landscaping should be installed this spring at the Activity Center.

She announced that Senior Softball will begin April 1st.

Economic Development Committee

Councilmember White announced that at the Committee meeting to be held tomorrow the Committee will be looking at revitalization issues for the downtown area.

Thank You

Councilmember White thanked Council, staff and community members for messages of support over the recent passing of her mother.

Environment Committee

Councilmember Thomasson reported the Committee has been reviewing the history and background regarding the Des Moines Creek Basin. He noted that staff is working on a couple of issues and that the Interlocal regarding the Basin will be back before the full Council shortly.

Councilmember Thomasson requested that Administration give a report on the parking requirements and impacts on Highline College with the proposed development at the Midway site.

Municipal Facilities Committee

Mayor Sheckler announced that the Committee met earlier this evening to discuss the upland area of the Marina regarding costs, open space and landscaping. He noted that the Committee will meet again in the next few weeks and hope to have a report for the May 6th Agenda.

ADMINISTRATION REPORTS

Redondo Boat Launch Project

City Manager Piasecki announced that funding from IAC in the amount of \$16,000 has been granted to complete the arbors at Redondo.

Hazardous Waste Recycling Event

City Manager Piasecki noted that the recent event held at the Marina appeared to be very successful and he will provide a full report to Council in his monthly written report.

Des Moines Boosters

City Manager Piasecki reported that the Des Moines Boosters are planning a downtown clean-up event sometime in the first week of May.

Council Future Agenda Items

City Manager Piasecki called Council's attention to the fact that the City Council Future Agenda Items has been expanded through the end of the year. He noted that it is a busy year ahead and requested feedback from Council.

Development Moratorium on Pacific Highway South

City Manager Piasecki reminded Council that a moratorium on development can only be instituted by Council action. He felt this rumor is a result of a misunderstanding by business owners over the work being done by Highline Water District for the Pacific Highway South Improvement Project. The Water District would normally be restricted from cutting into a new street when the project is complete and he thought that the District may be telling customers if they want any additional water service they should have it done now. He advised that the District could be allowed to cut into the new street for an emergency, and only with a higher degree of repair. Again, he assured Council that there is no development moratorium on Pacific Highway South.

Upon questioning by Council, Mr. Piasecki explained that the rule regarding street cuts was an Administrative policy and could be waived if necessary.

Highline Community College Parking

City Manager Piasecki informed Council that parking issues at the College were addressed during the permits for their latest construction. He stated that he will provide Council with more information on parking plans at the College.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the regular minutes of February 5, 2004, and the special and regular minutes of February 12, 2004.

2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #93116 through # 93253 & electronic fund transfers in the total amount of \$362,426.21

Payroll fund transfers in the total amount of \$336,788.30

3. Motion is to confirm Mayor Sheckler's appointments of Jill Patton and Florence McMullin to two year terms on the Human Services Advisory Board; and Barbara Lloyd McMichael to a three year term on the Library Board. All terms to be effective January 1, 2004."

4. ~~Draft Ordinance No. 03-079 [ASSIGNED ORDINANCE NO. 1336]~~ Title: ~~An Ordinance of the City of Des Moines, Washington, relating to municipal finance, creating imprest cash funds, authorizing the Finance Director to establish policies for creation and operation of such funds, creating a new chapter in Title 3 DMMC entitled "Imprest Cash Funds", and repealing chapter 3.60 DMMC.~~

~~TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 03-079. [ED NOTE: Item was removed by Mayor Pro Tem Thomasson.]~~

5. ~~Motion is to create the position of regular part-time Municipal Court Judge. [ED NOTE: Item was removed by Councilmember Steenrod.]~~

Mayor Sheckler requested that the Minutes of February 12th, page 7, second to last paragraph be amended to read: "Mayor Sheckler declared the public hearing closed and noted that if Council wishes to take action on the draft ordinance, a motion to suspend Council rules is in order."

Councilmember Steenrod requested that Consent Item #5 be removed.

Mayor Pro Tem Thomasson requested that Consent Item #4 be removed.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to approve the Consent Calendar Items 1 through 3 as read. Motion passed unanimously.

REMOVED CONSENT CALENDAR ITEMS

Creation of Position of Regular Part Time Municipal Court Judge

Councilmember Steenrod expressed concern over creation a position that would add to the City's employee head count. She noted at a time of a tight budget the City needs to accomplish goals without adding expenses through expanding the number of employees.

City Manager Piasecki advised that making the Municipal Court Judge a regular employee versus a contract employee, will actually reduce costs by about \$2,000.00 a year. He informed Council that after careful consideration of the Judge's request he noted that the City does operate a Municipal Court and therefore there is a need for a quality Judge and having the position as an employee makes it a more attractive position for more highly-qualified candidates. He noted that should the Judge's position ever become full-time, it would then become an elected position.

Mayor Pro Tem Thomasson felt that this is a policy question of employee versus a contract.

Upon questioning by Council, City Manager Piasecki noted the position will be up to 20 hours a week and receive vision and dental benefits. Also, sick leave and vacation will be prorated based on the number of hours worked.

City Attorney Marousek advised that a contract will be prepared with a specific salary that can only be changed through negotiation.

City Manager Piasecki advised that the contract will specifically waive health insurance benefits.

Councilmember Sherman pointed out that the contract for the Judge is for a time limit of four years.

MOTION was made by Councilmember White, seconded by Councilmember Sherman, to create the position of regular part-time Municipal Court Judge.

FRIENDLY AMENDMENT: Councilmember Thomasson felt that staff should be directed to prepare an ordinance to make the necessary changes to DMMC 2.28. This was accepted by the maker and seconder of the motion.

Councilmember Steenrod advised that she will be voting against the motion, but she wished to make it clear that it has nothing to do with Judge Hartl's performance, but only the issue she raised earlier regarding increasing the number of employees.

VOTE ON AMENDED MOTION: Motion passed 6 to 1 with Councilmember Steenrod opposed.

Draft Ordinance No. 03-079 [ASSIGNED ORDINANCE NO. 1336] Imprest Cash Funds

Mayor Pro Tem Thomasson noted that the draft ordinance directs the Finance Director to prepare forms. He would prefer the ordinance state that the rules are prepared by the Finance Director and co-signed by the City Manager. He also would prefer that the adoption of the ordinance did not include attaching a copy of the policy and procedure. He felt that since staff has the authority to prepare, they could also change the policies or procedures as needs dictate, so he would prefer they not be part of the ordinance.

City Manager Piasecki suggested that at the end of Section 2 language be added "with approval of the City Manager".

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to suspend Council Rule 26(b) in order to adopt the draft ordinance on first reading. Motion passed unanimously.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember White, to adopt Draft Ordinance No. 03-079 with the proviso that Section 2 be amended as discussed and that Section 4 be deleted.

Mayor Pro Tem Thomasson read the draft ordinance by title into the record.

VOTE ON MOTION: Motion passed unanimously.

OLD BUSINESS

Draft Ordinance No. 04-022 [ASSIGNED ORDINANCE NO. 1337] - Closure of South 212th Street - 1st Reading

City Manager Piasecki stated that the draft ordinance is on the agenda this evening because two Councilmembers were absent from the February 12th meeting when the draft ordinance was presented, but not acted upon. They requested the Mayor place the item on the agenda to allow the entire Council to vote.

Councilmember Sherman indicated he has reviewed the entire video of the February 12th Council Meeting. [ED NOTE: Councilmember White had advised earlier, under Comments from the Public, that she reviewed the video tape on this topic.]

City Manager Piasecki reminded Council of correspondence dated Feb. 19, 2004 from Lew Leigh, Executive Director of the Washington Cities Insurance Authority (WCIA), which he distributed to Council on Feb. 23rd. He read a portion of the letter which stated the intention of denying coverage and defense for any loss which results from the sub-standard repairs or design of South 212th, specifically 200' between Des Moines Memorial Drive and 7th Place South. The letter further urged that the street be brought up to reasonable City street standards before re-opening or remove the street for public travel purposes. He noted that WCIA provides the City's liability insurance coverage.

Mayor Pro Tem Thomasson noted that under public comments, the question was raised regarding Council's Rules over reconsideration. He questioned the City Attorney on her opinion on this subject.

City Attorney Marousek advised that she reviewed the Council Rules, in particular, reconsideration. She noted that at the February 12th meeting the Council voted on a motion that did not concern the ordinance. She stated that she reviewed the video tape of the meeting and the Mayor did point out to Council that there was an ordinance before them, but the Council took action on a motion. She noted that this just sort of left the ordinance "sitting there". In accordance to Council rules, a piece of business that has not been acted on in accordance with the last section of Rule 20, shall be deferred to the next regular Council meeting as Old Business, unless the Council by majority vote, determines otherwise. She also noted that under Rule 9 the Presiding Officer or three Councilmembers do have the authority to put items on the Agenda.

Upon questioning regarding Sea Tac Disposal garbage pickup, City Engineer Andrews informed Council that upon contacting the Disposal Company, they noted that they do use a small portion of South 212th and it has been difficult recently because of some loss of road material. She advised that it is the City's intent to improve that area for the garbage company, should the Council determine to close 212th permanently.

Upon questioning by Councilmember Sherman, Mr. Snyder (see comments from the public) advised that garbage pickup service has resumed.

Mayor Pro Tem Thomasson stated that should 212th be closed to vehicle traffic he would expect to have pedestrian access made available. He suggested that should the road be closed he would like a motion to ensure that this option is included.

Councilmember Benjamin noted that the motion of February 12th passed 3 to 2 directing Administration to have Highline Water District restore South 212th Street. He questioned why Administration did not bring up the fact that the ordinance needed to be acted upon at that meeting and why it is being brought up tonight.

Mayor Sheckler remarked that he brought it to Council's attention that action did need to be taken on the draft ordinance by asking for a motion to suspend Council Rule 26(b). However, a motion was offered and no action was taken on the ordinance.

Councilmember Benjamin stated that this item was dealt with at the last meeting and feels this is a waste of time. He advised that the feeling he is getting is that the vote did not go the way Administration would have liked it to, therefore it is back before Council tonight. He stated that he needs to know how the system failed and how to correct it.

City Manager Piasecki felt that the only excuse he has is that he was not paying attention to exactly what the Council rules say technically.

Councilmember Steenrod noted that Council Rule 28 is explicitly there for someone who wishes to change their vote due to new information or some other reason to bring an issue back for reconsideration. She stated that those who voted at the last meeting are not going to change their votes. She expressed concern that the citizens do not have time to keep coming to Council meetings because a vote does not go the way Administration wants. She felt that the Council took a vote, with a quorum, in a public session, after a public hearing and she has not heard anyone on the majority side that asked for reconsideration. Therefore, she questioned the ability of anyone to bring this matter back. She expressed concern that this action tonight tells the citizens that we do not care what your opinions are, that we will do what we want. She felt that

if the Council rules are not working to benefit the public then they should be changed. She pointed out that the packet item contained alternatives and one of them stated that Council could choose to reconstruct the street and by doing so, the City would accept the increased liability risk. She stated that she will not vote on the ordinance as a matter of principle and her vote stands from the previous meeting.

Councilmember Sherman expressed resentment for staff being blamed for what happened. He noted that all Councilmembers have served at least two years and know that the proper action would have been to act on the draft ordinance and vote it up or down. He felt those Councilmembers who were in attendance choose not to follow the rules.

Mayor Pro Tem Thomasson felt that the Council Rules regarding reconsideration are somewhat unclear. He noted that Council legislatively is always making decisions and constantly amending the Code. He noted that most decisions are not final and can always be revisited. He advised that the reconsideration rule deals mostly with those things that some permanent action comes out of.

Councilmember Benjamin stated that he felt that the action taken on February 12th was final and while he realizes decisions can be revisited, to say that an ordinance was left "dangling" indicates that there was something improperly done. However, he believes the issue was handled properly, with a vote of 3 to 2, and suggested Council move on to the next agenda item.

In response to questioning from Councilmember Sherman, City Attorney Marousek stated that Mayor Sheckler asked to have this item on the Agenda and she believes Council's Rules permit this action.

Mayor Pro Tem Thomasson stated that he had received a telephone call from the City Manager stating that he had three Councilmembers wishing to place this item on the Agenda and did he wish to add his name as the fourth. He informed the City Manager that since there were three already, he did not need to add his name. He noted that he does not feel that this is a dangling ordinance, but an entirely proper agenda item as the rules say that three Councilmembers can place an item on the Agenda for the Council to consider.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to suspend Council Rule 26(b) to enact the draft ordinance on a first reading. Motion passed with Councilmembers Sherman and White, Mayor Pro Tem Thomasson and Mayor Sheckler voting yes, Councilmembers Benjamin and Petersen voting no, and Councilmember Steenrod abstaining.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to enact Draft Ordinance No. 04-042.

City Attorney Marousek requested permission to revise the draft ordinance language to change it from an emergency ordinance to a regular ordinance. She noted it would take five votes to make an ordinance effective in five days and since it appears that there are only four votes in favor, she would make the language changes to make the ordinance in effect in 30 days.

Councilmember Sherman stated that he was sorry that 212th washed away. He advised that his initial reaction was to replace the road. He noted that not everyone wants the road opened. He

stated that after reviewing the Public Hearing video on the tape, even those who wanted the road left open, acknowledged that it is dangerous and requires special rules to navigate. He noted that a report produced by CH2M Hill stated that the road is dangerous for a variety of reasons, that it is deficient because of slope and sight distance, among other issues. He cited an appeals court case, Olson versus City of Bellevue of November 30, 1998, which clearly states that when an annexed area has roads that are deficient, the City is not responsible until such time as they are able to learn about the deficiencies. He noted it would be very hard to say that Des Moines is not aware of such deficiencies connected with 212th. He also called attention to the letter from the Washington Cities Insurance Association, which insures the City, that the City would be at increased liability if 212th is rebuilt. He further noted that the letter specifically states that if the City rebuilds the road as it was, the City will not be covered by insurance. He felt it is very clear that this is a very dangerous road and the City would be liable should an accident happen. He advised that he holds a responsibility to the citizens of the whole City, not just North Hill. He stated that based on all the information available, he believes the road should not be rebuilt. The only other alternative would be to rebuild it to a non-deficient state which could cost hundreds of thousands of dollars and he is not willing to do that.

Councilmember White noted this is a difficult issue and the City cannot please everybody. She advised that she personally visited the road and feels it is dangerous. She felt in light of information concerning the City's liability she cannot support re-opening the road.

Mayor Pro Tem Thomasson advised that he has listened to all the pros and cons, including testimony regarding hazardous conditions at the Council's Public Safety and Transportation Committee Meeting, but when the City's own insurance carrier has advised that the City will not be covered and the City Attorney has stated she cannot think of any way to defend the City, he is left with no choice but to vote to have the street closed. He acknowledged that the street was convenient, but other options are available.

VOTE ON MOTION: Motion passed with Councilmembers Sherman and White, Mayor Pro Tem Thomasson and Mayor Sheckler voting yes. Councilmembers Benjamin and Petersen voting no, and Councilmember Steenrod abstaining.

At 9:22 p.m. Mayor Sheckler called for a short break to be followed by an Executive Session at 9:30 p.m.

Executive Session

At 9:30 p.m. City Attorney Marousek advised that Council will convene into an Executive Session for approximately 15 minutes to discuss with legal counsel representing the City litigation or potential litigation to which the City is, or is likely, to become a party and about which public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the City.

No formal action was taken.

At 9:47 Council reconvened into open session and Councilmember Benjamin left the Council Chambers.

NEW BUSINESS

Amended Airport Communities Coalition (ACC) Interlocal Agreement

City Manager Piasecki informed Council that the draft revised interlocal agreement has been approved by the ACC Executive Committee and has been forwarded to the legislative bodies of each party for review and approval. He advised that the changes are for the most part structural in nature. He advised that the Executive Committee has been expanded to include, not only the appointed delegate for each party, but also each party's alternate, and each party's city manager/administration, however each party still only has one vote. He also noted the addition of two new activities as follows:

- Coordinate development of an ACC mitigation proposal that would fairly consider the varied impacts of the existing airport operations and third-runway expansion upon the ACC communities.
- Coordinate meetings with the Port of Seattle to seek to minimize the impacts and to mitigate all present and future impacts to ACC communities.

He reviewed the amendments to the Interlocal Agreement as presented in Council's packets noting that most of the changes are to clarify sections that were confusing or poorly written and to organize the interlocal to make it easier to follow.

Council discussion ensued with the following changes proposed and agreed to:

- Page 5, number 8: add the word "past"
- In regards to Attachment A, add language that it shall be adopted each year

MOTION was made by Councilmember Sherman, seconded by Councilmember White to approve the amended Airport Communities Coalition Interlocal Agreement with the following changes: add the word "past" to Page 5 number 8 and language that Attachment A shall be re-adopted at the beginning of each year and further, direct the City's representative to the ACC to present these changes substantially in the form as amended to the Executive Committee for consideration by the Committee and the legislative bodies of the other ACC member agencies.

In regards to Section I.C, Councilmember Steenrod commented that traditionally the membership has been made up only by elected officials. She noted that by adding the City Manager as a member with the potential of voting, makes a big change in regards to delegated authority. She noted it would be possible that the majority of elected official may not be in attendance at a meeting where action is taken, and therefore City Managers could have the majority vote.

Mayor Sheckler commented that Councilmember Steenrod's concerns have been expressed by other members and the right to vote by city managers may be removed.

Mayor Pro Tem Thomasson felt the issue of a majority of City Managers voting could be avoided by using the language that an official quorum to conduct business must contain a majority of elected officials.

It was Council's consensus that the definition of a quorum needs to be more specifically addressed.

VOTE ON MOTION: Motion passed unanimously 6 to 0.

Intergovernmental Relations Policies and Positions

Councilmember Steenrod voiced the opinion that these issues need to be reviewed, especially in light that the City Manager has recently used these positions to address State legislative issues.

Councilmember Sherman stated he would prefer a full Council in attendance before any discussions.

Mayor Pro Tem Thomasson suggested that Councilmembers provide Administration with particular subjects and issues to be discussed.

It was Council's consensus to have Administration and the Mayor schedule this topic for an upcoming study session.

NEXT MEETING DATE

Mayor Sheckler noted the next meeting will be a Study Session on March 4, 2004.

ADJOURNMENT

At 10:25 p.m. **MOTION** was made by Councilmember Petersen, seconded by Mayor Pro Tem Thomasson and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

ACTION ITEMS FROM FEBRUARY 26, 2004 MEETING

- Prepare draft ordinance for amendments to DMMC 2.28 regarding position of Municipal Court Judge as employee.

Des Moines Creek Basin Restoration Projects
Interlocal Agreement
Update: March 11, 2004

IIA Changes Requested by Des Moines Environmental Committee

Basin Committee Organization II. A. 3 (pg 6) - insert after Committee "who shall be empowered as their jurisdiction shall direct."

Clarifies that jurisdictions shall empower their basin committee representative, and that the basin committee representative has only those powers granted by the jurisdiction (ie: the representative does not have unilateral authority to commit the jurisdiction to contracts or other decisions.

Basin Committee Organization II A. 4 (pg 7) - insert after resolution. "Should two or more Parties request, professional mediation services will be retained to assist these officials in reaching a decision."

Should the basin committee fail to reach consensus, the issue is passed to the City Manager level. This insertion permits the City Managers to retain mediation services to assist them in reaching a decision prior to resorting to binding arbitration.

Party Responsibilities V. A. 3 (pg 21) - Text changed as follows: "Should any Party withdraw from this agreement, all easement rights granted to-of that Party shall terminate and be void A withdrawing Party may not terminate easements granted to other Parties for construction, operation and maintenance of the Projects."

Clarifies that a withdrawing Party no longer has easement rights, but may not revoke easements it has granted to other Parties to construct, operate and maintain the projects.

Party Responsibilities V. B. 3 (pg 22) - Text changed as follows: "Should any Party withdraw from this agreement, all easement rights granted to-of that Party shall terminate and be void A withdrawing Party may not terminate easements granted to other Parties for construction, operation and maintenance of the Projects."

Clarifies that a withdrawing Party no longer has easement rights, but may not revoke easements it has granted to other Parties to construct, operate and maintain the projects.

Party Responsibilities V. C. 4 (pg 22) - Text changed as follows: "Should any Party withdraw from this agreement, all easement rights granted to-of that Party shall terminate and be void A withdrawing Party may not terminate easements granted to other Parties for construction, operation and maintenance of the Projects."

Clarifies that a withdrawing Party no longer has easement rights, but may not revoke easements it has granted to other Parties to construct, operate and maintain the projects.

Party Responsibilities V. D. 4 (pg 23) - Text changed as follows: "Should any Party withdraw from this agreement, all easement rights granted to-of that Party shall terminate and be void A withdrawing Party may not terminate easements granted to other Parties for construction, operation and maintenance of the Projects."

Clarifies that a withdrawing Party no longer has easement rights, but may not revoke easements it has granted to other Parties to construct, operate and maintain the projects.

Costs VI. B. 2 (pg 26) – Insert after Des Moines. “Funding for the Operations and Maintenance budget shall be subject to any necessary authorization by each Party’s legislative authority”

Clarifies that budget decisions reached by the Basin Committee are subject to authorization by the individual jurisdictions.

Costs VI. c. 2 (pg 27) – Insert after Des Moines. “Funding for the Replacement and Improvement Fund budget shall be subject to any necessary authorization by each Party’s legislative authority”

Clarifies that budget decisions reached by the Basin Committee are subject to authorization by the individual jurisdictions.

Billing and Payment VII. A. 1. (pg 27) – Insert after Parties in both second and third sentence - “excepting the State”

Clarifies that the State is to be billed differently from the other Parties.

Billing and Payment VII. B. 3 (pg 28) – New item 3. “The first payment shall be made in calendar year 2005.”

Clarifies that no payments shall be made to the O&M fund in 2004. Allows jurisdictions to include payments in their normal budget process.

Billing and Payment VII. C. 3 (pg 28) – New item 3. “The first payment shall be made in calendar year 2005.”

Clarifies that no payments shall be made to the Replacement and Improvement Fund in 2004. Allows jurisdictions to include payments in their normal budget process.

Duration, Termination and Amendment VIII. B. (pg 29) – Insert “20 year” before duration .

Clarifies that funding commitments run for the full 20 years of the agreement, even if a Party withdraws.

*approved
1-0 on consent*

A G E N D A I T E M

SUBJECT: Design Guidelines -
Contract for consultant services.

ATTACHMENTS:

1. Consultant Services Contract

FOR AGENDA OF: March 11, 2004

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: March 2, 2004

CLEARANCES:

☒ LEGAL

☐

☐

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL CTL for TO

Purpose and Recommendation:

The purpose of this agenda item is to obtain Council authorization to contract for consultant services for the preparation of design guidelines.

"I move to authorize the City Manager to sign the contract with Cascade Design Collaborative for preparation of multifamily and commercial design guidelines. The contract shall be in the amount of \$30,000 and shall be substantially in the form as presented."

Background:

On December 11, 2003, the City Council accepted a Growth Management Grant from the Washington State Department of Community, Trade, and Economic Development (CTED). The scope of work for the grant involves the preparation of design guidelines for commercial and multifamily development. This project is funded entirely by grant funds.

Discussion:

As outlined in the City Manager's monthly report to the City Council, staff issued a Request for Proposals (RFP) for consultant services. Four proposals were submitted and staff has determined that the most-qualified firm is Cascade Design Collaborative (CDC).

Design guidelines are regulatory and economic development tools that can streamline the permit review process and improve the quality of life in Des Moines. Presently, the City has guidelines only for the Pacific Ridge neighborhood. The draft scope of work

calls for assimilation of the Pacific Ridge design guidelines so that all our design provisions will be compiled.

Design guidelines provide information that can help permit applicants avoid design-related problems that would otherwise slow the permit process. These guidelines can help mitigate or minimize potential land use conflicts and incompatibility issues. Our design guidelines will include Crime Prevention Through Environmental Design (CPTED) concepts to discourage criminal activity.

Cascade Design Collaborative has many years of experience in creating design guidelines for municipalities. Staff believes that CDC is well qualified for this project. All references provided very positive feedback about this consulting firm. A draft contract with a scope of work is provided as Attachment 1.

Alternatives:

1. Authorize the City Manager to sign the design guidelines agreement with CDC.
2. Authorize the City Manager to sign the design guidelines agreement as revised by the City Council.
3. Do not authorize the City Manager to sign the design guidelines agreement.

Financial Impact:

This project is funded via a State grant. The City will need to allocate staff resources to project management and review of the draft guidelines. Good design guidelines can help promote new construction by: 1) simplifying the permit review process; and 2) ensuring all new construction has a lasting, positive impact upon the community.

Recommendation/Conclusion:

Administration recommends the Council award the design guidelines contract CDC.

Concurrence:

A special staff team consisting of representatives of Police, Parks, Public Works, Community Development, and Administration has reviewed the proposals and recommends CDC.

CITY OF DES MOINES AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is entered into this _____ day of _____, 2004, by and between the CITY OF DES MOINES, a municipal corporation of the State of Washington (hereafter referred to as "City"), and CASCADE DESIGN COLLABORATIVE, a company incorporated under the laws of the State of Washington (hereafter referred to as "Contractor").

WHEREAS, the City was awarded a grant by the Washington State Department of Community Trade and Economic Development (CTED) for the preparation and adoption of design guidelines for multifamily and commercial properties; and

WHEREAS, the Des Moines City Council by regular motion on January 22, 2004, accepted the CTED grant and authorized Administration to solicit proposals for consultant services; and

WHEREAS, a Request for Proposals (RFP) was issued on January 26, 2004, and Cascade Design Collaborative was selected as the most qualified firm from the four proposals received; and

WHEREAS, Cascade Design Collaborative is land use and urban design consulting firm with extensive experience in the design of public spaces and private properties; and

WHEREAS, on the 11th day of March, 2004, the Des Moines City Council authorized the City Manager to enter into an agreement with Cascade Design Collaborative for the preparation of design guidelines for multifamily and commercial properties; and

WHEREAS, the services to be performed by the Contractor are temporary in duration; now, therefore,

IN CONSIDERATION of the mutual promises and covenants herein contained, to be kept, performed and fulfilled by the respective parties hereto, it is mutually agreed as follows:

1. The Contractor shall perform all services and carry out all work described in the attached "Scope of Work", attached hereto and incorporated herein as Attachment "A", for a fee not to exceed \$30,000.
2. The Contractor shall perform the services identified in Attachment "A" in a manner consistent with the terms of the Grant Agreement between the City of Des Moines and CTED (Contract No. S04-62600-091), attached hereto and incorporated herein as Attachment "B".
3. The City's Assistant City Manager shall have responsibility for overseeing and directing the Contractor's work.
4. Contractor agrees to submit no more than one invoice per calendar month for services

provided and costs incurred. Original invoices shall be submitted to the City.

5. Payment shall be authorized by the City on the basis of the completion of specific work tasks outlined in Attachment "A". If the City determines that adequate documentation for satisfactory completion of a work task is not provided, the City shall notify the Contractor within 10 days of receipt of the invoice to the reasons for withholding payment and the information or performance required for payment. The City shall mail payment within thirty (30) days of the City's approval of an invoice.

6. Any proposal for changes in the Scope of Work initiated by the Contractor shall be submitted to the City, including estimates of added costs. If the City proposes changes in the Scope of Work in a way that significantly changes the scope of the engineering work, the Contractor shall prepare a revised Scope of Work, and a revised cost estimate for review by the City. The Contractor shall not be obligated to proceed with any tasks not contained in the revised Scope of Work until such time as the payment for such services is resolved between the Contractor and the City.

7. (a) The parties intend that the Contractor shall be an independent contractor and not an employee of the City. No agent, employee or representative of the Contractor or subcontractors shall be deemed to be an agent, employee or representative of the City for any purpose under this contract. Employees of the Contractor or of the subcontractors are not employees of the City and are not entitled to any of the benefits the City provides to City employees. The Contractor will be solely and entirely responsible for the acts of its employees, agents and subcontractors during the performance of this Agreement.

(b) Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Agreement, shall be considered employees of the Contractor only and not of the City and any and all claims that may or might arise under the Workmen's Compensation Act on behalf of said employees of the Contractor, while so engaged and any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employee while so engaged on any of the work of services provided or rendered herein, shall be the sole obligation and responsibility of the Contractor.

(c) In the performance of the services under this Agreement, the Contractor is an independent contractor with control over the method and manner of completing the work, and the work of any subcontractors subject to applicable regulations. However, the results of the work contemplated herein shall be subject to the City's general rights of direction and must be approved by the City.

(d) The Contractor shall hold the City and its officials, agents, and employees, harmless from all suits, claims or liabilities of any nature, including attorneys fees, costs and expenses, for or on account of any injuries or damages sustained by any persons or property resulting from negligent acts, errors, or omissions of the Contractor, its agents or employees pursuant to this Agreement, or on account of any unpaid wages or other remuneration for services; and if a suit with respect to the above be filed, the Contractor shall appear and defend

the same at its own cost and expense, and if judgment be rendered or settlement made requiring payment of damages by the City, which damages are based on the negligent activities or omissions of the Contractor, its agent or employees, the Contractor shall pay the same to the extent the same result from negligent acts, errors, or omissions of the Contractor, its agents or employees pursuant to this Agreement.

(e) If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Commercial or Construction Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or, if the parties are unable to agree upon a mediator, through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the parties or if the parties are unable to agree upon an arbitrator, through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. Provided, however, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

8. Minimum Scope of Insurance. The Contractor's coverage shall be at least as broad as:

(1) Insurance Services Office form number GL 0002 (Ed.1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 (Ed. 1/81) covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) (Ed. 11/85).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code any auto and endorsement CA 0025 (Ed. 12/88)

(3) Worker's Compensation coverage as required by the Worker's Compensation Act of the State of Washington.

9. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

(1) Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Worker's Compensation coverage as required by Workers' Compensation Act of the State of Washington.

10. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials

and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11. Policy Coverages. The Policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages

(A) The City, its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.

(B) The Contractor's coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(C) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.

(D) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) All Coverages. Each insurance policy required by this clause shall state that coverage shall not be suspended, voided, canceled by, either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City.

12. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

13. (a) The right is reserved by the City to terminate or suspend this Agreement at any time upon not less than ten (10) days written notice.

(b) The Contractor reserves the right to terminate this agreement with not less than sixty (60) days written notice, or in the event outstanding invoices are not paid within forty-five (45) days.

(c) In the event this Agreement is terminated by the City, the Contractor shall be entitled to payment of all hours worked and reimbursable expenses incurred to the effective date of termination, (less all payments previously made). This provision shall not prevent the City from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the City shall be deducted from the final payment due the Contractor. No payment shall be made by the City for any expenses incurred or

work done following the effective date of termination unless authorized in advance in writing by the City.

(d) This Agreement may not be assigned or otherwise transferred by any party or parties hereto without the written consent of the other parties.

14. The parties hereto agree that the engineering and environmental studies, facility design and all construction documents submitted by the Contractor in the course of execution of the Scope of Work shall be public records subject to the limitations and exceptions of RCW 42.17, and furthermore shall be considered in the public domain and not subject to copyright.

15. The Contractor agrees to report to the City immediately any situation that might involve any conflict of interest in connection with its performance of this Agreement. The Contractor or subcontractors shall not have a financial interest in the proposal other than fees due under this Agreement.

16. This Agreement, including attachments incorporated by reference, represents the entire agreement and understanding between the parties in relation to the subjects addressed herein and any negotiations, proposals, purchase orders, or oral agreements are intended to be integrated herein and to be superseded by this written Agreement.

17. This Agreement is to be governed by, and construed in accordance with the laws of the City of Des Moines and the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Agreement, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Agreement until the parties have exhausted the mediation and arbitration procedures required by this Agreement.

18. Any notice required by the terms of this Agreement shall be deemed communicated if addressed or transmitted as follows:

The City of Des Moines:

Corbitt Loch
Assistant City Manager
21630 11th Avenue South, Suite A
Des Moines, WA 98198
Telephone: (206) 870-6568
Fax: (206) 870-6544
E-mail: cloch@cityofdesmoines.com

Cascade Design Collaborative

Eric Schmidt
Principal
911 Western Avenue, Suite 210
Seattle, WA 98104
Telephone: (206) 628-9133
Fax: (206) 292-8824
E-mail: eric@cascadedesigncollab.com

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CITY OF DES MOINES

CASCADE DESIGN COLLABORATIVE

By _____

By _____

Its: City Manager
21630 11th Avenue South, Suite A
Des Moines, WA 98198

Its: _____

Dated _____

Dated _____

APPROVED AS TO FORM:

By _____

Its City Attorney
21630 11th Avenue South, Suite C
Des Moines, WA 98198

Dated _____

SCOPE OF WORK

Preparation of Multifamily and Commercial Design Guidelines

Overview

The City of Des Moines seeks consultant services relating to design guidelines for multifamily and commercial properties. The objective of this project is adoption, by the Des Moines City Council, of design guidelines that will be used to guide new multifamily and commercial construction. The guidelines will be available to the public in printed form and electronically via the City's website.

Des Moines utilizes an administrative design review process. The City presently has design guidelines for one neighborhood only, Pacific Ridge. This project includes review and analysis of Des Moines' existing design review regulations and design guidelines to identify necessary revisions and updates. The existing design guidelines for Pacific Ridge shall be incorporated with the new design guidelines so that Des Moines' design review standards are integrated and comprehensive. Adopting ordinances shall be prepared by the City of Des Moines.

This project will include consultation with City staff, developers, the general public, and other stakeholders. Cascade Design Collaborative (hereafter referred to as the Consultant) will identify broad urban design and neighborhood-specific objectives. The guidelines shall incorporate Crime Prevention Through Environmental Design (CPTED) concepts. Between two and four public presentations by the Consultant will be conducted during evening hours.

The guidelines shall contain extensive use of graphics. Images of buildings/development with annotations and call-outs will identify desirable or undesirable design solutions. Graphics may be photographs of actual structures, or illustrations of conceptual but realistic construction. Graphics shall be embedded within the document and shall be producible via black and white printing/photocopying. Guidelines shall identify specific architectural or design features that can be incorporated within most types of construction, and will clearly communicate design objectives for developers, designers, the public, elected and appointed officials, and permit review staff.

The Consultant shall create and maintain a mailing list for interested persons, and facilitate the mailing/distribution of public notices and announcements. Public notices for hearings shall be prepared by the City of Des Moines, and distributed by the consultant.

Deliverables

- Written assessment of Des Moines' existing design review regulations and design guidelines, with recommended changes as necessary. Modernization of existing regulations, if necessary, shall reflect current case law. Changes to existing design review regulations (chapter 18.58 DMMC) shall be provided in legislative format.

- 25 copies of a first draft of the design guidelines (including legislative changes), comb-bound with front and back covers.
- A minimum of three presentation boards depicting general concepts and specific provisions of the draft design guidelines.
- Completed SEPA checklist.
- Mailing labels for public notice and public participation.
- Up to 25 copies of a second draft of the design guidelines (including legislative changes), comb-bound with front and back covers.
- One Microsoft PowerPoint presentation for use during public review and the legislative process.
- One camera-ready, hardcopy original of the adopted design guidelines.
- 50 copies of the adopted design guidelines, comb-bound with front and back covers.
- Electronic versions of the design guidelines in a Microsoft Windows-compatible format, and two Adobe Acrobat formats.

Schedule

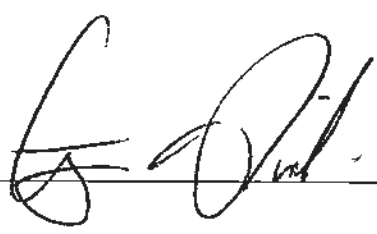
The Consultant shall complete work and submit invoices for payment as outlined in the Des Moines-CTED grant agreement. Specifically, the timing and amount of invoices for payment shall conform to the Budget of the Des Moines-CTED grant agreement. Adoption of the design guidelines by the Des Moines City Council is scheduled to occur before December 1, 2004.

Compensation

The professional consultant services enumerated herein shall be provided for a fee not to exceed \$30,000.

ATTACHMENT "B" DES MOINES-CDC AGREEMENT

WASHINGTON STATE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
GROWTH MANAGEMENT SERVICES

1. GRANTEE: <u>CITY OF DES MOINES</u> <u>21630 11TH AVENUE SOUTH, SUITE A</u> <u>DES MOINES, WASHINGTON 98198</u>	2. AWARD DATE: November 12, 2003	3. END DATE: December 31, 2004
4. GRANTEE REPRESENTATIVE: NAME: <u>CORBITT LOCH</u> PHONE: (206) 870-6568 FAX: (206) 870-6540 E-MAIL: <u>cloch@cityofdesmoines.com</u>	5. CTED REPRESENTATIVE: NAME: <u>IKE NWANKWO</u> PHONE: (360) 725-3056 FAX: (360) 753-2950 E-MAIL: <u>iken@cted.wa.gov</u>	
6. SOURCE OF STATE FUNDS: (GROWTH MANAGEMENT SERVICES) <u>\$30,000</u>	7. GRANTEE TAX IDENTIFICATION NUMBER: 91-6016496	
8. SUMMARY: To develop design guidelines for multi-family and commercial properties		
The DEPARTMENT and GRANTEE acknowledge and accept the terms of this CONTRACT and attachments and have executed this CONTRACT as of the date and year written below. The rights and obligations of both parties to this CONTRACT are governed by this CONTRACT and other documents incorporated by reference: CONTRACT Terms and Conditions including Attachment "A," Work Plan and Attachment "B," Budget.		
FOR THE DEPARTMENT OF COMMUNITY TRADE AND ECONOMIC DEVELOPMENT:  _____ Nancy K. Ousley, Assistant Director, Local Government Division DATE: <u>29 Dec 03</u>	FOR THE CITY OF DES MOINES:  _____ Name <u>City Manager</u> _____ Title DATE: <u>12/12/03</u>	
APPROVED AS TO FORM ONLY: <u>Signature on file</u> Melissa Burke-Cain, Senior Counsel Office of the Attorney General of Washington DATE: <u>October 20, 2003</u>	<u>approved as to form</u> <u>Tim A. Marounek</u> <u>City Attorney</u> <u>12/12/03</u>	

CONTRACT TERMS & CONDITIONS

SECTION 1 - PREAMBLE

This CONTRACT, entered into by the City of Des Moines, (hereinafter referred to as the GRANTEE) and the Department of Community, Trade and Economic Development (hereinafter referred to as the DEPARTMENT), WITNESSES THAT:

WHEREAS, the DEPARTMENT has the responsibility under RCW 43.330.050(5) to provide financial and technical assistance to the communities of the state, to assist in improving the delivery of federal, state, and local programs; and to provide communities with opportunities for productive and coordinated development beneficial to the well-being of communities and their residents; and

WHEREAS, the DEPARTMENT has the statutory authority under RCW 43.330.120 to offer technical and financial assistance to cities and counties planning under the Growth Management Act; and

WHEREAS, the DEPARTMENT has selected the GRANTEE to receive funds and the GRANTEE shall use the funds to undertake a project which furthers the goals and objectives of the DEPARTMENT's Growth Management Services Unit in accordance with its mission.

THEREFORE, the parties mutually agree to the following terms and conditions:

SECTION 2 - WORK PLAN

Over the course of the CONTRACT period, the GRANTEE shall accomplish the activities described in Attachment "A": Work Plan that is incorporated into the CONTRACT by reference.

SECTION 3 - FUNDING

The total funds to be reimbursed to the GRANTEE for costs incurred during the CONTRACT period shall be a sum not to exceed \$30,000.

SECTION 4 - BUDGET

An approved budget by category of expenditure is included as Attachment "B" of this CONTRACT that is incorporated into the CONTRACT by reference. The total amount of transfers of funds between line item budget categories shall be as specified in Attachment "B." If the cumulative amount of these transfers exceeds or is expected to exceed the amount specified in Attachment "B," the total project budget shall be subject to justification and negotiation of a CONTRACT amendment by the GRANTEE and the DEPARTMENT.

SECTION 5 - CONTRACT PERIOD

- A. The effective date of this CONTRACT shall be the date all parties sign and complete execution of the CONTRACT. This CONTRACT shall terminate on December 31, 2004 except for any remaining obligations of the GRANTEE as may exist under Section 7.
- B. Costs to be reimbursed by the DEPARTMENT under this CONTRACT are those eligible costs incurred during the performance of the CONTRACT work program on or after July 1, 2003.

SECTION 6 - REIMBURSEMENT PROVISIONS

- A. Funds will be disbursed per the schedule established in Attachment "B."
- B. Only eligible project-related costs will be reimbursed. Ineligible costs include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.
- C. Within twenty (20) days after receiving and approving the voucher, the DEPARTMENT shall remit to the GRANTEE a warrant covering the DEPARTMENT's share of the costs incurred for work performed.
- D. The final invoice voucher covering costs incurred for work performed on or before December 31, 2004, must be submitted by the GRANTEE prior to January 9, 2005 to allow the DEPARTMENT sufficient time to process it. Payment of the final voucher shall be contingent upon the DEPARTMENT's receipt and approval of any products or deliverables designated in Attachment "A."

SECTION 7 - REPORTS

- A. The GRANTEE shall submit a brief semiannual progress report on a form approved by the DEPARTMENT which describes the progress made on the work program outlined in Attachment "A." Progress reports will be submitted on a semiannual calendar cycle. The semiannual progress report shall also provide detail on the dedicated matching funds.
- B. The GRANTEE shall furnish, along with or prior to submitting the final invoice voucher, two copies of each final product designated in Attachment "A."

SECTION 8 - ACKNOWLEDGMENT OF STATE FUNDING

The GRANTEE shall provide all project-related press releases to the DEPARTMENT. Press releases shall identify the DEPARTMENT as a project financier.

Publications such as reports and pamphlets which are developed totally or in part with funds provided under this CONTRACT shall give credit to the funding source by including the following: "Funds made available through the Washington State Department of Community, Trade and Economic Development."

SECTION 9 - DOCUMENTATION, MONITORING, AND AUDIT

During the CONTRACT period and following its termination, the GRANTEE shall follow accounting procedures and shall maintain books, records, documents, and other evidence which sufficiently and properly reflect all project specific costs expended in the performance of this CONTRACT. The Office of the State Auditor or any persons duly authorized by the DEPARTMENT shall have full access to and the right to inspect, excerpt, audit, or examine any of these materials at all reasonable times for a period of six years after termination of the CONTRACT.

The DEPARTMENT may require a copy of the GRANTEE's most recent audit and management letter.

The DEPARTMENT may require the GRANTEE to obtain an audit for specific expenditures under this CONTRACT. Costs of a required audit are an allowable expense.

SECTION 10 - RECAPTURE PROVISIONS

In the event that the GRANTEE fails to expend funds under this CONTRACT in accordance with state laws and/or the provisions of this CONTRACT, the DEPARTMENT reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance.

Such right of recapture shall exist for a period not to exceed six years following CONTRACT termination. Repayment by the GRANTEE of funds under this recapture provision shall occur within 30 days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorney's fees.

SECTION 11 - CONTRACT AMENDMENTS

- A. The DEPARTMENT or the GRANTEE may request changes to the CONTRACT or its provisions. It is agreed and understood that no material or substantive alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by both parties. Any oral understanding or agreements shall not be binding unless made in writing and signed by both parties.
- B. CONTRACT amendments shall not be made which result in an extension of the CONTRACT period beyond June 30, 2005.

SECTION 12 - NONDISCRIMINATION CLAUSE

During the performance of this CONTRACT, the GRANTEE shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW. Washington's Law Against Discrimination, and 42, U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA).

In the event of the GRANTEE's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this CONTRACT may be rescinded, canceled, or terminated in whole or in part, and the GRANTEE may be declared ineligible for further CONTRACTS with the DEPARTMENT. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with Section 20.

SECTION 13 - TERMINATION OF CONTRACT

- A. If, through any cause, the GRANTEE shall fail to fulfill its obligations under this CONTRACT in a timely and proper manner; or if the GRANTEE shall violate any of its covenants, agreements, or stipulations; the DEPARTMENT shall have the right to terminate this CONTRACT. The DEPARTMENT may withhold the balance of state funding if such default or violation is not corrected within twenty (20) days after the DEPARTMENT submits written notice to the GRANTEE describing such default or violation.
- B. Notwithstanding any provisions of this CONTRACT, either party may terminate this CONTRACT by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- C. Reimbursement for GRANTEE work performed, and not otherwise paid for by the DEPARTMENT prior to the effective date of such terminations, shall be as the DEPARTMENT reasonably determines.
- D. In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this CONTRACT and prior to normal completion, the DEPARTMENT may unilaterally reduce the scope of work and budget or terminate this CONTRACT.

SECTION 14 - GRANTEE NOT EMPLOYEE OF DEPARTMENT

The GRANTEE, its employees, or agents performing under this CONTRACT are not deemed to be employees neither of the DEPARTMENT nor as agents of the DEPARTMENT in any manner whatsoever. The GRANTEE will not hold itself out as or claim to be an officer or employee of the DEPARTMENT or of the State of Washington and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington.

SECTION 15 - USE OF SUBCONTRACTS

The GRANTEE may enter into subcontracts for any of the work contemplated under this CONTRACT without obtaining prior written approval of the DEPARTMENT. The GRANTEE shall follow local policies regarding procurement, or in absence of local policies, shall use a competitive procurement process.

Each CONTRACT that the GRANTEE enters into with subcontractors, creditors and others shall contain a clause providing notice that the state and the DEPARTMENT are not responsible for any legal obligation, financial or otherwise, incurred by the GRANTEE.

The DEPARTMENT reserves the right to monitor the subcontractor selection process and contractual documents either during or following the selection process.

The GRANTEE is responsible for the performance of any subcontractors. The GRANTEE shall require all subcontractors to follow the same rules and regulations as described in this document. All subcontractors must be monitored by the GRANTEE to ensure fiscal accountability.

SECTION 16 - OWNERSHIP OF PROJECT MATERIALS

All finished or unfinished documents, data, studies, surveys, drawings, models, photographs, films, duplicating plates, computer disks and reports prepared by the GRANTEE under this CONTRACT shall be works for hire under U.S. copyright law. The DEPARTMENT may duplicate, use, and disclose in any manner and for any purpose whatsoever, all materials prepared under this CONTRACT.

The GRANTEE must have prior approval of the DEPARTMENT to produce patents, copyrights, patent rights, inventions, original books, manuals, films, or other patentable or copyrightable materials, in whole or in part with funds received under this CONTRACT. The DEPARTMENT reserves the right to determine whether protection of inventions of discovery shall be disposed of and administered in order to protect the public interest. Before the GRANTEE copyrights any materials produced with funds under this CONTRACT, the DEPARTMENT reserves the right to negotiate a reasonable royalty fee and agreement.

SECTION 17 - TRAVEL AND SUBSISTENCE REIMBURSEMENT

Travel and subsistence reimbursement shall be made in accordance with the guidelines followed by the GRANTEE in the course of normal operations. In the absence of local provisions, per diem rates and travel allowances shall be paid in accordance with rates set for state employees pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or hereafter amended.

SECTION 18 - SPECIAL PROVISION

The DEPARTMENT's failure to insist upon the strict performance of any provision of this CONTRACT or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this CONTRACT.

SECTION 19 - HOLD HARMLESS

The GRANTEE agrees to defend, hold harmless, and indemnify the State of Washington and the DEPARTMENT, their officers, agents, employees, and assigns against any and all damages of claims from damages resulting or allegedly resulting from the GRANTEE's performance of activities under the terms of this CONTRACT.

SECTION 20 - DISPUTE RESOLUTION

Except as otherwise provided in this CONTRACT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the GRANTEE, and a third party mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

SECTION 21 - GOVERNING LAW AND VENUE

The CONTRACT shall be construed and enforced in accordance with, and the laws of the State of Washington hereof shall govern the validity and performance. Venue of any suit between the parties arising out of this CONTRACT shall be the Superior Court of Thurston County, Washington.

SECTION 22 - APPLICABLE LAWS AND REGULATIONS

The GRANTEE shall comply with all existing applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

SECTION 23 - SEVERABILITY

In the event any term or condition of this CONTRACT or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this CONTRACT which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this CONTRACT are declared severable.

SECTION 24 – ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

The attachments to this agreement are as follows:

- ATTACHMENT A: “Work Plan,” consisting of 1 page(s); and
- ATTACHMENT B: “Budget,” consisting of 1 page(s).

ATTACHMENT A: WORK PLAN

Grantee: City of Des Moines

Summary: To develop design guidelines for multi-family and commercial properties.

Estimated Completion Dates & Activities:

Goals/ Actions/ Deliverables	Description	Start Date	End Date
Goal	To create and adopt design guidelines for multi-family and commercial properties		
Action	Gather design guidelines from other communities	10/1/03	12/15/03
Action	Hire consultant	11/15/03	1/15/04
Action	Gather images of desirable and undesirable development	1/1/04	3/1/04
Action	Identify desired design themes and elements	2/1/04	3/31/04
Action	Prepare draft design guidelines	3/1/04	7/30/04
Action	Solicit public participation and input	8/1/04	9/30/04
Action	Prepare SEPA checklist and issue SEPA threshold determination	8/1/04	9/30/04
Action	Conduct public meetings and public hearing	9/1/04	12/1/04
Action	Adopt final design guidelines	11/1/04	12/1/04
Deliverable	Final adopted design guidelines		12/1/04

Deliverables: Final adopted design guidelines

Status reports due by: December 15, 2003, June 15, 2004, and December 15, 2004

Products to be submitted by: December 15, 2004.

**ATTACHMENT B: BUDGET
DES MOINES-CTED AGREEMENT**

The budget shall consist of the following elements:

1. Category of Expenditure

	SFY 2004	SFY 2005	Total
Salaries and Benefits	\$1,000	\$2,000	\$3,000
Goods and Supplies			
Professional Services	\$10,000	\$20,000	\$30,000
Other Goods and Services	\$100	\$400	\$500
Total	\$11,100	\$22,400	\$33,500

2. Budget Summary

	SFY 2004	SFY 2005	Total
CTED Funds	\$10,000	\$20,000	\$30,000
Other Funds	\$1,100	\$2,400	\$3,500
Total	\$11,100	\$22,400	\$33,500

3. Payment Disbursement Schedule

Upon final signing of contract and before June 30, 2004:	\$10,000
After submission of first status report and before June 30, 2004:	\$10,000
After submission of second status report, after July 1, 2004 and before December 31, 2004:	\$7,000
Upon completion of the contract, after July 1, 2004 and before December 31, 2004:	\$3,000

4. Special Budget Provisions

- A. For CONTRACTS over \$30,000 the total amount of transfers of funds between line item budget categories shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a CONTRACT amendment by the GRANTEE and the DEPARTMENT.
- B. For CONTRACTS under \$30,000 the total amount of transfers of funds between line item budget categories shall not exceed twenty (20) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed twenty percent, the total budget shall be subject to justification and negotiation of a CONTRACT amendment by the GRANTEE and the DEPARTMENT.
- C. A sum of ten (10) percent of funds shall be withheld until all tasks, activities, and final products defined in ATTACHMENT "A" have been successfully completed by the GRANTEE and accepted fully by the DEPARTMENT.

