

get copy of
Wasson
strip for
Saugie

Linda

AMENDED

Executive Session - 7 p.m. Litigation

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
March 27, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

CORRESPONDENCE

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.

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the regular meeting minutes of March 6, and the special and regular meeting minutes of March 13, 2003.
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 # through # & electronic fund transfers in the total amount of \$

Payroll fund transfers in the total amount of \$

3. Draft Ordinance No. 03-070 - Title: An Ordinance of the City of Des Moines, Washington, relating to boards and committees; establishing a lodging tax advisory committee; providing for appointment, membership, and scope of duties of the committee; and codifying this ordinance as a new chapter 4.52 DMMC.

MOTION is to approve Draft Ordinance No. 03-070 on 2nd reading.

4. Draft Ordinance No. 01-192 - Title: An Ordinance of the City of Des Moines, Washington, providing for the licensing of overnight lodgings in order to ensure the safety of citizens, providing for severability, establishing an effective date, and adding a new chapter to Title 5 of the Des Moines Municipal Code.

MOTION is to approve Draft Ordinance No. 02-192 on 2nd reading.

2500
42

6 - present

- Leslie Perry - Principal DM elementary

- Brett Fish - Port NPDES

- Gene White

- Bob Pond

- Mystry Beal

- Sheikh Wicklund

- Valerie Constantino

- Gay Offert

- Office Impact Fees

- Merv Rosenburg

amended schedule

Bob
KPDSS
Wasson

10 min recess
for order

5. Draft Resolution No. 02-237 - Title: A Resolution of the City Council of the City of Des Moines, Washington, amending Rule 12 of the Des Moines City Council Rules of procedure for City Council meetings to add a specific identification action item section to the City Council minutes, and amending Rule 12 of section 1 of Resolution No. 525.

MOTION is to approve Draft Resolution No. 02-237.

6. Motion is to approve the surplus and disposal of the house, structures, and personal property located at 2458 South 220th Street in Des Moines which were purchased as part of the Pacific Highway South Redevelopment Project.

7. Motion is to confirm the City Manager's appointment of the firm of ~~Driscoll & Hunter~~ ^{Hunter, 3 others} as the Hearing Examiner for the City of Des Moines for a one year term beginning March 1, 2003, and to ratify and confirm any acts consistent with the authority granted by this appointment which occurred prior to the date of this confirmation.

8. Motion is to approve the lease agreement with Classic Yachts, Inc., with the modifications as shown and authorize the City Manager to sign the lease substantially in the form as submitted.

9. Motion is to authorize the City Manager to sign the 2003 LHWMP contract No. D32773D between the City and the Seattle-King County Department of Public Health.

10. Motion is to authorize the City Manager to sign the contract with Reid-Middleton for professional engineering services relating to the Redondo Boat Launch. The contract shall be in the amount of \$39,000 and shall be in a form as approved by the City Attorney.

11. Motion is to enter into the supplemental agreement for professional engineering design services and for construction management for the Pacific Highway South Project with CH2M Hill for an additional \$1,922,249, plus authorize the City Manager or his designee to approve change orders up to an amount of 10%, and further to authorize the City Manager to sign the contract substantially in the form as submitted.

12. Motion is to award the contract for professional engineering design services for the 2003 Arterial Maintenance Program to KPG in the amount of \$36,872, and authorize the City Manager or his designee to approve change orders up to an amount of 10%, and further to authorize the City Manager to sign said contract, substantially in the form as submitted.

13. Motion is to confirm Mayor Steenrod's appointment to the Planning Agency of Donald Riecks to a vacant four year term, to expire on December 31, 2006.

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

OLD BUSINESS

1. Draft Ordinance No. 02-177 Mobile Home Park Regulations - 2nd Reading

SUMMARY: On February 27, 2003, Council discussed the draft ordinance. During discussion staff addressed a letter from the owner of a mobile home park. Staff discussed the proposed changes suggested by the owner, and based on staff recommendations Council moved the draft ordinance to a second reading. The changes have been included in the revised draft ordinance.

2. Draft Ordinance No. 02-264 Traffic Impact Fees - 2nd Reading

SUMMARY: The draft ordinance has been discussed at past Council meetings. The Council Public Safety & Transportation Committee has reviewed the funding level and after careful

consideration recommended a phased-in rate. The draft ordinance, when adopted, will establish a transportation impact fee service area, impose impact fees to finance part of the costs of improvements to serve new development, provide disposition of such impact fees and establish an appeal process.

NEW BUSINESS

1. Draft Resolution No. 03-097 Highline School District 401 Education Programs and Operations Levy
SUMMARY: The draft resolution would support the Highline School District's Levy. This election, to be held on April 22nd, is for replacement of the current school programs and operation levy tax; it is not a new tax. The previous levy passed by Highline voters in 2000 expires at the end of 2003.
2. Vacant Council Position - Appointment Process
SUMMARY: The purpose of this agenda item is to provide the City Council information for use in putting together the process to fill the City Council position that has become vacant because of the resignation of former Councilmember Don Wasson.
3. ACC Funding
SUMMARY: This item was placed on the agenda for discussion by Councilmembers Sheckler, Thomasson and White per Council Rules of Procedure, Rule 9.
4. Draft Ordinance No. 03-075 Right-of-way and Park Use Permits - 1st Reading
SUMMARY: This draft ordinance has been prepared in part at the direction of the Council late last fall and in part at the recent request of 3 members of the Council. The draft ordinance establishes policy, guidelines and approval procedures for City right-of-way and City park special use permits and amends DMMC chapters 12.04 and 19.08.
5. Ad Hoc Marina Rate Committee
SUMMARY: Council will discuss the possible establishment of such a committee.

NEXT MEETING DATE - Study Session April 3, 2003

ADJOURNMENT

March 13
April 13
June 13

- Δ def total & motel - 18.04
words used in DMMC

to be consistent

Δ "room" unit
need keeping application
AGENDA ITEM #4

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Hotel/Motel Licensing

FOR AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Legal

ATTACHMENTS: Draft Ordinance No. 01-192

DATE SUBMITTED: March 17, 2003

CLEARANCES:

[X] Legal

[X] Police

[Signature]
[Signature]

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

PURPOSE AND RECOMMENDATION

The purpose of this proposed ordinance is to establish a licensing endorsement and registration requirement for overnight lodgings in an effort to help combat crime against persons, property, society, and host businesses. Hotels and motels with high numbers of police calls for service will be required to employ aggressive measures to assist in deterring crime as a condition of their general business license and business license endorsement approval.

It is recommended that the council pass Draft Ordinance No. 01-192 in its revised formed. On March 6, 2003 Council reviewed and unanimously passed Draft Ordinance No. 01-192 with minor revisions as denoted below.

MOTION: "To pass Draft Ordinance No. 01-192, creating 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 of the provisions provided in this ordinance."

BACKGROUND AND CONCLUSION

Staff brought before Council on March 6, 2003 Draft Ordinance No. 01-192. After discussion Council unanimously passed the draft ordinance onto a second reading with minor revisions

suggested. Staff has incorporated those changes into this second draft version. This revised draft changes the definitions of "hotel" and "motel " to use the same language used elsewhere in the Des Moines Municipal Code, and makes changes requested by Council:

- Changes "room" to "unit" throughout.
- Clarifies the record-keeping and application procedures in Section 4.
- Corrects clerical errors from first draft.

The hotel/motel industry historically experiences criminal activities of the type, severity, and frequency that is of concern to public safety. This draft ordinance establishes a partnership between the Des Moines Police Department and the hotel and motel industry in an effort to promote hotel and motel safety. The Police Department has recommended the measures contained in Draft Ordinance No. 01-192 in order to effectively deter crime within the industry. The annual number of police calls from an individual hotel/motel establishment will determine which requirements will be placed on each hotel or motel location.

The Police Department in researching this topic has been in contact with various communities in our area exploring how they have dealt with similar problems in their community. Most notably the cities of Tukwila and Fife have reduced calls for service and made their communities safer by employing similar measures as proposed in this draft ordinance.

Historically calls for service to these businesses are much higher than adjacent businesses. Police have met with some problem businesses to suggest better practices and have had limited success. While some motel/hotel owners and managers actively and aggressively manage their business, other appear to be satisfied by merely having rooms rented regardless to the impact on the community.

The Police Department has received frequent complaints from the community at large from what they believe to be the negative impact of poor management and business practices by some motels in our community. The Police Department has responded and investigated many incidents of criminal behavior occurring at these businesses. These include homicide, sexual assault, robbery, drug dealing, identity theft, gang activity and prostitution to list but a few. It is common to recover stolen cars and fugitives from justice at these businesses. Often the complexity of and sheer volume of calls for service at these businesses divert attention and resources of the police department that could be utilized elsewhere in the community if only preventive measures had been employed by the operators of these businesses.

CITY ATTORNEY'S FIRST DRAFT 03/03/03
CITY ATTORNEY'S SECOND DRAFT 03/12/03

DRAFT ORDINANCE NO. 01-192

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, providing for the licensing of overnight lodgings in order to ensure the safety of citizens, providing for severability, establishing an effective date, and adding a new chapter to Title 5 of the Des Moines Municipal Code.

WHEREAS, the type, severity, and frequency of police calls for service at hotels and motels that have experienced significant criminal activity are a real and compelling concern to the City of Des Moines, the citizens of Des Moines, visitors to Des Moines, and the hotel and motel industry itself, and

WHEREAS, hotel and motel safety are also the concern of both the hotel and motel industry and the Police Department, with safety measures to include strategies for combating crimes against persons, crimes against property, crimes against society, crimes against the host business, and reducing civil liability, and

WHEREAS, it has been statistically demonstrated that some hotels and motels are responsible for a disproportionate number of police calls for service, and

WHEREAS, it is reasonable to require those hotels and motels with higher numbers of police calls for service to employ certain measures designed to assist in deterring crime as a condition for business license approval within the City, and

WHEREAS, the Police Department has identified and recommended certain measures that have been demonstrated to effectively deter crime, and

WHEREAS, those hotels and motels that have initiated aggressive crime prevention measures have found those measures to be effective deterrents to crime, and

WHEREAS, it has been recognized by the hotel and motel industry and the crime prevention community that the level of employee access into the privacy and safety of its patrons is of

such significance as to require higher levels of employee screening for those hotels and motels with higher numbers of police calls for service, and

WHEREAS, crime prevention programs work by not only reducing crime, but affording participants the opportunity to focus their interests, reach their goals, and become good neighbors, and

WHEREAS, the City Council believes it is time to form a partnership between the City of Des Moines Police Department and the hotel and motel industry to promote hotel and motel safety; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Sec. 1. Findings. The recitals set forth above are by this reference incorporated herein as the City Council's findings.

Sec. 2. Definitions.

(1) Use of words and phrases. As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

~~((2) "Hotel" means a building or portion thereof, and the associated parking and landscaping, designed or used for the transient rental of five or more units for sleeping purposes. A hotel may provide a central kitchen and dining room and accessory shops and services catering to the general public. The term hotel does not include institutions housing persons under legal restraint or requiring medical attention or care.))~~

(2) "Hotel" means a building, and the associated parking and landscaping, in which there are six or more guest units where lodging with or without meals is provided for compensation, and where no provision is made for cooking in any individual unit or suite, and in which building may be included one apartment for use of the resident manager, but shall not include jails, hospitals, asylums, sanitariums, orphanages,

prisons, detention homes, and similar buildings where human beings are housed or detained under legal restraint.

~~((3) "Motel" means a building or buildings, detached, or in connected units, or designed as a single structure, and the associated parking and landscaping, the building units of which are used as individual sleeping or dwelling units having individual private toilet facilities, which may or may not have individual kitchen facilities, designed primarily for the accommodation of transient automobile travelers. The term motel includes tourist cabins, tourist courts, motor lodges, auto courts, cabin courts, motor inns, and similar lodgings. The term motel does not include accommodations for travel trailers.))~~

(3) "Motel" means a group of attached or detached buildings containing individual sleeping units, and the associated parking and landscaping, where a majority of such units open individually and directly to the outside, and where a garage is attached to or a parking space is conveniently located to each unit, all for the temporary use by automobile tourists or transients, and the word shall include tourist courts, motor courts, automobile courts, automobile camps, and motor lodges.

(4) "Call for service" means:

(a) any report to the Des Moines Police Department from or concerning a hotel or motel in connection with an incident occurring at that hotel or motel; ~~((and))~~ or

(b) any on-view incident observed by police concerning a hotel or motel,

which report or on-view incident is responded to by a police officer.

(5) "Police" means any authorized agent of the Des Moines Police Department or other law enforcement agency having jurisdiction.

(6) "Police Department" means the Police Department of the City of Des Moines.

Sec. 3. General license requirements.

(1) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without a license issued pursuant to RCW Chapter 70.62.

(2) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without a business license issued pursuant to Des Moines Municipal Code Chapter 5.04.

Sec. 4. City of Des Moines business license endorsement requirement.

(1) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without an additional business license endorsement issued pursuant to this chapter.

(2) All hotels and motels may be issued a business license endorsement under the provisions of this chapter. Based upon an individual hotel or motel's annual calls for service per ~~((room))~~unit, however, a hotel or motel must comply with additional requirements designed to deter crime in order to obtain or maintain its business license endorsement. The calls for service and crime statistics for each hotel and motel will be compiled for a twelve (12) month period ending June 30 of each calendar year. ~~((monitored from July 1 of the current calendar year through June 30 of the following calendar year. Crime statistics for each hotel and motel will be kept on an annual basis from July 1 of the current calendar year through June 30 of the following calendar year. The time between July and December will allow hotels and motels time to comply with all the requirements of their group level necessary to receive a business license endorsement at year's end for the next calendar year.))~~

(3) Each hotel or motel licensee will be notified of its annual number of calls for service per ~~((room))~~unit no later than July 31 of each calendar year. The time between July and December will allow hotels and motels time to comply with all the requirements of their group level necessary to receive a business license endorsement at year's end for the next calendar

year. Any additional requirements placed on a hotel or motel under this chapter must be met or substantially in progress, as determined and verified by the Des Moines Police Department business license endorsement, before the next calendar year's business license endorsement will be issued. The Police Department business license endorsement required herein shall be made upon a form prepared by the Police Department upon application by the licensee. The business license endorsement form must be presented to the City Clerk by every hotel or motel licensee, as a condition of eligibility for the general business license required by DMMC Chapter 5.04.

Sec. 5. Annual calls for police service less than or equal to 0.25 calls per ((room))unit. Hotels or motels whose ((semi-))annual calls for service are less than or equal to 0.25 calls per ((room))unit are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the City of Des Moines:

(1) Every hotel and motel operator, and the clerk at time of guest registration, must obtain and record the full names; full dates of birth including day, month, and year; and the current addresses, of all ((room))unit occupants; and the make, model, and license number of the vehicles being used by every ((room))unit occupant. Names and addresses of all ((room))unit occupants over the age of sixteen must be verified by obtaining a copy of a valid driver's license, passport, or other form of government approved picture identification. The records required by this section shall be kept available for a period of not less than one year for inspection by any police or code enforcement officer at any reasonable time, or in a police or fire emergency at any time of day or night.

(2) At the request of an establishment, the Des Moines Police Department will provide the hotel or motel with inspection services and advice concerning Crime Prevention Through Environmental Design Standards.

(3) At the request of the hotel or motel, the Des Moines Police Department will provide training for the hotel or motel staff, in cooperation with management, regarding the recognition of criminal behavior.

(4) At the request of the hotel or motel, the Des Moines Police Department will keep the hotel or motel management apprised of police activity that occurs on the property.

Sec. 6. Annual calls for police service greater than 0.25 calls per ((room)) unit but less than or equal to 1.00 calls per ((room)) unit. Hotels or motels whose annual calls for service are greater than 0.25 calls per ((room)) unit but less than or equal to 1.00 calls per ((room)) unit are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the City of Des Moines:

(1) Conform to the requirements set forth in section 5 of this ordinance.

(2) Have a representative available on the premises at all times.

(3) Install and operate a surveillance camera (with recorder) in the lobby for twenty-four (24) hours per day, seven (7) days per week.

(4) Undergo a Des Moines Police Department crime prevention assessment of their property to be conducted by the Des Moines Police Crime Prevention Unit using standards from the Crime Prevention Through Environmental Design (CPTED) program.

Sec. 7. Annual calls for police service greater than 1.00 calls per ((room)) unit. Hotels or motels whose annual calls for service are greater than 1.00 calls per ((room)) unit are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the City of Des Moines:

(1) Conform to the requirements set forth in sections 5 and 6 of this ordinance.

(2) Provide the Des Moines Police Department with the names and dates of birth of all owners, managers, and employees to allow for background checks.

(3) Hold semi-annual employee training sessions, assisted by the Des Moines Police Department.

(4) Provide 24-hour front desk personnel.

(5) Enforce the following guest rules:

(a) ~~((Rooms))~~ Units cannot be rented for less than a six-hour period.

(b) No ~~((room))~~ unit may be used for drunkenness, fighting, or breaches of the peace. No ~~((room))~~ unit may be used if loud noises come from that ~~((room))~~ unit. Loud noises are those noises that disturb the tranquility of the neighborhood or those noises that would be disturbing to a reasonable person.

(c) Alcohol may not be consumed in common areas except for designated banquet or reception rooms or areas.

(6) Maintain a daily key log. Each key that is found to be missing must have its corresponding lock re-keyed prior to the ~~((room))~~ unit being rented. Each master key that is found to be missing will require the establishment to re-key all corresponding locks.

(7) Issue parking passes to all vehicles to be allowed to park on the premises with each pass marked with the issue date and expiration date.

(8) Require all guests who stay more than thirty days to fill out an Application for Tenancy in a form provided by the Des Moines Police Department.

(9) Participate in the Des Moines Police Department "Criminal Trespass Program." Participation shall mean the facility shall be registered in the "Criminal Trespass Program."

(10) Remove all graffiti and repair all vandalism within seven (7) days of occurrence.

(11) Permit an annual inspection by the City of Des Moines Building Official to ensure that guestrooms are maintained according to Uniform Health Code and Uniform Fire Code,

including tamper-resistant smoke detectors meeting National Fire Protection Agency (NFPA) standards.

(12) Follow Crime Prevention Through Environmental Design (CPTED) standards for landscaping/plant maintenance. These standards will be provided by the Des Moines Police Department.

(13) Install lighting in all common areas with minimum maintained lighting of 1.5 foot-candles at ground level.

(14) Install and operate video monitoring equipment in all parking lots, monitored and recorded at the front desk twenty-four (24) hours per day, seven (7) days per week.

(15) Submit to scheduled semi-annual audits by the City of Des Moines Police Department to verify compliance with the above-referenced requirements.

Sec. 8. Enforcement. If the Chief of Police finds that any hotel or motel has violated or failed to comply with any provisions of this chapter, the Chief shall make a written record of such finding and shall specify therein the particulars; and will inform the Des Moines City Manager. Upon recommendation of the Chief of Police, the City Manager may revoke, or deny renewal of, the City of Des Moines business license endorsement for that hotel or motel for a period not less than ninety (90) days or not more than one (1) year. This determination shall be made in consultation with the Police Chief and shall be based on the severity of the violation(s). Revocation, or denial of renewal, of the hotel or motel business license endorsement under this chapter shall require revocation of the hotel or motel City of Des Moines general business license under DMMC 5.04.060, or denial of renewal of the hotel or motel City of Des Moines general business license under DMMC 5.04.070. The City Manager will provide the hotel or motel with notice of the decision to revoke, or deny renewal of, the City of Des Moines business license as required under DMMC 5.04.060 and DMMC 5.04.070.

Sec. 9. Appeals. Upon notice of revocation or denial of renewal of a business license based upon the provisions of this chapter, the hotel or motel operator shall be entitled to appeal to the hearing examiner under DMMC 5.04.060 and DMMC 5.04.070,

Ordinance No. ____
Page 9 of ____

and the provisions of the hearing examiner code, DMMC Chapter 18.94. The applicant or license holder must appeal as required under DMMC 18.94.113, filing a notice of appeal within ten days of the decision that is being challenged.

Sec. 10. Remedies cumulative. The remedies provided for herein for failure to comply with this chapter shall be cumulative and in addition to any other remedy at law or equity.

Sec. 11. Codification. This ordinance shall be codified as a new chapter in Title 5 DMMC.

Sec. 12. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 13. Effective date. This ordinance shall take effect and be in full force ((~~five~~—(5))thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

Ordinance No. ____
Page 10 of ____

ATTEST:

City Clerk

Published: _____

DRAFTORD:01-192

AGENDA ITEM

SUBJECT: Surplus Structures on Ursino
Property

ATTACHMENTS:

A. Property Location Map

AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Public Works

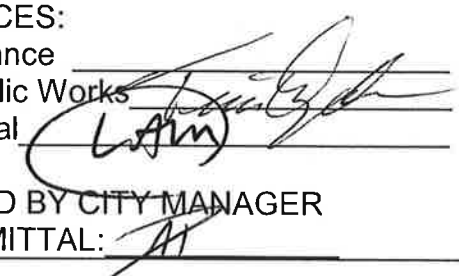
DATE SUBMITTED: March 11, 2003

CLEARANCES:

[] Finance

[X] Public Works

[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this report is to seek City Council approval for the surplus and disposition of the house, associated structures, and personal property located at 2458 South 220th Street in Des Moines which were purchased as part of the Pacific Highway South Improvement Project.

Suggested Motion

The following motion will appear on the Consent Calendar:

- 1) "I move to approve the surplus and disposal of the house, structures, and personal property located at 2458 South 220th Street in Des Moines which were purchased as part of the Pacific Highway South Redevelopment Project."

Background:

The Pacific Highway South Redevelopment Project requires right-of-way purchases along SR 99 from Kent Des Moines Road to South 216th Street. The City Council approved the purchase of this property on June 13, 2002. This particular piece of property will be used as a water quality/detention facility for road runoff from Pacific Highway South. The owner of the home was relocated in November 2002 through the federal relocation procedures as part of this project.

Discussion:

The Pacific Highway South Redevelopment Project is scheduled to be advertised for construction this spring. The biggest challenge to this schedule will be obtaining the necessary right-of-way certification from the State.

Staff is looking into various options for disposal of the home and structures, from demolition and disposal, to contracting with the fire department for use in a practice burn. Staff will select the least expensive, most convenient arrangement that will keep the project on schedule and still meet our legal and funding requirements.

Alternatives:

There are no viable alternatives that would not result in significant alteration to the project and subsequently in delay and increased costs to the project.

Financial Impact:

It is important that this step be taken to minimize continuously escalating costs associated with delay to the project. The purchase was consistent with federal, state and city guidelines. Disposition will be handled in the most cost-effective and timely manner.

Recommendation/Conclusion:

Staff recommends this motion be approved to ensure that the Pacific Highway South project stays on schedule and we can proceed with removal of the structures.

Concurrence:

The Legal Department and City Manager are kept apprised of negotiations and approve all contracts as required. When specific issues come up that require input by Community Development, we solicit their input. This is a joint effort to improve the conditions along Pacific Ridge.

MOINES

VOL. 73-76

509700

URSINO

SUBJECT PROPERTY

SOUTH 220TH STREET

1317.62

1124/249

18-6-20, C.C. Vol. 22-594

ATTACHMENT A

revise to give more right to relocate

CONSENT CALENDAR
Item #8

AGENDA ITEM

Send
Language
to Joe
43

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

Marina
Master
Plan

SUBJECT: Modification of the Lease Agreement
with Classic Yachts.

FOR AGENDA OF: March 27, 2003
DEPT. OF ORIGIN: Marina

ATTACHMENTS:

Draft Lease with Modifications
Exhibit "A" showing slip L-08 and
additional leased area.

DATE SUBMITTED: March 17, 2003

CLEARANCES

[X] Marina

[X] Legal

[Signature]

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

[Signature]

A. Purpose & Recommendation

The purpose of this Agenda Item is to gain Council approval for modifications to the lease between the City and Classic Yachts, Inc.

Suggested Motion: "I move that the City Council approve the lease agreement with Classic Yachts, Inc., with the modifications as shown, and authorize the City Manager to sign the lease substantially in the form as submitted."

B. Background

In April of 2001, the Council approved a lease between the City and Classic Yachts, Inc., a yacht brokerage operated by Jerry and Cathy Reese, who are residents of Des Moines. At that time, the lease conveyed the right to use slip L-02, where their office is located, and slips M-46, I-04, L-01, and L-10.

C. Discussion

Slip L-08, which is the next slip out from L-02, where Classic's office is moored has always been a problem because of it's proximity to the entrance to the travel lift pier, (see, Exhibit "A"). L-08 is a 36-foot open slip, but the Marina has always rented it as a 28-foot open slip and limited the length of the vessel placed in the slip to approximately 31 feet. Even at the reduced length, conflicts still occur, and generally, tenants that are assigned to L-08 want to trade out of it as soon as they can. When the last tenant in L-08 told the office that they wanted to move, the Marina staff approached Classic Yachts and offered to exchange L-08 and the north side of L

Dock between L-02 and L-08, for their 28 foot covered slip on I dock, I-04. Both parties would benefit from this trade. Classic would have almost all of their slips located on the same dock near the office, plus the use of about 20 feet of additional space, and the Marina would have the use of an additional 28 foot covered slip, which would result in a net increase in revenue. The additional space along the north side of L dock that would be included in Classic's lease has never been rented out as a moorage space.

D. Alternatives

Alternative 1. Accept the recommendation of the recommendation of the staff and authorize the modifications to the lease with Classic Yachts.

Alternative 2. Direct the staff to maintain the lease in the present form.

E. Financial Impact

Under the terms of the modified lease, Classic's rent would remain the same, \$1,197 per month plus leasehold tax. Even though they would be trading a 28 covered slip for a 28 open slip, they would gain the use of that part of the north side of L Dock between L-02 and L-08 to use to moor consigned boats for sale. Under the terms of the modified lease, the Marina would have a net increase of about \$500 per year, which is the difference between the annual rent for a 28 foot open slip and a 28 foot covered slip.

F. Recommendation

The Marina staff recommends approval of the lease with Classic Yachts, as modified.

G. Concurrence

The City Attorney concurs with these changes.

LEASE FOR MARINA FACILITIES

This Lease is entered into between the CITY OF DES MOINES, a municipal corporation (hereinafter "Lessor") and CLASSIC YACHTS, Inc., (hereinafter "Lessee").

(1) Terms and Premises. Lessor grants to Lessee for a term of five (5) years, commencing on the first day of January, 2001, the exclusive right to use and occupy certain real and personal property located at the Des Moines Marina. Such property shall be hereinafter referred to as "premises". The premises are generally described as slip L-02, in which a floating sales office will be moored. Owing to the difficulty of writing a legal description for the premises. The premises are schematically described on the diagram attached hereto as Exhibit "A" and by this reference incorporated herein.

(2) Use of Other Marina Facilities. In addition to Slip L-02, the Lessor shall have the use of Slips M-46, ~~((+04))~~ L-01, L-08, ((and)) L-10, and the north side of the L Dock's main walkway between L-02 and L-08 for the purposes of conducting a boat brokerage and sales business. The following conditions shall apply to the use of the slips.

(a) The slips shall be used to moor boats that are for sale and are either owned by or consigned to the Lessee.

(b) Casual use of the slips by invitees of the Lessee, or any other use that may compete with the guest moorage business of the Lessor, is not allowed.

(c) The Lessee expects the Lessor to charge customers for the use of the slips in the regular course of the business, but long term sub-leasing is not allowed, unless such sub-leases comply with Marina Rule 4.0.

Lessee may sub-lease other slips in the Marina, subject to Marina Rule 4.0. Lessee will be charged the regular and customary rate for such sub-leases. Marina facilities other than Leased or sub-leased facilities, will be available to the Lessee at the regular posted rates therefor.

(3) Additional Facilities. Lessor and Lessee reserve the right to negotiate for expansion, and/or relocation of the premises, (sales office). Lessee may also be placed on the waiting list for additional slips if the Lessee can demonstrate to the City of Des Moines that such slip(s) are necessary for the success of the business. The decision to allow the Lessee to Lease additional slips shall be at the sole discretion of the City of Des Moines.

(4) Option. The Lessee shall have the option to extend the Lease for an additional five (5) years. Such option must be exercised in writing by the Lessee not later than one (1) year before the expiration date of the original term. In the event Lessee shall exercise such option, the rent for the option period shall be determined in accordance with paragraph 5 herein. In the event the parties shall be unable to agree

upon such rent, the parties agree to resolve the matter using the Mediation/Arbitration process as provided in paragraph 19 below.

(5) Rent. Monthly rent shall be \$1,175.00 per month, plus State Leasehold Tax, payable in advance on or before the first day of each month of this Lease. This rate shall take effect on January 1, 2001. Beginning January 1, 2002, and effective on January 1st of each succeeding year of the original Lease period, plus the option period if necessary, the rental rate shall be established by applying the greater of:

(a) The same percentage increase that is applied to all other slips as a result of an action by the Des Moines City Council.

(b) An amount equal to the rental rate for the previous year multiplied by the Consumer Price Index, U.S. City Average, All Urban Consumers, for the 12-month period ending August 31st of the previous year. (Published by the U.S. Department of Labor, Bureau of Labor Statistics).

(6) Deposit. Lessor acknowledges receipt of a deposit in the amount of one (1) month's rent to ensure faithful performance of all provisions of this Lease. This sum shall be applied towards the last month's rent provided all provisions of this Lease are complied with.

(7) Inspection of Moorage. During business hours, the City Manager, or his designated agent, shall have the right to inspect the dock structure where the premises, (sales office), is moored. The right of inspection reserved to the City hereunder shall impose no obligation of the City to make inspections to ascertain the conditions of the premises and shall impose no liability upon the City for failure to make such inspections.

(8) Utilities. In addition to the above rent, Lessee shall be required to pay, within ten (10) days after billed, all utilities furnished to the premises, except surface water management charges and water, which are included in the monthly rent. Power rates billed to the Lessee shall be billed at the rates posted in the Marina office.

(9) Sales and Real Property Taxes. If required by law, Lessee shall be required to pay any sales tax on the rent or any property taxes or Leasehold tax, if levied.

(10) Permitted Uses.

(a) Slip L-02 - sales office for a boat brokerage business.

(b) Slips M-46, ((L-04)), L-01, L-08, ((&)) L-10, and the north side of the L Dock's main walkway between L-02 and L-08 – moorage for vessels owned or consigned to Lessee for the purpose of selling such vessels.

(11) Restrictions on use of Leased Premises.

(a) The sale of gas, diesel fuels and propane gas is prohibited except when used by Lessee to test work performed and the excess conveyed to customer.

(b) The dock structure where the premises are moored, (L-02), may be structurally modified by Lessee only after prior written consent of Lessor. All additions and modifications permanently attached to structures shall be at the expense of Lessee and shall become the property of Lessor at the termination of this Lease and any extension thereof. Any non-attached additions, lighting fixtures, furniture and trade fixtures ever added by Lessee, which are removable without injury to the premises, shall be and remain the property of Lessee. Lessee may modify slips M-46((, L-04,)) ((L-08)) or L-10 only after prior written consent of Lessor. Only such modifications that would normally be approved under the current Rules and Regulations of the Des Moines Marina will be allowed.

(12) Conduct of Business. Lessee shall be required to follow all City Ordinances, Federal, State and County laws and the Rules and Regulations of the Des Moines Marina. The Lessor shall have the right to restrict certain types of operations during the hours of 10 P.M. to 6 A.M. if they create a nuisance or have a detrimental effect upon adjacent residents and Marina tenants.

(13) Duties of Lessor. Lessor will at all times during the tenancy:

(a) Comply with all City ordinances, state, and federal regulations and any special provisions in this Lease related to environmental protection.

(b) Maintain the premises to substantially comply with all applicable codes, statutes, ordinances, or regulations pertaining to the Leased premises;

(c) Except where the conditions attributable to normal wear and tear, make repairs and arrangements necessary to put the premises in as good condition as it was at the commencement of the tenancy;

(d) Maintain all electrical, plumbing, heating, and other facilities in reasonably good working order;

(e) No duty shall devolve upon the Lessor to repair a defective condition where the defective condition complained of was caused by the conduct of Lessee.

(14) Duties of Lessee. Lessee accepts the premises in its present condition, and will at all times during the tenancy:

(a) Comply with all city, state, and federal regulations related to environmental protection, and any special provisions described in this Lease.

(b) Keep the Leased premises as clean and sanitary as the conditions of the premises permit;

(c) Properly dispose all solid waste, liquids, and hazardous waste in a clean and lawful manner at reasonable and regular intervals;

(d) Properly use and operate all electrical, gas, heating, plumbing and other fixtures.

(e) Not permit a nuisance or common law waste.

(f) Not allow junk or debris to accumulate on the demised premises;

(g) At the expiration of the Lease term, or any extension thereof, surrender the premises in as good condition as they were at the beginning of the term, reasonable wear and tear excepted.

(15) Minimum Hours of Operation. The parties recognize that Lessor's primary intent in granting this Lease is to provide the boating community with a service, specifically a boat brokerage and sales business and to that extent it is vital that the facilities and services be available on a regular basis throughout the year. Accordingly, Lessee agrees that the business shall remain open a minimum of eight (8) hours per day, five (5) days per week, from May 1 to July 31 of each year.

(16) Indemnification and Insurance. Lessee shall be responsible to Lessor for damages to the premises caused by Lessee, Lessee's agents, and parties using the premises with the permission of Lessee. Lessee shall keep the premises insured for fire, and other casualty. Lessee shall purchase and maintain a general liability insurance policy insuring against claims for personal injury and property damage in an amount with an annual aggregate limit of not less than one million dollars (\$1,000,000). Lessor shall be named as an additional insured under such general liability policy. Appropriate certifications of insurance coverage shall be delivered to Lessor. Lessee agrees to save, keep, defend and otherwise hold harmless Lessor, its officers, agents, employees and volunteers, from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damage to property or personal injury received by reason of or in the course of activities involving Lessee's use and occupancy of the premises or adjacent areas, including, but not limited to, claims arising out of the condition of the premises. Lessee's indemnification is intended to apply to all claims which are occasioned by any willful or negligent act or omission of Lessee, its employees, or any party using the premises with the permission of Lessee.

(17) Sign. Lessee shall be permitted to paint or install such signs as are permitted by the Des Moines Municipal Code.

(18) Assignment. Lessee shall not assign this Lease or the rights granted hereunder or sublet the premises or any part thereof without first obtaining written consent of the City Manager. Such consent shall not be unreasonably withheld. Lessor and Lessee recognize that the primary purpose of this Lease is to provide a boat brokerage and sales service for of customers of the Des Moines Marina, and the boating community, and, accordingly, the primary standards for approving assignment or sublease shall be as follows: the qualifications, business ability, financial capability, technical competence, and personal reputation & integrity of the proposed assignee or sublessee.

(19) Mediation/Arbitration Clause. 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 applicable rules of the American Arbitration Association. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, or upon the mutual written agreement of the parties to forgo the mediation process, 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 Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(20) Default.

(a) Event of Default. Each of the following shall be deemed an Event of Default:

- (i) Failure to make full and timely payment of rent;
- (ii) Failure by Lessee to perform or observe any covenant or condition of this Lease which is to be performed or observed by Lessee;
- (iii) Abandonment of the premises;
- (iv) The filing of execution or occurrence of:
 - (A) An adjudication of Lessee as a bankrupt or insolvent in the bankruptcy or equity sense, or;
 - (B) An assignment for the benefit of creditors, whether by trust or otherwise, or;
 - (C) The taking by any person of the rights hereunder upon

execution or attachment or other process of law or equity.

(b) Cure of Default. Lessee may cure a default, except for failure to make full and timely payment of rent, and this Lease shall remain in effect, provided that Lessee cure such default or enters into good faith efforts with Lessor to cure such default, within fifteen (15) days of receiving written notice of default by Lessor. Lessee shall notify Lessor in writing of his intent to cure default and the amount of time required to cure the default. Subsequent failure of Lessee to cure the default under this subsection within a reasonable time shall be grounds for termination of the Lease.

(c) Termination of Lease. If Lessee fails to cure any default within the period of time described in the preceding subsection "b" herein, the Lessor may at its option, in addition to any other remedy or right given hereunder or by law,

(i) Except for failure to make full and timely payment of rent, give notice to Lessee that this Lease shall terminate upon the date specified in the notice, which date shall be not earlier than thirty (30) days after the giving of such notice, or

(ii) Immediately or at any time after occurrence of such Event of Default, and without notice or demand, enter upon the premises or any part thereof in the name of the whole, and upon the date specified in such notice or in any other notice pursuant to law, or upon such entry this Lease and the term thereof shall terminate.

(d) Repossession. Upon termination of this Lease as herein above provided, the Lessor may enter forthwith without further demand or notice and resume possession either by summary proceedings, or by action at law or in equity or by force or other-wise, as the Lessor may determine, without being liable in trespass. In no event shall such reentry or resumption of possession or reletting as hereinafter provided be deemed to be a waiver of the rights and remedies of the Lessor hereunder.

(e) Reletting. Upon termination of this Lease in any manner above provided, the Lessor shall use reasonable efforts to relet the premises. The Lessor shall be deemed to have used reasonable efforts if it Leases the whole or any part of the premises, separately or with other premises, for any period equal to or less than, or extending beyond, the remainder of the original term, for any sum or to any tenant or for any use it deems reasonably satisfactory or appropriate. Refusal to let to any person or for any use the Lessor deems objectionable, or for a use not expressly permitted under paragraph 10 of this Lease shall also be deemed a reasonable effort to relet.

(f) Damages. Upon termination of this Lease in any manner above provided, the Lessee shall pay the Lessor forthwith without demand or notice the sum of the following:

(i) All rent accrued to the date of such termination and a proportionate part of the rent otherwise payable for the month in which such termination occurs;

(ii) The cost of making all repairs, alterations and improvements required to be made by the Lessee hereunder, and of performing all covenants of the Lessee relating to the condition of the dock structure during the term, such cost to be deemed prima facie to be that cost estimated by a reputable architect or contractors selected by the Lessor or the amounts reasonable expended or incurred thereafter by the Lessor; and

(iii) Such other damages as are proper under applicable provisions of statutory and common law.

(21) Cancellation by Lessee. Lessee shall have the right to cancel this Lease upon ninety (90) days written notice. During such ninety-(90) day period the parties shall enter into a cancellation agreement defining the rights and duties of the parties upon cancellation of this Lease. There shall be two (2) mandatory provisions contained in the cancellation agreement: (1) following the ninety (90) day notice period, Lessee shall have no further obligation to pay rent, (2) on the effective date of the ninety (90) day notice, Lessee shall vacate the premises and Lessor shall have the right to re-enter and re-let. As to any other term of the cancellation agreement, should the parties be unable to agree on any provision, it shall be submitted to arbitration as provided in paragraph 19 herein.

(22) Conversion of Slip. If the Lessee cancels this Lease following the procedure set forth in paragraph 21, or if the Lessee assigns this Lease as part of the sale of the underlying business, or if the corporation is sold, the Lessee shall have the option to convert and retain one slip listed in this agreement for the personal use of Jerry or Cathy Reece.

IN WITNESS WHEREOF, Lessor and Lessee have affixed their signatures on the dates below written signifying agreement to the terms and conditions of the foregoing Lease for Marina Facilities.

LESSEE: Classic Yachts, Inc.

LESSOR: City of Des Moines

By: _____
Jerry Reece, its President

By: _____
Anthony A. Piasecki, Its City Manager

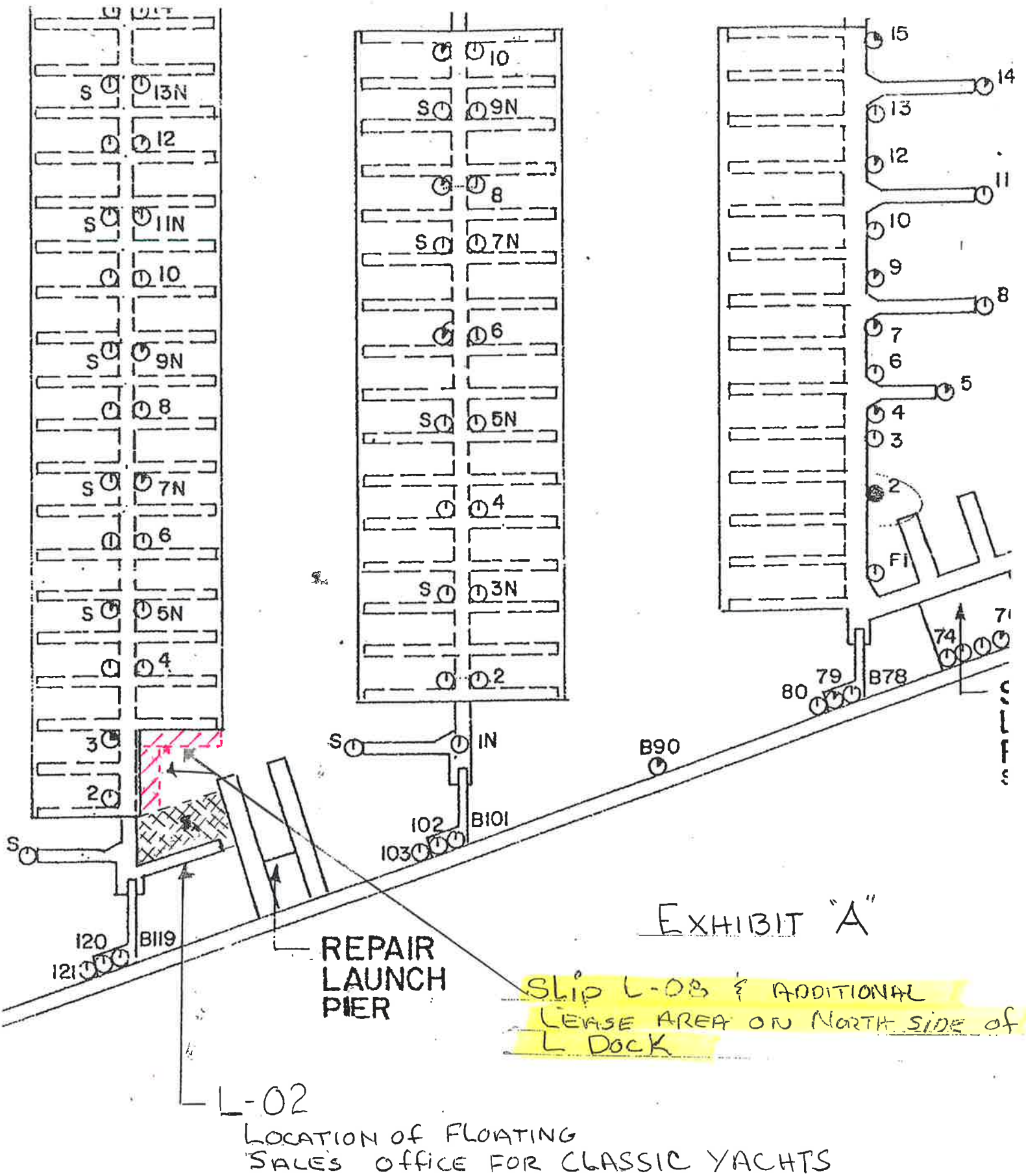
At the direction of the City Council by
motion regularly passed in its open
public meeting on _____, 2003.

Date: _____

Date: _____

"L" Dock

"M" Dock



AGENDA ITEM

SUBJECT: Traffic Impact Fees

AGENDA OF: March 27, 2003

ATTACHMENTS:

DEPT. OF ORIGIN: Public Works

A. Fifth Draft of Ordinance No. 02-264 adopting the use of traffic impact fees.

DATE SUBMITTED: March 19, 2003

B. Excerpt from Des Moines City Council Minutes of March 6, 2003

CLEARANCES:

☒ Finance

☒ Public Works

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *CTR for TP*

Purpose and Recommendation:

The purpose of this agenda item is for the approval of Fifth Draft Ordinance 02-264 adopting the use of traffic impact fees.

Suggested Motion

"I move to approve the Fifth Draft of Ordinance 02-264 establishing a transportation impact fee service area, imposing impact fees to finance part of the costs of improvements to serve new development, provide disposition of such impact fees and establish an appeal process."

Background:

At the January 30th Council meeting, Council agreed impact fees were necessary, but discussion ensued as to the amount to charge developers. Council tabled the ordinance until March 6th for final consideration, then directed the Council Public Safety and Transportation (PS&T) Committee to discuss the funding level and bring back to the full Council a recommendation for an impact fee rate. It was felt that the rate should work toward the goal of funding the City's transportation's needs due to development, yet not be so cost prohibitive to developers doing business in our City that a significant amount of development moves outside the City as a result the fee.

On February 6th, the PS&T Committee met and discussed various options taking into consideration other cities' rates in the region for assessing impact fees. After careful consideration, the PS&T Committee's recommended option to be presented to the Council via Draft Ordinance 02-264 is a phased-in rate. The original 2001 base rate of \$2,539 per new PM peak hour trip as computed by methodologies recommended by the City's consultant, The Transpo Group, would first be adjusted yearly by inflation. For the calendar years 2003 through 2005, the impact fee rate would be phased in at a percentage of the then-current base rate as follows: 70% in 2003, 80% in 2004, and 90% in 2005. For 2006 and all subsequent years, the impact fees will be paid in the amount of 100% of the then-current base rate. This proposal would provide an incentive for development to occur in the near term, before the full rate goes

into effect. The Ordinance spells out the establishment of a service area and a method of imposing impact fees on development, including disposition of impact fee revenue, refunds if applicable, and an appeal process if the developer does not agree with the fee. At the March 6th Council meeting, there were a few remaining questions related to the Fourth Draft of Draft Ordinance No. 02-264. As a result of Council direction, staff has made a number of changes to the Draft Ordinance to clear up areas of Council concern.

Discussion:

At the March 6th Council meeting, there was a discussion about details within Draft Ordinance No. 02-264 in order to make sure that the public, and staff, would have clear direction from Council (See Attachment B). The motion made at the meeting directed staff to respond to four items:

1. add language to Section 4(a) to reference the Comprehensive Transportation Plan
2. include the Pacific Ridge area fees
3. make the refund section clearer, including development, which does not occur
4. what happens with an expired building permit or no certificate of occupancy issued

The City's Legal and Public Works staff has made the requested changes. For the first item, Section 4(a) was expanded which eliminated the need for Section 4(d). For the second item, the Draft Ordinance now clearly refers to the Pacific Ridge Transportation Mitigation Fee in Sections 3 and 4. Expanded language in Section 6 (3) responds to Item 3 and Section 6 (2) covers Item 4.

Alternatives:

Beginning the rate at 100%, which many Council members felt was too onerous for a new fee of this type. It would also be possible for Council to set the rate at any level under 100%; however, a lower rate would not provide as much funding for critical transportation projects.

Financial Impact:

Adopting a traffic impact fee program itself does not incur cost to the City. However, traffic impact fees are the only revenue source available to the City at this time that will cover a significant portion of the costs incurred by the need for transportation improvements caused by growth within the City of Des Moines. Traffic impact fees will only be charged on new growth that adds additional trips to the transportation system.

Recommendation/Conclusion:

The PS&T Committee, after evaluating transportation needs and funding options, recommends that Council adopt the use of traffic impact fees based on the stepped rate phased in over the course of four years starting at 70% in 2003 and stepping up to 100% in 2006.

Concurrence:

Finance and Legal

CITY ATTORNEY'S FIRST DRAFT 11/21/02
CITY ATTORNEY'S SECOND DRAFT 12/12/02
CITY ATTORNEY'S THIRD DRAFT 02/20/03
CITY ATTORNEY'S FOURTH DRAFT 03/04/03
CITY ATTORNEY'S FIFTH DRAFT 03/17/03

DRAFT ORDINANCE NO. 02-264

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a transportation impact fee service area, imposing impact fees therein to finance part of the costs of improvements to serve new development, providing for the disposition of such impact fees, establishing an appeal process, and adding a new chapter to Title 12 DMMC.

WHEREAS the City is authorized by RCW 82.02, the Growth Management Act ("the GMA"), and by RCW 39.92, the Local Transportation Act, to require new growth and development within the City of Des Moines to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees, and

WHEREAS, as part of the Greater Des Moines Comprehensive Plan the City has adopted a Comprehensive Transportation Plan, which identifies deficiencies in public transportation facilities and identifies the means by which such deficiencies could be eliminated, and

WHEREAS, the City Council has found and determined that it is in the best interests of the City, in order to ensure a fair and predictable method for allocating the share of the cost of such new public facilities, to impose impact fees on the new growth and development activities; now therefore,

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

Sec. 1. Definitions.

(1) **Use of words and phrases.** As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Building permit" means any written authorization from the City which authorizes the commencement of development activity.

ATTACHMENT A

(3) "City" means the City of Des Moines, Washington.

(4) "City Comprehensive Plan" means the Greater Des Moines Comprehensive Plan, adopted pursuant to the GMA.

(5) "Development activity" means any construction or expansion of a building or structure that creates additional demand on and/or need for public facilities, but not interior remodeling that does not change the PM Peak trips as categorized in the Comprehensive Transportation Plan to the Greater Des Moines Comprehensive Plan or of the applicable code or regulation of the City.

(6) "GMA" means the Washington State Growth Management Act, codified as RCW 82.02.050 through 82.02.090, as now in existence, or as hereinafter amended.

(7) "Hearing Examiner" means the Hearing Examiner of the City of Des Moines, pursuant to Chapter 18.94 of the Des Moines Municipal Code.

(8) "Impact fee" means a payment of money imposed by the City upon development activity as a condition of issuance of a building permit to pay for public facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of the City, but does not include any permit or application fee.

(9) "Owner" means the owner of record of real property. If real property is being purchased under a real estate contract, the purchaser shall be considered the owner of real property if the contract is recorded.

(10) "Public facilities" as used in this section refers to public streets, roads and rights-of-way owned or operated by the City for other governmental entities, including trails, paths, bikeways, other transportation facilities and all attendant improvements.

(11) "Service area" means the development impact fee service area of the City identified in Section 3.

(12) "Transportation facilities" means and refers to streets and roads, but includes all publicly owned streets, roads, alleys and right-of-ways within the City and street services, traffic control devices, curbs, gutters, sidewalks and related facilities and improvements.

Sec. 2. Transportation impact fees established. There is established, subject to the provisions of this chapter, a transportation impact fee program.

Sec. 3. Establishment of service area.

(1) The City hereby establishes, as the service area for development impact fees, the City of Des Moines, including all property located within the corporate limits of the City, except for those subareas of the Pacific Ridge zone that are subject to a Pacific Ridge Transportation Mitigation Fee and exempt or partially exempt from traffic impact fees pursuant to Exhibit B of Ordinance No. 1298. Those subareas and exemptions are:

(a) New residential developments located east of the Pacific Highway South Corridor shall not be required to pay the citywide traffic impact fee; and

(b) New developments that front along the Pacific Highway South corridor will be required to pay the citywide traffic impact fee but will receive a credit toward the traffic impact fee equal to the amount of the Pacific Ridge Transportation Mitigation fee.

(2) The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles.

Sec. 4. Imposition of impact fee on development activity.

(1) Except for those subareas of the Pacific Ridge zone set forth in § 3 (1), above, the City hereby authorizes the assessment and collection of impact fees on development activity within the City, at the calendar year 2001 base rate of Two Thousand Five Hundred Thirty Nine dollars (\$2,539.00) per new

425-
556-
2829

that
collection
of
the fee
will be
(reduced)

p.m. peak hour trip, as computed using methodologies from the most current edition of the Institute of Transportation Engineers Trip Generation Manual or other industry sources approved by the Public Works Director. This impact fee base rate shall be adjusted annually based on the construction cost index for the Seattle area as reported in the March issue of the Engineering News Record periodical. Based upon the above impact fee base rate and adjustments, the base rate as of January 1, 2003 will be Two Thousand Six Hundred Fifteen dollars (\$2,615.00) per peak p.m. trip. For the calendar years 2003 through 2005, the impact fee shall be phased-in as follows: for the calendar year 2003, the impact fee shall be paid in the amount of Seventy percent (70%) of the then-current base rate; for the calendar year 2004, the impact fee shall be paid in the amount of Eighty percent (80%) of the then-current base rate; and for the calendar year 2005, the impact fee shall be paid in the amount of Ninety percent (90%) of the then-current base rate. For the calendar year 2006, and for all subsequent years, the impact fee shall be paid in the amount of One Hundred percent (100%) of the then-current base rate.

(2) Such impact fees shall:

(a) Only be imposed for system improvements that are reasonably related to new development and identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program;" and,

(b) Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development; and,

(c) Be used for system improvements that will reasonably benefit new development; and,

~~((d) Be used for facilities identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program."))~~

(3) Such impact fee schedule is based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees, which formulas are described in the Comprehensive Transportation Plan element of the Greater Des Moines Comprehensive Plan and incorporated herein by this reference.

(4) The impact fees imposed pursuant to this chapter shall be assessed by the City after the effective date of this ordinance. A final assessment, based upon the actual building permit to be issued, shall be made, and the fee shall be due and payable in full at the time of issuance of the permit.

(5) Failure to pay the impact fees for a given development activity at the time that such impact fees are due and payable shall result in denial of the building permit for which the owner has applied.

(6) The impact fee program shall provide credits for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program." The value for which credit shall be given is the estimated value used for Impact Fee calculation in the Comprehensive Transportation Plan.

Sec. 5. Disposition of impact fee revenues.

(1) The impact fees collected pursuant to the provisions of this chapter shall be deposited into an impact fee fund. Pending application as provided in this chapter, the monies deposited in the impact fee fund shall be invested in any investment authorized for the investment of City funds. All interest and profits derived from the investment of monies in each account in the impact fee fund shall be retained in such account.

(2) The impact fees deposited in each account in the impact fee fund, and the interest and profit received from the

investments therefrom shall be expended only for public facilities of the type for which such impact fees were collected, in conformity with the Greater Des Moines Comprehensive Plan and Comprehensive Transportation Plan, and expended or encumbered within six years of receipt by the City, unless written findings by the City Council identify an extraordinary and compelling reason for the City to hold the fees for a longer time. The City shall account for annual expenditures and shall comply with this section in successive comprehensive plans, transportation plans and capital facilities plans as appropriate.

(3) The City shall prepare an annual report on the impact fee fund which shows the source and amount of all monies collected, earned or received and the public facilities that were financed in whole or in part by impact fees.

Sec. 6. Refunds.

(1) The City shall, in accordance with RCW 82.02.080, refund to the current owners of property on which an impact fee has been paid any impact fees paid with respect to such property that has not been expended or encumbered for public facilities of the type of which such impact fees were collected.

(2) The City shall also refund to the current owner of property on which an impact fee has been paid all impact fees paid with respect to such property if the development activity for which the impact fee was imposed did not occur and no impact has resulted. (~~(; provided, that)~~)

(3) If some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund will be (~~(available under this section)~~) payable, provided however, that the property on which the impact fee was paid shall receive a credit toward any subsequent development activity on the property up to the full amount of the payment.

(4) Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the City Manager or designee within one (1) year of the date the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to paragraph 2 of this section only, shall be the date of voluntary or involuntary abandonment of the building permit, or the date that notice is given as provided in paragraph 1 of this section, whichever occurs later. Refunds of impact fees shall include interest and any profits earned on the impact fees from the date of their receipt to the date of refund, as a percentage of the interest/profits earned by the fund on an annual basis. Any impact fees not expended within the time limitations and for which no application for a refund has been made within the one (1) year claim period, shall be retained by the City and expended on public facilities of the type for which such impact fees were initially collected, without further limitation as to the time of expenditure.

Sec 7. Appeals.

(1) The determination of the City Manager or designee regarding the applicability of the impact fee to a given development activity within the service area shall be final, however an owner may pay an impact fee imposed pursuant to this chapter under protest in order to obtain a building permit and, after such payment, file an appeal regarding the amount of the impact fee to the Hearing Examiner within ten (10) days of the City's final decision under the provisions of the hearing examiner code, Chapter 18.94 DMMC.

(2) Appeal regarding the amount of the impact fee imposed on any development activity may only be made by the owner of the property where such development activity shall occur.

Sec. 8. Codification. Sections 1 through 7 of this ordinance shall be codified as a new chapter in Title 12 DMMC.

Sec. 9. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent

jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 10. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

EXCERPT DES MOINES CITY COUNCIL MINUTES March 6, 2003

Draft Ordinance No. 02-264 Traffic Impact Fees

Public Works Director Heydon advised that at Council direction at the February 6th Study Session, Council sent the draft ordinance to the Public Safety & Transportation Committee to review the level of fees.

City Attorney Marousek called Council's attention to the new codification language in the draft ordinance.

Mayor Pro Tem Benjamin, Chairman of the PS&T Committee, informed Council that the Committee recognized the impacts of new construction and the need to fund transportation improvements, however had some concern that the fees would be a deterrent to attacking new businesses. He informed Council that the Committee determined that businesses are committed to proper roads and their maintenance, and wants assurance of proper traffic flow. Therefore, the transportation impact fee is good for business. The Committee is recommending an incentive for new businesses by using a graduated rate schedule as follows: 70% base rate for 2003, 80% base rate for 2004, 90% base rate for 2005, with the full 100% base rate to be instituted in the year 2006.

Upon questioning by Mayor Steenrod regarding the City of Kent using an LID process, Public Works Director Heydon explained that the City of Kent has a large staff to handle only commercial development. He noted a Local Improvement District, requires a large amount of engineering, technical and legal staff. He felt this would not work for Des Moines.

In response to Council questioning, Acting City Manager Loch advised that the traffic impact fees for the Pacific Ridge area were developed to encourage development by allowing developers to know up front what fees will be expected. He felt that early notification to developers is important and will work City-wide.

Assistant City Engineer Andrews noted that the residential zone of the Pacific Ridge area is exempt and the commercial area east of the Highway is split, with a credit for impacts fees in place.

Mayor Steenrod commented that Section 4(a) needs to be clarified by adding the language "as identified in the Comprehensive Transportation Plan, or as may be amended."

Councilmember Thomasson felt it important to add a new section to the draft ordinance showing the City wide-fee and include the Pacific Ridge area language too.

Councilmember Wasson suggested that the portion of the Comprehensive Transportation Plan pertaining to improvements, should be included to help make it easier for developers. He further noted that he would like to see an installment payment plan so that huge costs up front for developers could be avoided.

ATTACHMENT B

Councilmember Thomasson stated that most developers will get a construction loan and a lender would not look favorably on an installment fee schedule. He felt the City should get the transportation impact fee up front with the building permit.

Public Works Director Heydon remarked upon questioning by Council, that there is a 6 year limit on how long the City can hold the fees. If they are not spent on a project in that time, the fee must be given back to the developer.

After further discussion regarding the fees, it was determined that the phase in fee plan as recommended by the PS&T was the best compromise.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously, to place the draft ordinance on a future agenda and incorporate the following changes:

- add language to Section 4(a) to reference the Comprehensive Transportation Plan
- include the Pacific Ridge area fees
- make the refund section clearer, including development which does not occur
- what happens with an expired building permit or no certificate of occupancy issued

CITY ATTORNEY'S FIRST DRAFT 11/21/02
CITY ATTORNEY'S SECOND DRAFT 12/12/02
CITY ATTORNEY'S THIRD DRAFT 02/20/03
CITY ATTORNEY'S FOURTH DRAFT 03/04/03
CITY ATTORNEY'S FIFTH DRAFT 03/17/03
CITY ATTORNEY'S SIXTH DRAFT 03/27/03

DRAFT ORDINANCE NO. 02-264

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a transportation impact fee service area, imposing impact fees therein to finance part of the costs of improvements to serve new development, providing for the disposition of such impact fees, establishing an appeal process, and adding a new chapter to Title 12 DMMC.

WHEREAS the City is authorized by RCW 82.02, the Growth Management Act ("the GMA"), and by RCW 39.92, the Local Transportation Act, to require new growth and development within the City of Des Moines to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees, and

WHEREAS, as part of the Greater Des Moines Comprehensive Plan the City has adopted a Comprehensive Transportation Plan, which identifies deficiencies in public transportation facilities and identifies the means by which such deficiencies could be eliminated, and

WHEREAS, the City Council has found and determined that it is in the best interests of the City, in order to ensure a fair and predictable method for allocating the share of the cost of such new public facilities, to impose impact fees on the new growth and development activities; now therefore,

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

Sec. 1. Definitions.

(1) **Use of words and phrases.** As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Building permit" means any written authorization from the City which authorizes the commencement of development activity.

(3) "City" means the City of Des Moines, Washington.

(4) "City Comprehensive Plan" means the Greater Des Moines Comprehensive Plan, adopted pursuant to the GMA.

(5) "Development activity" means any construction or expansion of a building or structure that creates additional demand on and/or need for public facilities, but not interior remodeling that does not change the PM Peak trips as categorized in the Comprehensive Transportation Plan to the Greater Des Moines Comprehensive Plan or of the applicable code or regulation of the City.

(6) "GMA" means the Washington State Growth Management Act, codified as RCW 82.02.050 through 82.02.090, as now in existence, or as hereinafter amended.

(7) "Hearing Examiner" means the Hearing Examiner of the City of Des Moines, pursuant to Chapter 18.94 of the Des Moines Municipal Code.

(8) "Impact fee" means a payment of money imposed by the City upon development activity as a condition of issuance of a building permit to pay for public facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of the City, but does not include any permit or application fee.

(9) "Owner" means the owner of record of real property. If real property is being purchased under a real estate contract, the purchaser shall be considered the owner of real property if the contract is recorded.

(10) "Public facilities" as used in this section refers to public streets, roads and rights-of-way owned or operated by the City for other governmental entities, including trails, paths, bikeways, other transportation facilities and all attendant improvements.

(11) "Service area" means the development impact fee service area of the City identified in Section 3.

(12) "Transportation facilities" means and refers to streets and roads, but includes all publicly owned streets, roads, alleys and right-of-ways within the City and street services, traffic control devices, curbs, gutters, sidewalks and related facilities and improvements.

Sec. 2. Transportation impact fees established. There is established, subject to the provisions of this chapter, a transportation impact fee program.

Sec. 3. Establishment of service area.

(1) The City hereby establishes, as the service area for development impact fees, the City of Des Moines, including all property located within the corporate limits of the City, except that collection of the fee will be modified for those subareas of the Pacific Ridge zone that are subject to a Pacific Ridge Transportation Mitigation Fee and exempt or partially exempt from traffic impact fees pursuant to Exhibit B of Ordinance No. 1298. Those subareas and exemptions are:

(a) New residential developments located east of the Pacific Highway South Corridor shall not be required to pay the citywide traffic impact fee; and

(b) New developments that front along the Pacific Highway South corridor will be required to pay the citywide traffic impact fee but will receive a credit toward the traffic impact fee equal to the amount of the Pacific Ridge Transportation Mitigation fee.

(2) The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles.

Sec. 4. Imposition of impact fee on development activity.

(1) Except for those subareas of the Pacific Ridge zone set forth in § 3 (1), above, the City hereby authorizes the assessment and collection of impact fees on development activity within the City, at the calendar year 2001 base rate of Two Thousand Five Hundred Thirty Nine dollars (\$2,539.00) per new

p.m. peak hour trip, as computed using methodologies from the most current edition of the Institute of Transportation Engineers Trip Generation Manual or other industry sources approved by the Public Works Director. This impact fee base rate shall be adjusted annually based on the construction cost index for the Seattle area as reported in the March issue of the Engineering News Record periodical. Based upon the above impact fee base rate and adjustments, the base rate as of January 1, 2003 will be Two Thousand Six Hundred Fifteen dollars (\$2,615.00) per peak p.m. trip. For the calendar years 2003 through 2005, the impact fee shall be phased-in as follows: for the calendar year 2003, the impact fee shall be paid in the amount of Seventy percent (70%) of the then-current base rate; for the calendar year 2004, the impact fee shall be paid in the amount of Eighty percent (80%) of the then-current base rate; and for the calendar year 2005, the impact fee shall be paid in the amount of Ninety percent (90%) of the then-current base rate. For the calendar year 2006, and for all subsequent years, the impact fee shall be paid in the amount of One Hundred percent (100%) of the then-current base rate.

(2) Such impact fees shall:

(a) Only be imposed for system improvements that are reasonably related to new development and identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program;" and,

(b) Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development; and,

(c) Be used for system improvements that will reasonably benefit new development; and,

~~((d) Be used for facilities identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program."))~~

(3) Such impact fee schedule is based upon the formula for calculating the proportionate share of the cost of the system

improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees, which formulas are described in the Comprehensive Transportation Plan element of the Greater Des Moines Comprehensive Plan and incorporated herein by this reference.

(4) The impact fees imposed pursuant to this chapter shall be assessed by the City after the effective date of this ordinance. A final assessment, based upon the actual building permit to be issued, shall be made, and the fee shall be due and payable in full at the time of issuance of the permit.

(5) Failure to pay the impact fees for a given development activity at the time that such impact fees are due and payable shall result in denial of the building permit for which the owner has applied.

(6) The impact fee program shall provide credits for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program." The value for which credit shall be given is the estimated value used for Impact Fee calculation in the Comprehensive Transportation Plan.

Sec. 5. Disposition of impact fee revenues.

(1) The impact fees collected pursuant to the provisions of this chapter shall be deposited into an impact fee fund. Pending application as provided in this chapter, the monies deposited in the impact fee fund shall be invested in any investment authorized for the investment of City funds. All interest and profits derived from the investment of monies in each account in the impact fee fund shall be retained in such account.

(2) The impact fees deposited in each account in the impact fee fund, and the interest and profit received from the investments therefrom shall be expended only for public facilities of the type for which such impact fees were collected, in conformity with the Greater Des Moines Comprehensive Plan and

Comprehensive Transportation Plan, and expended or encumbered within six years of receipt by the City, unless written findings by the City Council identify an extra-ordinary and compelling reason for the City to hold the fees for a longer time. The City shall account for annual expenditures and shall comply with this section in successive comprehensive plans, transportation plans and capital facilities plans as appropriate.

(3) The City shall prepare an annual report on the impact fee fund which shows the source and amount of all monies collected, earned or received and the public facilities that were financed in whole or in part by impact fees.

Sec. 6. Refunds.

(1) The City shall, in accordance with RCW 82.02.080, refund to the current owners of property on which an impact fee has been paid any impact fees paid with respect to such property that has not been expended or encumbered for public facilities of the type of which such impact fees were collected.

(2) The City shall also refund to the current owner of property on which an impact fee has been paid all impact fees paid with respect to such property if the development activity for which the impact fee was imposed did not occur and no impact has resulted. (~~(, provided, that)~~)

(3) If some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund will be ~~((available under this section))~~payable, provided however, that the property on which the impact fee was paid shall receive a credit toward any subsequent development activity on the property up to the full amount of the payment.

(4) Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the City Manager or designee within one (1) year of the date the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to paragraph 2 of this section only, shall be

the date of voluntary or involuntary abandonment of the building permit, or the date that notice is given as provided in paragraph 1 of this section, whichever occurs later. Refunds of impact fees shall include interest and any profits earned on the impact fees from the date of their receipt to the date of refund, as a percentage of the interest/profits earned by the fund on an annual basis. Any impact fees not expended within the time limitations and for which no application for a refund has been made within the one (1) year claim period, shall be retained by the City and expended on public facilities of the type for which such impact fees were initially collected, without further limitation as to the time of expenditure.

Sec 7. Appeals.

(1) The determination of the City Manager or designee regarding the applicability of the impact fee to a given development activity within the service area shall be final, however an owner may pay an impact fee imposed pursuant to this chapter under protest in order to obtain a building permit and, after such payment, file an appeal regarding the amount of the impact fee to the Hearing Examiner within ten (10) days of the City's final decision under the provisions of the hearing examiner code, Chapter 18.94 DMMC.

(2) Appeal regarding the amount of the impact fee imposed on any development activity may only be made by the owner of the property where such development activity shall occur.

Sec. 8. Codification. Sections 1 through 7 of this ordinance shall be codified as a new chapter in Title 12 DMMC.

Sec. 9. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 10. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

current changes - 9/30/03 all data - actual set backs 9/30/03 -
AGENDA ITEM
ap see email -

SUBJECT:

Revision of mobile home park regulations

avoid reconstituting
AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Community Development *JK*

DATE SUBMITTED March 4, 2003

ATTACHMENTS:

1. Draft Ordinance 02-177

CLEARANCES:

[X] LEGAL *LAAM*

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL *AS*

Purpose and Recommendation:

Suggested Motion:

"I move to adopt Draft Ordinance 02-177

The purpose of this ordinance is to allow mobile home owners, with an approved site plan, the opportunity to fill their parks.

Background:

On June 27, 2002 Administration requested direction on mobile home parks. Currently, the mobile homes in the City are nonconforming uses. DMMC 14.48.270 required mobile home owners existing before July 1, 1992 to provide the city a site plan, prepared by a registered engineer showing the number of mobile homes on site, their location, lot dimensions, the location and size of all road, sewers, etc. This site plan was supposed to be part of the business license application.

Except for the mobile home parks in the Woodmont/Redondo area, staff has no site plans for any mobile home park in the city.

On February 27, 2003 the Council discussed the draft ordinance. During the discussion administration addressed the letter from the owner of the Pine Terrace Mobile Home park, Gordon Gray. Administration discussed these proposed changes with City Council and based on Administration recommendations Council moved the draft ordinance to a second reading. These changes have been included in the revised draft ordinance included in this packet.

Discussion:

The changes to the draft ordinance include:

- Minor changes to the definition section of the chapter to provide more current language
- Requires annual inspection of mobile home parks for compliance with provisions of this chapter
- Includes language detailing failure to remedy corrections found at the annual inspection as a basis to revoke the business license
- Requires all fire lanes to be clearly marked and remain free of parking
- Requires all outdoor storage areas in and around mobile homes to be adequately screened acceptable to the Community Development Department
- Clarifies language requiring mobile home park owners to be responsible for collection and disposal of solid waste
- Allows the required site plan to be prepared by an engineer or surveyor or in a form acceptable to the Community Development Department
- Sets the "grandfather" date for legal non-conforming uses as September 30, 2003
- Allows owners until September 30, 2003 the opportunity to provide the required site plan
- Allows existing mobile home parks to continue to use actual setbacks existing on September 30, 2003, as documented in the required site plan
- Additional minor editing to the ordinance

Under this draft ordinance mobile home parks established before July 1, 1992 remain legal, nonconforming uses. Because of the enforcement and regulation issues, RV's remain prohibited uses.

Alternatives:

The Council has three options concerning this ordinance:

1. Adopt the draft ordinance as revised by Council
2. Direct staff to further revise the draft ordinance based on additional Council discussion
3. Do not adopt the draft ordinance

Financial Impact:

There is no negative impact to the city in adopting this draft ordinance

Recommendation/Conclusion:

Administration recommends adoption of draft ordinance 02-177

Concurrence:

None

COMMUNITY DEVELOPMENT'S FIRST DRAFT 9/12/02
COMMUNITY DEVELOPMENT'S SECOND DRAFT 3/05/03

DRAFT ORDINANCE NO. 02-177

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to revision of mobile home park regulation code and amending chapter 14.48 DMMC.

WHEREAS, the mobile home park regulation code was established to provide orderly operation of these facilities, and

WHEREAS, there is a need to require a high quality of management of these parks to ensure that the occupants of these parks and the community as a whole are protected from potentially adverse impacts, and

WHEREAS, revisions to DMMC 14.48 will allow for enhanced monitoring of these parks while providing mobile home owners the opportunity to maintain the economic viability of these parks, and

WHEREAS, well maintained mobile home parks provide safe and affordable housing for many households priced out of the conventional housing market, and

WHEREAS, it has been determined that textual code amendments to Title 14 are a Type V land use action, and

WHEREAS, the City Council finds it is in the best interest of the public health, safety and general welfare to revise these regulations; now therefore:

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Sec. 1 Chapter 14.48 DMMC and sections 143, 144, 145, 146, 147, 148, 149(part), 149(A), 149(B), 149(C), 149(D), 149(E), 149(F), 149(G), 149(H), 149(I), 149(J), 149(K), 149(L), 149(M), 149(N), 149(O), 150, 151, 152, 153, 154, 155, 156, 157, 159, 160, and 161 of Ordinance No. 938 and section 1 of Ordinance No. 978 are each amended to read as follows:

14.48.010 Short title. This chapter shall be known and may be cited as the "mobile home park regulation code."

14.48.020 Findings and policy.

(1) The City finds that properly planned and operated mobile home parks:

(a) Promote the safety and health of the residents of such parks and of other nearby neighborhoods; and

(b) Encourage economical and orderly development of such parks and other nearby neighborhoods.

(2) It is, therefore, declared to be the policy of the City to eliminate and prevent health and safety hazards and to promote the economical and orderly development and utilization of land by providing for planning and operating mobile home parks and by providing for the standards and regulations necessary to accomplish these purposes.

14.48.030 Definitions.

(1) **Use of words.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Factory-built housing" means any structure designed primarily for human occupancy which is either entirely or substantially prefabricated or assembled at a place other than a building site, meets the requirements of the Uniform Building Code, and bears the insignia of the Washington State Department of Labor and Industry. Factory-built housing may also be called

industrialized, modular, sectional, or sectionalized construction.

(3) "Mobile/manufactured home" means a factory-assembled structure or structures designed for human occupancy and equipped with the necessary service connections and constructed so as to be readily movable as a unit or units upon running gear. The support system of a mobile home shall be constructed so that the mobile home may be placed thereon and may be moved from time to time at the convenience of the owner. Mobile homes must bear the insignia of the state Department of Labor and Industries and built according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974. The terms mobile home and manufactured home are considered to be interchangeable in the context of this chapter. A commercial coach, recreational vehicle, or motor home are not a mobile/manufactured home.

(4) "Mobile home park" means an approved residential development as shown in the records of the Community Development Department, and designed and approved in accordance with either the subdivision or the planned unit development regulations of the City, together with certain service/utility buildings and uses providing for the enjoyment and benefit of the residents of the mobile home park in which individual spaces are provided for the placement of a mobile home for dwelling unit purposes. Lots for mobile homes may be either rented or purchased.

(5) "Leasable" space means that area within the mobile home park designated on an approved site plan as lots for locating mobile home units with full utility hook-ups.

(5-6) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use with or without motive

power of such size and weight as not to require a special highway movement permit and certified as approved as such by the State Department of Labor and Industries. Recreational vehicles shall include but are not limited to campers, motor homes, travel trailers, and camping trailers.

(67) "Recreational vehicle storage area" means a surfaced area enclosed by appropriate fencing provided for the storage of recreational vehicles. All recreational vehicle storage within the mobile home park shall occur in this designated area.

(78) "Service building" means a building for the purpose of housing mobile home park community facilities.

(89) "Utility building" means an accessory structure intended for the storage of typical outdoor equipment incidental to the occupants of the mobile home, i.e., lawn mower, lawn chairs, barbecue, etc. Utility buildings are limited to one per mobile home lot.

14.48.040 General requirements.

(1) Mobile homes are a permitted use in mobile home parks only. Mobile home parks shall be developed in accordance with the requirements of either Title 17 DMMC or chapter 18.52 DMMC together with the requirements of this chapter.

(2) No recreational vehicle shall be occupied for residential or commercial purposes anywhere in the City except in the case of temporary uses as authorized by the City Manager or their designee; provided, that under no circumstances shall a recreational vehicle be occupied more than 30 days. ~~Under no circumstances shall a recreational vehicle be parked overnight on a public street.~~

(3) Mobile/manufactured homes shall be used for residential purposes only, except for home occupations as defined in Title 18 DMMC.

(4) No space shall be rented or sold for any purpose within a mobile/manufactured home park except for a permanent residence.

(5) No person, company, or corporation shall establish a new mobile/manufactured home park, or enlarge the size of or increase the allowed density of an existing mobile/manufactured home park, without first complying with the provisions of this chapter.

(6) Where there is a conflict between the requirements of either Title 17 DMMC, chapter 18.52 DMMC, and this chapter, the most stringent provisions shall control.

(7) The provisions of this chapter shall not apply to factory-built housing.

14.48.050 Business license required. All persons who rent or sell lots in a mobile home park for mobile homes and/or who sell mobile homes therein, shall possess a valid business license from the City. In addition to meeting all requirements of chapter 5.04 DMMC, relating to business licenses, the mobile home park shall be inspected by the Seattle-King County department of public health prior to issuance of a business license by the City Clerk. The applicant shall remedy all unsanitary conditions found by the health department. Failure to remedy such conditions shall be grounds for denial or revocation of the business license by the City Manager. All mobile home parks shall be inspected by the Community Development Department annually for compliance to this chapter. Failure to remedy corrections in a timely manner shall be ground for denial or revocation of the business license by the City Manager.

14.48.060 Density requirements.

(1) Mobile home parks shall be not less than three acres in size. The maximum site area of a mobile/manufactured home park, or combination of adjacent parks, shall be 10 acres. Parks shall be considered to be "adjacent" to one another unless they are separated by an unrelated land use, and not merely by a public or private street, easement, or buffer strip.

(2) The number of mobile homes in the mobile home park shall not exceed the allowable number of dwelling units in the zone district in which the mobile home park is located.

14.48.070 ~~Development standards~~ Compliance. In addition to the requirements of either Title 17 DMMC or chapter 18.52 DMMC, mobile home parks shall comply with the following development standards and requirements.

14.48.080 ~~Development standards~~ Lots.

(1) Every mobile home lot shall be at least 2,400 square feet with a 40-foot frontage.

(2) Each mobile home lot shall be identified with an individual site number, each number a minimum of four inches tall in a logical numerical sequence, subject to approval by the building official, displayed in a uniform manner throughout the mobile home park and readily identified from the roadways within the park. In addition, these numbers must be shown on the official ~~plat~~ site plan for the mobile home park. Site numbers shall not be mounted on the mobile homes.

(3) Every mobile home lot shall have a pad hard surfaced with concrete or asphaltic concrete of minimum thickness of four inches. It shall be

of a size not less than that of the mobile home to be parked on the lot.

14.48.090 ~~Development standards~~ - Lot coverage. All impervious surfaces, including but not limited to mobile homes, service/utility buildings, carports, patios, driveways, and streets shall not exceed 50 percent of the lot area.

14.48.100 ~~Development standards~~ - Setbacks.

(1) Minimum front yard setbacks for all structures shall be 10 feet.

(2) Minimum rear yard setbacks for all structures shall be 15 feet.

(3) Minimum side yard setbacks for all structures shall be 10 feet.

(4) Corner lots shall observe a minimum 15-foot setback from all streets and alleys.

(5) The minimum clearance between mobile homes shall not be less than required by the fire code.

(6) The clearance between mobile homes and any service/utility building(s) situated on the same lot shall not be less than required by the Uniform Fire Code.

(7) Eaves may project up to a maximum of 18 inches into any required setback area.

14.48.110 ~~Development standards~~ - Parking spaces.

(1) A minimum of two off-street parking spaces per mobile home shall be provided on the lot on which the mobile home is located.

(2) In addition to occupant parking, guest and service parking shall be provided within the boundaries of the park at a ratio of one parking space for each two mobile/manufactured lots, and shall be distributed for convenient access to all lots and may be provided by a separate parking area. Clubhouse and community building parking facilities may account for up to 50 percent of this requirement.

(3) Setbacks for mobile/manufactured home units shall not be calculated for purposes of meeting the minimum parking requirements. All off-street parking spaces shall conform to the dimensional requirements contained in chapter 18.44 DMMC.

(4) Vehicles over 8,500 pounds gross license weight and recreational vehicles shall not be parked or stored on the individual lots or on any street. A separate storage area shall be provided with appropriate fencing and visual screening as determined by the Community Development Department.

14.48.120 ~~Development standards~~ Streets and access.

(1) Access to and from the mobile home park shall be from a minor arterial or collector street. Access to mobile home lots shall be from interior streets only. No individual access to any mobile home lot shall be from streets adjacent to the exterior of the mobile home park.

(2) All streets shall be constructed to City standards contained in chapter 12.28 DMMC.

(3) Pedestrian sidewalks shall be of concrete pavement a minimum of five feet wide on both sides of all streets.

(4) Driveways providing entrance or exits to the mobile home park shall be no closer than 150 feet from an intersection, measured from the existing or proposed right-of-way, whichever is the greater.

(5) All streets and access roads so designated either in the subdivision or PUD review process shall be completed prior to occupancy of any mobile home.

(6) All fire lanes shall be clearly marked and no parking shall be allowed in these areas.

14.48.130 ~~Development standards~~ - Building heights. The maximum building height shall be 25 feet.

14.48.140 ~~Development standards~~ - Landscaping - Recreation space.

(1) At least 15 percent of the gross area within the mobile home park shall be set aside as active recreation space. The 15-foot buffer area required by subsection (2) of this section shall not be counted towards meeting the 15 percent requirement.

(2) A 15-foot minimum buffer area around the perimeter of the mobile home park is required. The buffer area shall contain perimeter screening of dense evergreen plantings, a minimum of five feet in height when installed, which will grow to a minimum of eight feet in height within five years.

(3) The developer shall furnish to the City a performance bond or other suitable security in a form approved by the City Attorney and in an amount approved by the Community Development Department to insure installation of the landscaping prior to any construction in the mobile home park.

14.48.150 ~~Development standards~~ - Drainage.

Drainage and runoff plans shall be approved by the public works director.

14.48.160 ~~Development standards~~ - Sewers.

Each mobile home shall be connected to sanitary sewers. A valid side sewer permit shall be obtained prior to any connection to any sewers.

14.48.170 ~~Development standards~~ -

Utilities. Every mobile home shall be permanently connected to electric power, water supply, sewage disposal, gas, cable television, and telephone service lines in compliance with applicable municipal codes. All utilities shall be placed underground in accordance with the provisions of chapter 17.36 DMMC.

14.48.180 ~~Development standards~~ - Lighting.

Artificial lighting shall be provided sufficient to illuminate walks, driveways, and parking areas to ensure the safe movement of pedestrians and vehicles at night. Artificial lighting shall be high pressure sodium lamps or equivalent. These exterior lights shall be such as will turn on and off automatically with dawn and dusk. Lighting shall be directed away from adjacent properties.

14.48.190 ~~Development standards~~ -

Recreation areas. Playground facilities or play area shall be conveniently situated, containing a minimum of five percent of the total gross area of the park and shall be restricted to such use. Such an area shall further be placed within the mobile home park so as to be properly protected from streets, highways, roadways, and parking areas. Such playground space may be provided in one or more locations within the mobile home park.

14.48.200 ~~Development standards~~ -

Screening.

(1) An ornamental wall, fence, or screen planting acceptable to the Community Development Department ~~and~~ not less than six feet and not more than ten feet in height shall be erected and maintained along the side and rear boundaries of a mobile home park. Where, in the opinion of the Community Development Department, it is unreasonable to require a wall or fence due to the nature of the existing topography or other existing conditions that might render such a wall or fence ineffective, the department, at its discretion may waive or modify the requirements as specified in this section.

(2) All outdoor storage in and around mobile homes shall be screened as prescribed in 18.41.040 except that a five-foot deep landscape area shall not be required. All screening shall be approved by the Community Development Department.

14.48.210 ~~Development standards~~ - Solid waste and recycling.

(1) The storage, collection, and disposal of solid waste in the mobile home park shall be conducted so as to prevent health hazards, rodent harborage, insect breeding areas, accidents, fire hazards, and air pollution. It shall be the responsibility of the mobile home park owner to ensure safe and sanitary storage, collection and disposal of refuse as required in DMMC 7.04.090.

(2) Community-type containers will be required and shall be located not more than 150 feet from any mobile home lot.

(3) These collection areas shall be screened according to the provisions of chapter 18.41 DMMC.

(4) Recycling facilities shall be provided as determined by the Community Development Department.

14.48.220 ~~Development standards~~ - Skirting. Skirtings are required and shall be constructed of nonflammable material. Every mobile home skirt shall be provided with a door or easily removed portion thereof through which an inspector may gain access to the crawl space under the unit.

14.48.230 Adoption of mobile home regulations by reference. Chapter 296-150B WAC (Standards for Mobile Homes, Commercial Coaches, and Recreational Vehicles), as presently constituted or as may be subsequently amended, is adopted and shall be applicable within the City.

14.48.240 Smoke detectors. Smoke detectors, of a type approved by the building official, shall be installed in all newly set mobile homes.

14.48.250 Furnace controls - Power switch. All furnace controls and power switches shall be placed on the exterior of the furnace enclosure.

14.48.260 Tie downs. All mobile homes shall be equipped with tie downs of a type that has been approved by the building official.

14.48.270 Site plan required - Preexisting parks. The owners of mobile home parks existing before ~~((July 1, 1992))~~ September 30, 2003, shall provide the City with a site plan, prepared by a registered civil engineer professional surveyor or engineer and/or in a form acceptable to the Community Development Department showing the number of mobile homes presently on the site, their location, and the dimensions of all lots and the location and size of all roads, sewers, water lines, all other utilities and other structures on the property. The site plan shall be submitted in

conjunction with the application or renewal of a business license as required by DMMC 14.44.050.

14.48.280 Preexisting mobile home parks.

All mobile home parks existing before ~~((July 1, 1992))~~ September 30, 2003, and which were in compliance with existing City or county codes at the time of their establishment, shall be legal, nonconforming uses and are entitled to the number of mobile homes which was permitted by the applicable ordinance in effect at the time the mobile home park was established, the number and configuration of individual spaces which are provided for placement of a mobile home for dwelling unit purposes existing on ~~((July 1, 1992))~~ September 30, 2003, and the privilege of locating in such spaces mobile homes of a size suitable to the dimensions of the individual spaces and subject to the actual setbacks existing on September 30, 2003, as documented in the plan or schematic required in subsection (1) of this section; ~~which are provided for mobile home placement;~~ provided:

(1) The owner of the mobile home park shall provide the City Community Development Department by ~~December 28, 1992~~ June 30, 2003, September 30, 2003 a plan or schematic of the mobile home park drawn to scale, showing the location and dimension of each space for the placement of mobile homes;

(2) All other provisions of this mobile home park regulation code shall be applicable; and

(3) No increase in density and no increase in the number of mobile homes are allowed unless all of the provisions of this chapter are met.

14.48.290 Administration. The Community Development Director or his/her designee shall enforce the terms of this chapter according to the provisions of this title.

14.48.300 Inspections.

(1) No person may occupy or allow or suffer another person to occupy a mobile/manufactured home before the same has been inspected and approved by the State Department of Labor and Industries, and the installation has been approved by the building official.

(2) The installer/owner shall request an inspection after all aspects of the installation, other than installation of the skirting, have been completed. If the inspection is not completed within 10 business days, the tenant or owner may occupy the mobile/manufactured home at his or her own risk. Occupancy before inspection does not imply City approval.

14.48.310 Authority to issue permits for and inspect installation of mobile/manufactured homes. *Repealed by Ord. 946.*

14.48.320 Mobile/manufactured home installation. No person may install a mobile home unless that person owns the mobile home, is a licensed mobile home dealer, or is a contractor registered under chapter 18.26 RCW, as presently constituted or as may be subsequently amended.

14.48.330 Permits for accessory structures. Building permits shall be required pursuant to chapter 14.08 DMMC for all accessory structures on a mobile/manufactured home lot, including but not limited to awnings, porches, steps, decks, storage sheds, and carports.

14.48.340 Park administration.

(1) The owner(s) of a mobile/manufactured home park shall be responsible for the development and maintenance of the park in strict conformity

with this chapter, the building site plan, and all other applicable laws and ordinances.

(2) A mobile/manufactured home park shall have internal rules and regulations governing, at a minimum, the following:

(a) A requirement that all tenants comply with state inspection codes at the time a mobile/manufactured home is installed or modified.

(b) A requirement that all tenants comply with zoning code restrictions relating to the use of their mobile/manufactured home and lot.

(c) A requirement that all landscaping, buffer areas, recreational areas and facilities, storage areas, streets, walkways, and other common areas and facilities be continuously maintained to at least the minimum standard required by the City and approved by the enforcing agency at the time of initial occupancy.

(3) A mobile/manufactured home park shall have a full time resident manager on site who shall be the agent of the owner with authority to communicate directly with City officials regarding compliance with codes and requirements and who shall be responsible for the enforcement of park rules and regulations.

NEW SECTION. Sec. 2 Severability-Construction

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Ordinance No. ____
Page 16 of ____

NEW SECTION. **Sec. 3. Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY THE City Council of the City of Des Moines this ____ day of ____, 2003 and signed in authentication thereof this ____ day of ____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD/02/177

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Mayor's Appointment to Vacancy
on Des Moines Planning Agency

ATTACHMENTS:

- Application from Donald Riecks

FOR AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: March 25, 2003

CLEARANCES:

[]

[]

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

RECOMMENDED ACTION

It is recommended that Council approve the following motion on the Consent Calendar:

"Motion is to confirm Mayor Steenrod's appointment to the Planning Agency of Donald Riecks to a vacant four year term to expire on December 31, 2006."

SUMMARY STATEMENT

Four vacant positions currently exist on the Planning Agency. Active recruitment has been undertaken.

At this time Mayor Steenrod is recommending appointment of Donald Riecks to one of the vacant positions and is requesting Council confirmation. This appointment will be for a four year term commencing immediately, and expiring on December 31, 2006.



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
 21630 11th Avenue South
 Des Moines, WA 98198

Recvd. _____

Please Check

NAME: DONALD Pieck
 ADDRESS: 21221 5th Ave S.
 CITY, ZIP: Des Moines 98198-3632
 PHONE: Home (206) 829-1375 Work SAME
 LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 30 years
 REGISTERED VOTER? YES
 EMPLOYMENT SUMMARY LAST FIVE YEARS: RETIRED

- ☐ Civil Service Commission
☒ Planning Agency
☐ Library Board
☐ Human Services
☐ Senior Services

Are you related to anyone presently employed by the City or a member of a City Board? NO
 If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? NO If so, please describe: _____

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

- Why do you wish to serve in this capacity and what can you contribute? _____
HAVE BEEN ASKED TO SERVE
EXPERIENCED IN CIVIC INTERESTS FOR MANY YEARS
- What problems, programs or improvements are you most interest in? _____
I HAVE NO PRE-EXISTING AGENDA.
- Please list any Des Moines elective/appointive offices you have run/applied for previously. _____
ONCE LOST MY HEAD AND RAN FOR CITY COUNCIL. LOST IN PRIMARY.
VOTERS WERE SMARTER THAN ME.
I WILL NOT DO THAT AGAIN

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

March 6, 2003

At 7:30 p.m. Mayor Steenrod announced that the meeting start will delayed for approximately 10 minutes to allow the Public Safety and Transportation Committee to conclude their meeting.

The regular study session of the Des Moines City Council was called to order by Mayor Steenrod at 7:40 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Mayor Pro Tem Benjamin.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson, Don Wasson and Susan White (left the meeting at 8:54 p.m.). Also present were Acting City Manager Corbitt Loch, City Attorney Linda Marousek, Assistant City Attorney Richard Brown, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Police Commander John O'Leary and City Clerk Denis Staab.

DISCUSSION ITEMS

RCAA Final Billing

Councilmember Wasson stated that after reviewing the invoices submitted by the RCAA, he felt that benefits to the City were non-existent and therefore Council should not spend taxpayer dollars for no benefit. He further felt that during the time period covered, activity was mainly confined to legal actions by lawyers of ACC and that citizen involvement played no part in any of the legal arguments. Since there was strictly legal procedures during this time frame this would be his rational for denying payment of the billing.

Councilmember Thomasson advised that this is a contract issue. He noted that for a number of years RCAA has provided various services and the 2002 services were more or less the same as previous years and the City has not requested any change. He voiced the opinion that the idea of not paying RCAA is being led by personality issues. He feels the City should honor the contract in accordance with the termination clause and pay the invoice.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, to authorize payment of \$22,065.22 to the Regional Commission on Airport Affairs as full and final payment for services provided in 2002.

Councilmember Petersen expressed concern that both the 1st and 2nd quarter billings from RCAA were sent on the same date.

Councilmember Sheckler remarked that having observed RCAA activities for several years, he feels they have done a commendable job of keeping citizens informed, which is their purpose. He further advised that RCAA has taken on some of the side issues that ACC did not have the time to take on. He felt RCAA has performed their tasks and should be paid for their past service.

In response to Councilmember Petersen's concern, City Attorney Marousek noted that the contract calls for quarterly payments to be made and therefore it is the City's responsibility to pay.

Larry Corvari, President of RCAA, remarked that cities are typically slow in paying, however when there was an apparent change in City policy direction with the City Manager being fired, RCAA decided the first and second quarter bills should be sent to the City. That is the reason they have the same date. He noted that normally billings are not sent as the cities know their responsibility to pay.

Councilmember Wasson remarked that RCAA members are actively pursuing litigation against Des Moines Councilmembers during the billing time in question. He further noted that RCAA provided written material to citizens during the Council election, publishing information to try to influence the outcome of the Council election, with false statements. He felt the City should not be paying for this type of activity. He advised that he will vote against any payment and encouraged other Councilmembers to vote likewise.

Councilmember White questioned whether Councilmembers involved in the PDC investigation should even be voting on this issue.

City Attorney Marousek responded that this is not a quasi-judicial matter, and generally there is no financial interest involved, therefore no disqualifying factor exists.

Mayor Steenrod remarked that it appears that RCAA is duplicating efforts of other organizations that are doing the same job.

Councilmember Thomasson advised that this was a negotiated contract and that RCAA kept their end of the agreement. Des Moines needs to maintain its reputation and pay the amount due per the contract.

VOTE: Motion failed 4 to 3 with Councilmembers Sheckler, Thomasson and White voting YES.

Draft Ordinance No. 02-264 Traffic Impact Fees

Public Works Director Heydon advised that at Council direction at the February 6th Study Session, Council sent the draft ordinance to the Public Safety & Transportation Committee to review the level of fees.

City Attorney Marousek called Council's attention to the new codification language in the draft ordinance.

Mayor Pro Tem Benjamin, Chairman of the PS&T Committee, informed Council that the Committee recognized the impacts of new construction and the need to fund transportation improvements, however had some concern that the fees would be a deterrent to attracting new businesses. He informed Council that the Committee determined that businesses are committed to proper roads and their maintenance, and wants assurance of proper traffic flow. Therefore, the transportation impact fee is good for business. The Committee is recommending an incentive for new businesses by using a graduated rate schedule as follows: 70% base rate for 2003, 80% base rate for 2004, 90% base rate for 2005, with the full 100% base rate to be instituted in the year 2006.

Upon questioning by Mayor Steenrod regarding the City of Kent using an LID process, Public Works Director Heydon explained that the City of Kent has a large staff to handle only commercial development. He noted a Local Improvement District, requires a large amount of engineering, technical and legal staff. He felt this would not work for Des Moines.

In response to Council questioning, Acting City Manager Loch advised that the traffic impact fees for the Pacific Ridge area were developed to encourage development by allowing developers to know up front what fees will be expected. He felt that early notification to developers is important and will work City-wide.

Assistant City Engineer Andrews noted that the residential zone of the Pacific Ridge area is exempt and the commercial area east of the Highway is split, with a credit for impacts fees in place.

Mayor Steenrod commented that Section 4(a) needs to be clarified by adding the language "as identified in the Comprehensive Transportation Plan, or as may be amended."

Councilmember Thomasson felt it important to add a new section to the draft ordinance showing the City wide-fee and include the Pacific Ridge area language too.

Councilmember Wasson suggested that the portion of the Comprehensive Transportation Plan pertaining to improvements, should be included to help make it easier for developers. He further noted that he would like to see an installment payment plan so that huge costs up front for developers could be avoided.

Councilmember Thomasson stated that most developers will get a construction loan and a lender would not look favorably on an installment fee schedule. He felt the City should get the transportation impact fee up front with the building permit.

Public Works Director Heydon remarked upon questioning by Council, that there is a 6 year limit on how long the City can hold the fees. If they are not spent on a project in that time, the fee must be given back to the developer.

After further discussion regarding the fees, it was determined that the phase in fee plan as recommended by the PS&T was the best compromise.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously, to place the draft ordinance on a future agenda and incorporate the following changes:

- add language to Section 4(a) to reference the Comprehensive Transportation Plan
- include the Pacific Ridge area fees
- make the refund section clearer, including development which does not occur
- what happens with an expired building permit or no certificate of occupancy issued

8:54 p.m. Mayor Steenrod called for a 6 minute break. Councilmember White left the meeting.

Draft Ordinance No. 03-070 Hotel/Motel Tax - 1st Reading

City Attorney Marousek reminded Council that this subject was first brought up during budget discussions. She advised that the draft ordinance would establish a "lodging tax advisory committee". She informed Council that this is a required first step if Council wants to consider the imposition of a hotel/motel tax for the purpose of tourist promotion, acquisition or operation of tourism-related facilities or any other uses authorized by RCW 67.28.

Acting City Manager Loch noted that the draft ordinance only establishes legislation to create the positions of a committee, whose members would have to be appointed by Council.

Assistant City Attorney Brown explained that the 1% tax, if instituted, could only be used to promote tourism in the community.

Acting City Manager Loch felt that economic development could be regarded as having a tourism link.

Councilmember Thomasson noted that he is reluctant to go through this process without knowing for sure how much money would be raised. He further felt that should this draft ordinance pass, that there should be a "sunset clause" in the event that Council chooses not to proceed.

City Attorney Marousek noted that Council need not appoint a committee until it has been decided that a hotel/motel tax should be implemented.

Mayor Steenrod commented that new hotel construction in the Pacific Ridge area could contribute significantly to this type of fund.

Mayor Pro Tem Benjamin felt this is definitely something Council should explore and use in the future.

MOTION was made by Councilmember Wasson, seconded by Mayor Pro Tem Benjamin, to pass Draft Ordinance No. 03-070 to a second reading, to amend the draft ordinance by deleting Section 2(5) and adding a sunset provision of 3 years. Motion passed 5 to 1 with Councilmember Sheckler voting NO.

Draft Ordinance No. 01-192 Hotel/Motel - Check-In Identification Requirements - 1st Reading

Police Commander O'Leary advised that the Police Department has long advocated this type of legislation in order to effectively deter crime within the hotel/motel industry. He noted that the annual number of police calls from an individual hotel/motel establishment will determine which requirements will be placed on each establishment. He cited that there has been numerous complaints from the community and it is time for operators of these establishments to take responsibility. He stated that the draft ordinance has been patterned after the cities of Tukwila and Fife, who have reduced calls for service and made their communities safer by employing similar measures. He cited various crime statistics noting the negative impact of poor management and business practices by some motels in the city. In conclusion, he stated that he strongly believes this legislation would go a long way in addressing the high crime statistics and that the police department's attention and resources could then be utilized elsewhere in the community.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, to move Draft Ordinance No. 01-192 to a second reading with the following amendments:

- Move the last sentence of Section 4(2) to Section 4(3) in front of the current last sentence.
- Section 5 delete the word “semi” prior to the word “annual”.
- Section 2(4)(a) at the end of the sentence change the word “and” to “or”.

Councilmember Thomasson also noted that the ordinance needs to be consistent and therefore “rooms” should all be noted as units.

VOTE ON MOTION: Motion passed unanimously.

Draft Resolution No. 03-013 Amend Council Rule 36 Video Taping of Council Meetings

Councilmember Wasson noted that the purpose of this legislation is to regulate the location of video taping or other electronic recording equipment in the Council Chambers, other than the City’s official video recorder. He feels the draft resolution designates a suitable location for such activities, such as video tape recordings.

Mayor Steenrod noted that the amount of furniture, chairs, etc. stacked in the back of the room make it difficult to use that area. She requested that when the Council Chambers is upgraded it should be made more camera friendly by finding somewhere else to store the tables and chairs that are not used for Council meetings. She felt strongly that the room needs to be redesigned.

Councilmember Thomasson felt that this legislation addresses a non-existent problem. He noted that this could become a problem in the future, however, the Presiding Officer has the power to stop any activity that interferes with Council conducting business.

Councilmember Sheckler referenced the 1998 Attorney General Opinion contained within Council’s packet. He felt that the use of video or audio recording devices has not been a problem. He noted that the Mayor has the right to stop any disorderly conduct. He cautioned against taking unnecessary legislative action.

Councilmember Wasson felt that Council is not bound by the Attorney General’s opinion, and that Council should be able to legislate itself. He noted the City pays to have the meetings televised and that Council does not need to provide an area up front for private recording when we are already paying someone to do that.

At 10:02 p.m. **MOTION** was made by Councilmember Wasson to adjourn. Motion DIED for lack of a second.

Mayor Steenrod questioned whether any Councilmember wished to introduce a motion on the agenda item. As there was no response, Mayor Steenrod declared that the item has DIED for lack of any action.

NEXT MEETING DATE

Mayor Steenrod announced that the next regular meeting will be March 13, 2003.

ADJOURNMENT - 10:03 p.m.

MOTION was made at 10:03 p.m. by Councilmember Thomasson, seconded by Mayor Pro Tem Benjamin to adjourn. Motion passed 5 to 1 with Councilmember Wasson voting NO.

Respectfully submitted,

Denis Staab, City Clerk

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

March 13, 2003

The special meeting of the Des Moines City Council was called to order by Mayor Pro Tem Benjamin at 7:10 p.m. in the City Hall Conference Room, 21630 11th Avenue South.

ROLL CALL - Present: Mayor Pro Tem Richard Benjamin, Councilmembers Bob Sheckler, Scott Thomasson and Susan White. Excused: Councilmembers Gary Petersen and Maggie Steenrod. Absent: Councilmember Don Wasson. Also present were Assistant City Manager Corbitt Loch, Assistant City Attorney Richard Brown, Public Works Director Tim Heydon and Assistant City Engineer Maiya Andrews.

Mayor Pro Tem Benjamin announced that the Council would hold an Executive Session for approximately 20 minutes to discuss real estate matters, about which public knowledge might have an adverse impact on price to the detriment of the City.

No formal action was taken.

ADJOURNMENT

The Executive Session adjourned at 7:28 p.m.

Respectfully submitted,

Richard Brown
Assistant City Attorney

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

March 13, 2003

The regular meeting of the Des Moines City Council was called to order at 7:34 p.m. by Mayor Steenrod in the Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson, Don Wasson and Susan White. Also in attendance were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Community Development Director Judith Kilgore, Harbormaster Joe Dusenbury, Finance Director Paula Henderson, and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Michael Dannels, 1115 Woodmont Beach Road South

Mr. Dannels thanked City Manager Piasecki for coming to his home to look at the gate that the City required near the end of his driveway, which he wants to remove. He informed Council that he hired a transportation engineer to review the situation and prepare a report. Mr. Dannels distributed a copy of the report for Council's review and restated his request to be allowed to remove the gate required by the City, as he contents it is a dangerous situation.

City Manager Piasecki informed Council that he and the Public Works Director did go out to look at the situation. He has requested that the Public Works Director prepare an engineering analysis. He noted that he will be sure that the report Mr. Dannels' had prepared is reviewed by the City's Public Works Director. City Manager Piasecki advised Council that the driveway was supposed to have been built in a different location, however the contractor paved a driveway where he had been using a construction access.

Councilmember Thomasson felt that this situation should have never been allowed to occur and the City should have made the contractor move the driveway to a more logical place.

Mr. Dannels responded that a different location would have required a switch-back driveway which, in his opinion, would have been even more dangerous. The other alternative would have been to acquire access through a neighbors property.

City Manager Piasecki concluded by stating that he will provide Council with a written report on the conclusions drawn by the Public Works Director.

Les Findley, 24726 12th Avenue South, Huntington Park

Mr. Findley stated that he has been out of town since January and just learned of the passage of Ordinance No. 1315 regulating dangerous fences, including razor wire. He informed Council, that on the advice of the Police Department, he has razor wire around an area where he and others store valuable motor homes. He expressed concern with the fact that he will now have to remove this wire, which will increase insurance premiums.

City Manager Piasecki explained that the ordinance was prepared at Council's direction over concerns expressed to small domestic animals encountering razor wire.

Tom Roush, 2000 Alaskan Way, #255, Seattle

Mr. Roush, Associate Broker for Windermere Real Estate, read a letter into the record requesting Council revisit the Pacific Ridge zoning to carefully examine what is hindering development on Pacific Highway. He specifically noted orientation of a building to be directly on the highway, lot coverage for at grade surface parking not allowed to exceed 35% and driveway separation of 100 feet.

Dave Kaplan, 2614 South 226th

Mr. Kaplan spoke regarding Marina rates. He noted several years ago, the decision was made to separate resident and non-resident rates. He voiced support that Council is addressing this disparity as he feels they should be equal. He did express the opinion that there are long term implications for the Marina and that stability is important.

In regards to economic development, Mr. Kaplan felt that looking at the area south of Kent-Des Moines Road along Pacific Highway South is important as it is the last commercial zone in the City that needs attention. He felt that whatever economic development plan Council chooses it is important that it have a City-wide vision, not just focused on the downtown area. He stressed the need for Council to work with a number of various business entities. He voiced concern with working solely with the Chamber of Commerce as, to his knowledge, has not brought in 3 new businesses to the City in the last five years.

Speaking in regards to the Pacific Ridge area, Mr. Kaplan stated that the one variance he would not grant is the one concerning the minimum height restriction. He felt the height restriction is very important as it helps maintain the vision established for the area.

Regarding a potential utility rate reduction, Mr. Kaplan reminded Council that for the last five years he has stated that he feels utility taxes are a crummy way to finance a City. However, given the fact that the City has not addressed the long term financial concerns in terms of expenditures versus revenues, it would be premature to roll back utility tax rates until the long term expenditure issues have been addressed.

Tom Sitterley, 601 South 227th

In regards to the proposed Marina rate ordinance on the agenda tonight, Mr. Sitterley reminded Council that the last rates were very specific in that they were a result of the I-695 and the failure of the City to have enough money. He noted the last ordinance raised rates of citizens of Des Moines by 7% and non-residents up over 19 ½ %. He stated this allowed the City to transfer in the year 2000 about \$180,000 from the Marina revenues into the City, and since its enactment a little over \$500,000 to help with the impacts of I-695. He noted that the new ordinance has three options that will increase the citizens rates and one option which follows the directions of the original Ordinance 1250 a little closer. This option would reduce the non-resident rates to the resident rates. He reminded Council that Ordinance 1250 contains the following language: "The City Manager is directed to return this ordinance to the City Council for reconsideration and possible reduction and/or repeal of Marina moorage rate increases at the earliest possible date." He felt that residents have been unfairly asked to take a greater portion of the City's revenue shortfall on their shoulders. He asked the Council to select Option C which will roll the non-

resident rate back to the current resident rate and relieves the residents from supporting the City's budget shortfall.

Lynne Voss, 20810 7th Place South

Ms. Voss addressed Council advising that she has had a boat at the Marina for the last 15 years. She noted that when Council passed the last ordinance increasing rates for non-residents, she lost a lot of non-residential boater friends. She requested Council keep in mind that many boaters, such as herself, cannot afford moorage increases. She warned Council that if they keep raising rates they may find that "the cash cow has run out of milk".

BOARD & COMMITTEE REPORTS

National League of Cities Conference, WA, DC

Councilmember White briefed Council on her attendance at the Conference held this week. She noted that city council members and mayors from 49 states were in attendance. She noted the 2003 NLC priorities are:

1. An Economic Stimulus and Growth plan to partner with the Federal Government in assisting cities to provide fiscal relief.
2. Making America safe by providing new, substantial and continued funding for ongoing local homeland security efforts and for successful public safety programs.
3. Ensuring an adequate supply of affordable housing by fully funding the Community Development Block Grant, Home, Hope VI, public housing and Section 8 assistance programs.
4. Strengthening vital transportation systems by increasing federal support for the Transportation Equity Act for the 21st Century to preserve the partnership with cities, reduce congestion and promote smart, sustainable development.
5. Protecting the Natural resources, increasing the federal investment in clean water, clean air and renewed water infrastructure.
6. Investing in children by fully funding implementation of the No Child Left Behind Act.

She advised that she attended several seminar and sessions that she found very rewarding. She stressed the importance of maintaining and continuing close connections with neighboring cities and communities. She noted that while some problems are unique to our City, it is surprising how much we have in common with others and that by sharing information and learning from other cities, we may find solutions to our own problems. She concluded by noting she has prepared a packet of information that she will distribute to Councilmembers.

Municipal Facilities Committee

Mayor Steenrod reported that the Committee has been meeting once a week to discuss the Marina rates.

Highline Community College

Mayor Steenrod announced that the College has received a grant to move forward with their plans for a marine science technology center to be located at the Redondo Pier.

Finance & Economic Development Committee

Mayor Steenrod advised that the Committee is working on an economic development program, trying to set policy without going into detail. Details will be brought to Council to address as a whole within the next month.

PRESIDING OFFICER'S REPORT

Washington State SHB 1876 and SB 5787 - Draft Resolution [ASSIGNED RESOLUTION NO. 948]

Mayor Steenrod announced that she understands there is a bill before the Legislature with regards to paving the way for the Port of Seattle to put in the 3rd runway having to do with changing the requirement for dirt and water.

Councilmember Sheckler stated that the bill was presented to the Legislature by the Port of Seattle in attempt to change the requirements set by the Pollution Control Hearing Board (PCHB) regarding the quality of fill that would be used to complete the 3rd runway should they get the green light. The Port is asking that the requirements set by PCHB be lowered so that instead of using clean fill they can use, what is commonly called, dirty dirt. He advised that there were two requirements before the 3rd runway could be built, one was to have the Dept. of Ecology issue a 401, which is a certification that says they have met all of the State requirements for the Clean Water Act. The 401 was issued some time ago, however ACC challenged that to the PCHB saying that the type of fill that Port was proposing to use was very dirty and had contaminants that could leach into the rivers, particularly Des Moines and Miller Creeks and pollute them. The PCHB agreed with ACC and said that in order for the Port to use any fill to construct the 3rd runway it had to meet certain criteria and the dirt tested prior to being used. The Port did not like this because of cost and they did not know where they would get that type of fill. He felt that what the Port is attempting to do in the Legislature is to circumvent the PCHB ruling and any future Court ruling against them. He advised that the Senate has passed the bill and it is now in Committee in the House side. Should the speaker of the House approve this bill then the Port has the go ahead to start using potentially contaminated fill.

Mayor Steenrod stated that she believes it wrong for the Legislature to allow "an end run" to happen to circumvent the PCHB decision. She questioned whether Council would consider issuing a resolution to the Legislature telling them this is a local issue and that we believe it is wrong for them to even be contemplating the idea and basically we would like them to vote it down. She felt that if Council is to speak for the citizens of Des Moines then it is Council's right and obligation to go on record to the Legislature explaining opposition to the 3rd runway and what we expect them to do.

Councilmember White noted that Representatives Shay Schual-Berke and Dave Upthegrove are working hard on this issue but feels it would be a good idea for Des Moines Councilmembers to be on record to help support them in their efforts.

Councilmember Sheckler pointed out that the lack of any response from the City of Des Moines would be harmful as that would indicate to certain individuals at the State Legislature that Des Moines does not care. He stated that fortunately 100s of citizens have testified and that is giving the Speaker of the House Frank Chopp reason to pause before making his final decision. He felt it important that the City match what the citizens are saying.

After further discussion regarding reasons the City should strongly oppose the bills, **MOTION** was made by Councilmember Thomasson, seconded by Mayor Pro Tem Benjamin to direct City staff to prepare proper legislation opposing the bills and authorize the Mayor to sign.

Staff was further directed to e-mail the draft legislation to Councilmembers to review and add comments if needed prior to having the final draft signed by the Mayor.

VOTE ON MOTION: Motion passed unanimously.

ADMINISTRATION REPORTS

Proposed Fire Districts Merger

City Manager Piasecki stated that several years back there was an effort of four Fire Districts to merge - Des Moines, Federal Way, Burien and Highline. He advised that for various reasons that effort failed. However, that effort is being revived and there is on-going efforts between the Fire Districts to potentially merge. He noted that the Des Moines Fire District #26 will be sending a packet of information regarding the merger and he will distribute the information to Council when it arrives.

ACORN Group

City Manager Piasecki informed Council that the ACORN Group have invited City staff from Public Works, Parks and the Police to attend a meeting on Tuesday, March 18th to discuss issues they have of concern regarding the east side of the Pacific Ridge area and Midway Park.

Pacific Highway South Project

City Manager Piasecki announced that the Pacific Highway South project property purchase has recently gone through an audit by Washington State Department of Transportation and we have gone through with "flying colors". This is an important milestone in being able to get the project design bid and construction.

Draft Legislation Opposing SHB 1876 and SB 5787

City Attorney Marousek requested Councilmembers contract her or the City Manager directly with any questions or changes to the draft legislation in order to ensure there is no violation of the Open Public Meetings Act by Councilmembers talking about this amongst themselves.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the regular meeting minutes of January 23, and February 6 and 27, 2003.
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 #84403 through #84547 & electronic fund transfers in the total amount of \$292,929.21

Payroll fund transfers in the total amount of \$344,140.99

3. Draft Ordinance No. 03-059 [ASSIGNED ORDINANCE NO. 1317] - Title: An Ordinance of the City of Des Moines, Washington relating to boards and committees, revising provisions governing the Senior Services Advisory Committee residency requirements, and amending DMMC 4.44.020.

TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 03-059.

4. Motion is to enter into an interlocal agreement with the Highline School District for the transfer of a surplus ball field drag to Mt. Rainier High School and to authorize the City Manager to sign the interlocal agreement substantially in the form as submitted.
5. Motion is to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19389-6 KNT, which provides for acquisition by the City, for \$32,750.00, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project and to authorize the City Attorney to present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.
6. Motion is to purchase 1,589 square feet of land and improvements from Callow Limited Partnership in the amount of \$139,883 plus closing costs and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.
7. Motion is to approve the Consultant Agreement for Landscape Architecture, Civil Engineering and Project Construction Observation Services with Cosmopolitan Engineering Group, Inc., in the amount of \$42,000 and authorize the City Manager to sign the contract substantially in the form as submitted, and to authorize the City Manager to approve change orders in amounts not to exceed 10% in total.

Councilmember Sheckler questioned a word in Mayor Pro Tem Benjamin's statement in the minutes of January 23, 2003, contained on page 4, 27th line down, "legislature". He asked if this was what he meant. Mayor Pro Tem Benjamin advised he was not sure, but thought he meant elected official. However, the word "legislature" is what he said so it truly reflects what he said.

Mayor Steenrod and Councilmember Petersen noted that they are recusing themselves from Items 5 and 6.

MOTION was made by Councilmember White, seconded by Councilmember Petersen and passed unanimously, to approve the Consent Calendar as read.

PUBLIC HEARING

Draft Ordinance No. 03-065 Planning Agency Duties - 1st Reading

Mayor Steenrod introduced the item.

City Attorney Marousek explained the rules for conducting the public hearing.

Community Development Director Kilgore advised that the draft ordinance was prepared at Council's direction to rescind expanded duties of the Planning Agency and return the duties to the City Council. She read the duties involved: approval of preliminary subdivisions, preliminary modified subdivisions, preliminary alterations or vacation of subdivisions, preliminary alterations or vacations of short subdivisions with public dedication, preliminary alteration or vacation of binding site plans with public dedication, preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication, preliminary binding site plan with more than four lots, and preliminary townhouse development with more than four lots.

Mayor Steenrod declared the hearing open and called for public comments.

PUBLIC COMMENTS

Dave Kaplan, 2614 South 226th

Mr. Kaplan, as a former Des Moines Councilmember, explained that the expanded duties were given to the Planning Agency after Council deliberation concerning the role of the Planning Agency and that they had not been given enough substantial projects to warrant their existence. He further advised that the Agency members were given proper training to make the proper decisions. He suggested that Council maintain the Agency duties as they currently exist which allows for citizens to get an independent review and judgment. He encouraged Council not to pass the draft ordinance and urged Council to appoint citizens to the vacancies that currently exist on the Planning Agency.

As there were no further comments from the public, Mayor Steenrod declared the hearing closed.

Councilmember Thomasson expressed disappointment that staff had not prepared a full presentation regarding the Planning Agency duties as he had requested at the February 6th Council meeting.

Upon questioning by Council, Community Development Director Kilgore stated that the Agency has conducted 3 hearings since their duties have expanded and there is one Unclassified Use Permit pending that needs to be heard as soon as the Planning Agency has a quorum. She advised that their next work will be on the Comprehensive Plan which will still be true even if the draft ordinance passes.

Councilmember White voice the opinion that the Agency duties should remain as they are. She felt that Council does not have the time and energy that these trained Agency members can devote to these types of issues.

Mayor Steenrod expressed concern that an applicant's only appeal from these Agency decisions is to Superior Court. She would rather see this come to the City Council.

Community Development Director Kilgore advised that in her 10 years with Des Moines there has been no appeals to Superior Court. She informed Council that staff works closely with applicants to determine any fatal flaws in a project and works to solve any issues that arise.

Mayor Pro Tem Benjamin questioned whether there was a member of the Planning Agency in attendance that would come forward and address Council.

Gene White, Planning Agency member for two years, addressed the Council. He advised that the Agency meets when there is an appropriate item to address. He informed Council of the good comprehensive training that was provided to Agency members. He felt that the Agency members provide a professional contribution with no political interest. Upon questioning by Council, he noted that the Agency has met 6 times since he has been a member with no denial of projects. He acknowledged that the Agency would still review some projects to make recommendations to Council, but feels the Agency members intense training would be wasted. He further advised that before the expanded duties, the Agency really did not have anything very useful to do and no real input to make any decisions.

Councilmember Thomasson informed Council that the former role of the Planning Agency did not have enough "meat" to keep members on the Agency. Council at that time discussed dissolving the Agency even though there were a few statutory requirements that they filled.

Councilmember Sheckler further informed Council that members of the Planning Agency felt they did not have significant authority and therefore there was no need for their services. The Agency members at that time requested that their duties be put on a par with other cities agencies and that the City provide training for them to function properly.

Community Development Director acknowledged that there was a lack of work for the Agency before the duties were changed, but more important the Agency members felt Council was discounting their recommendations and preliminary decisions.

9:04 p.m. Mayor Steenrod called for a 10 minute break.

Mayor Pro Tem Benjamin noted that Mr. White had indicated that the current situation with the Planning Agency was superior over Council handling such matters without a political venue. He stated that Mr. White is involved politically in a major way and feels there is a conflict of interest since his wife Susan White is a City Councilmember. He noted that he has serious concerns regarding this as there are other members on the Agency that are very politically involved, and he feels it is important that the Citizens understand that there may be conflicts of interest and that the Agency members may not be looking out for the best interests of the City. He stated this is not the type of business he wants to see continue. He is willing to put in more time, get more involved and remove these duties from the Planning Agency.

Upon questioning by Councilmember Sheckler, Mr. White stated that he was appointed to the Planning Agency a year before his wife was elected as a Councilmember.

Councilmember Sheckler questioned what qualifications are looked at for appointment to the Agency. Mr. White stated that he worked for the Portland City Planning Commission on two separate occasions, worked as an advisor to the Mayor of Portland, working on land use, annexation, zoning. In addition, Mr. White stated that he is a Landscape Architect with a lot of land use background. He suggested that Council appointment citizens who are willing to dedicate their time and take advantage of citizens with qualified backgrounds.

Community Development Director Kilgore confirmed that the land use actions that would be returned to Council would still go to the Planning Agency for recommendations, but the Council would now have the ultimate decision making role.

Upon questioning by Council, Community Development Director Kilgore explained the process for selecting an Agency member. She noted that they must submit a City application, which is reviewed by the City Manager and herself, who then make recommendations to the Mayor, and the Mayor either accepts the recommendation or not. She prefers that the members have some background in planning, land use, urban design, architecture, or landscape architecture. Being able to read a plan is very important. Ultimately appointments are made by the Mayor and confirmed by the City Council.

Community Development Director Kilgore advised Council that a recent applicant who had been before the Planning Agency told her he felt going through the Agency was much more efficient due to City Council work loads, which could delay projects by months.

MOTION was made by Councilmember Wasson, seconded by Mayor Pro Tem Benjamin, to suspend Council Rule 26(b) in order to enact the draft ordinance on first reading.

Councilmember White advised that she is recusing herself from voting on this subject.

Councilmember Thomasson voiced the opinion that he feels Council needs more education to understand the issues involved. He explained that these types of land use hearings are quasi judicial in nature and are there are strict guidelines for findings of fact and conclusions needed to back up any decisions. He advised that there is not a lot of discretion allowed as all projects must meet City code.

VOTE ON MOTION: Motion failed 3 to 3 with Councilmembers Petersen, Sheckler and Thomasson voting NO.

MOTION was made by Councilmember Wasson, seconded by Mayor Pro Tem Benjamin, to pass Draft Ordinance No. 03-065 to a second reading.

Upon questioning by City Manager Piasecki, it was noted that the date would be determined by the Mayor and City Manager.

Councilmember Wasson advised that he has not argued about the duties of the Planning Agency, but has argued about the responsibilities of the City Council. He noted that Councilmembers are elected by the citizens and therefore should not give the decision making authority to citizens who have no accountability to the rest of the citizens of the City.

VOTE ON MOTION: Motion passed 4 to 2 with Councilmembers Sheckler and Thomasson voting NO.

NEW BUSINESS

Draft Ordinance No. 02-237 Amending Council Rule 12 Minutes - 1st Reading

Mayor Steenrod advised that she supports this draft ordinance as she feels that things keep slipping through the cracks. Also, items discussed at meetings seemed to disappear for months. Therefore she would like to see an "action item section" added at the end of the minutes so that Council could quickly refer back to things that have to be done.

MOTION was made by Mayor Steenrod, seconded by Councilmember Wasson, to place Draft Resolution No. 02-237 on a subsequent regular Council meeting agenda for adoption. Motion passed unanimously.

Draft Ordinance No. 03-014 Allowing Suspension of Council Rules of Procedure - 1st Reading

MOTION was made by Councilmember Wasson, seconded by Councilmember Thomasson, to table indefinitely Draft Ordinance No. 03-014.

City Attorney Marousek advised that the motion should be to table. She noted that if the motion is to "table" the item, then it must be brought off the table at the next regular meeting, or it is considered a dead issue.

Councilmember Wasson noted that he would **amend his motion** to read "table". Councilmember Thomasson withdrew his second, and Mayor Pro Tem Benjamin seconded the motion to table.

VOTE ON MOTION: Motion passed 5 to 2 with Councilmembers Petersen and Sheckler voting NO.

Draft Ordinance No. 03-036 Marina Rates [ASSIGNED ORDINANCE NO. 1318] - 1st Reading

Harbormaster Dusenbury advised that the purpose of the draft ordinance is to eliminate the dual moorage rate structure at the Marina. He noted that in 1999, the Council adopted the dual rate structure that charged tenants who are residents of Des Moines less than tenants who are non-residents. He displayed a graph which detailed current rate structure versus the four alternatives as noted in Council's packet. He noted that when Council adopted the rate structure in 1999, they committed to reconsidering the issue at an appropriate time.

Harbormaster Dusenbury continued by stating early in the Master Plan process some problems with the moorage rate structure were identified. Since that time staff has wanted to develop a new set of moorage rates based on the square footage for each class of moorage. It is felt by staff that this is the appropriate time for reconsidering the rate issue and return to the analysis of the rate structure begun in 1999. He noted the goal is to bring findings and recommendations to the Council by the end of this year. It is felt that equalizing the rates at this time is a good place to begin this process.

Mayor Steenrod, as Chairman of the Municipal Facilities Committee, informed Council that the Committee has reviewed the alternatives and recommends Alternative D even though there will be a revenue shortfall around \$28,000 for the rest of 2003.

Harbormaster Dusenbury noted that the \$28,000 loss, can be offset by the decrease in the DNR lease over what was budgeted and by the Redondo launch site closed for construction, staff expects to see an increase in launching fees. Furthermore, staff would recommend charging a fee for being on the waiting list for moorage. His recommendation is that Alternative D is the fairest and that the short fall in revenues can be made up.

Councilmember White, Municipal Facilities Committee member, stated that Alternative D has the least impact to tenants, but rates may have to be raised for next year.

Mayor Steenrod recommended that Council consider establishing an ad-hoc committee to study rates in general with the goal of having recommendations for Council deliberations of next years budget.

MOTION was made by Councilmember White, seconded by Councilmember Sheckler, to suspend Council Rule 26(b) in order to act on Draft Ordinance No. 03-036.

Councilmember Petersen announced that he will abstain from participation on this item.

VOTE ON MOTION: Motion passed 5 to 1 with Mayor Pro Tem Benjamin voting NO.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, to approve Draft Ordinance No. 03-036.

Upon questioning by Council, Harbormaster Dusenbury informed Council that tenants will be given a 30 day written notice prior to any rate increases.

Councilmember Wasson advised that he will vote against the draft ordinance based on Mr. Sitterley's comments made earlier in the evening regarding City financial problems being heaped on the back of Marina customers.

VOTE ON MOTION: Motion passed 4 to 2 with Councilmember Wasson and Mayor Pro Tem Benjamin voting NO.

Utility Tax Rate

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember Petersen, to place this agenda on the April 3rd Study Session. Motion passed unanimously.

Councilmember Wasson Resignation

Councilmember Wasson read the following statement into the record:

"Today I am announcing my resignation from the Des Moines City Council. My resignation is effective immediately and it is with great regret that I tender this resignation from the Council.

My decision to resign was not made lightly and was driven by several factors. First, it is well known that I have become embroiled in two adversarial proceedings: one initiated by the Public disclosure Commission and a recall effort initiated by my political opponents within Des Moines City Government. In large part, these proceedings are based upon false statements by those who have political agendas and goals which require my removal from the Council and I have concluded that the personal and financial cost of defending against these false accusations is simply too great to warrant my continued participation on the Council. If I were a younger man with greater financial resources, I would not hesitate to stand and fight those who are determined to bully me from office. But I am 76 years of age and I have decided, that at this stage of my life, these costs are simply too great. I do not intend to jeopardize my health by continued stress that the holding of public office poses.

I have also decided that my resignation will give the citizens of Des Moines the opportunity to elect another council member who can then serve the people of this good City without being distracted by false accusations as I have been for many months. By resigning now, it is my hope that we can get beyond the questions swirling around the 2001 council election and focus upon the substantial issues now facing this community. Were I to remain on the council, I do not believe that this refocusing could occur, even if I were to prevail on the merits of both proceedings.

Finally, and significantly, my decision to resign is based upon a realization that I inadvertently made some mistakes during the 2001 Council campaign and in responding to questions asked of me by the PDC. While it was never my intent to violate any rule or law regulating our City's election process, I must acknowledge that I did so mistakenly. To the many citizens of Des Moines who placed their trust and confidence in me I sincerely apologize and I also wish to apologize to the other citizens of our City who may

feel a sense of embarrassment because of the negative attention the City has received in part because of my mistakes.

While I have enjoyed the last 12 years of public service, I have concluded that now is the right time to return to private life and I intend to remain a private citizen in the future and will not seek any further elective office.

It is my sincere hope that my departure will enable our City to move forward and address those many significant issues that confront us.

Sincerely,

Don Wasson

I will not be making any further comment.

My attorney John W. Wolfe can be contacted for further information.”

ADJOURNMENT

At 10:30 p.m. **MOTION** was made by Petersen, seconded by Mayor Pro Tem Benjamin and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

*Delete
- county council
- added 3 yr sunset*

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Lodging Tax Advisory Committee

FOR AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Legal

ATTACHMENTS: Draft Ordinance No. 03-070

DATE SUBMITTED: March 11, 2003

CLEARANCES:

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *AD*

BACKGROUND

Draft Ordinance No. 03-070, establishing a lodging tax advisory committee, was presented to Council for first reading at its March 6, 2003 study session. Section 4 of this draft reflects the changes Council directed regarding deletion of one committee position for a county council member; and the "sunsetting" of this ordinance, providing that the ordinance shall expire and terminate three years after its effective date, unless otherwise renewed by the City Council.

MOTION: "I move to enact Draft Ordinance No. 03-070, establishing a lodging tax advisory committee."

FINANCIAL IMPACT

None.

RECOMMENDATION

Administration recommends adoption of draft ordinance 03-070.

CITY ATTORNEY'S FIRST DRAFT 2/25/03
CITY ATTORNEY'S SECOND DRAFT 03/11/03

DRAFT ORDINANCE NO. 03-070

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to boards and committees; establishing a lodging tax advisory committee; providing for appointment, membership, and scope of duties of the committee; and codifying this ordinance as a new chapter 4.52 DMMC.

WHEREAS, RCW 67.28.180 provides that cities are authorized to levy and collect a special excise tax of not to exceed two (2%) percent on the sale of or charge made for the furnishing of lodging that is subject to tax under Chapter 82.08 RCW, and

WHEREAS, RCW 67.28.1817 provides that before proposing imposition of a new tax under Chapter 67.28.180 RCW or an increase in the rate of, repeal of an exemption from, or a change in the use of revenue received under any such tax, the City shall establish a lodging tax advisory committee that shall advise the City Council regarding any such tax imposition, and

WHEREAS, the city council finds it to be in the public interest to establish a lodging tax advisory committee; now therefore,

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

Sec. 1. Establishment of lodging tax advisory committee.
There is established a lodging tax advisory committee ("committee"), that shall advise the city council regarding the imposition of any new tax under Chapter 67.28.180 RCW or any increase in the rate of, repeal of an exemption from, or change in the use of revenue received from any such tax.

Sec. 2. Committee--Composition.

(1) The committee shall consist of at least five members, appointed by the Mayor and confirmed by a majority of the City Council.

(2) The committee membership shall include:

(a) At least two members who are representatives of businesses required to collect tax under RCW 67.28.180.

(b) At least two members who are persons involved in activities authorized to be funded by revenue received under RCW 67.28.180.

(c) One member who shall be a member of the City Council and who shall serve as chair of the committee.

(d) Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection and persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection.

(3) Organizations representing businesses required to collect tax under RCW 67.28.180, organizations involved in activities authorized to be funded by revenue received under RCW 67.28.180, and local agencies involved in tourism promotion may submit recommendations for membership on the committee.

(4) The number of members who are representatives of businesses required to collect tax under RCW 67.28.180 shall equal the number of members who are involved in activities authorized to be funded by revenue received under RCW 67.28.180.

~~((+5) The committee may include one nonvoting member who is an elected official of King County.))~~

~~((+6+))~~ (5) The Mayor and the City Council shall review the membership of the advisory committee annually and make changes as appropriate.

Sec. 3. Scope of duties.

(1) Any proposal for the imposition by the City of a tax under RCW 67.28.180 or any proposal for the increase in the rate of, repeal of an exemption from, or change in the use of revenue received from any such tax shall be submitted to the committee for review and comment.

(2) The submission shall occur at least forty-five days before final action on or passage of the proposal by the City Council. The advisory committee shall submit comments on the

proposal in a timely manner through the City's applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815.

(3) Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the City from acting on the proposal. The City is not required to submit an amended proposal to an advisory committee under this section.

Sec. 4. Sunset provision. Unless renewed by City Council action, this ordinance shall automatically expire and terminate three (3) years after its effective date.

Sec. 5. Codification. Sections 1 through ((3))4 of this ordinance shall be codified as a new chapter 4.52 DMMC.

Sec. 6. Severability--Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 7. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

Ordinance No. 03-070
Page 4 of 4

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD/03-070

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendment to City Council Rules
Of Procedure, Rule 12.

ATTACHMENTS: Draft Resolution No. 02-237.

FOR AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: March 18, 2003

CLEARANCES:
[X] Legal 

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

PURPOSE AND RECOMMENDATION

The purpose of this item is to amend the current City Council *Rules of Procedure* to more specifically identify the City Clerk's duties to keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, and to require a specific action item section in the minutes kept of each City Council meeting. This is the second reading of Draft Resolution No. 02-237, as required in DMMC 4.12.030.

MOTION: "To adopt Draft Resolution No. 02-237, which amends Council Rule 12 regarding the City Clerk's duties, allowing for a specific action items section to be added to the minutes kept of each City Council meeting."

BACKGROUND

This proposed amendment to the Council *Rules of Procedure* was discussed by the City Council at the March 13, 2003 meeting. In accordance with DMMC 4.12.030, this amendment was first submitted in resolution form on March 13, 2003, under the order of New Business, and subsequently placed on this calendar for consideration. An affirmative vote of at least a majority of the whole membership of the Council is needed to adopt this resolution.

DISCUSSION

Adding a specific action items section to the Minutes of each Council meeting may simplify tracking of action items that need follow up.

ALTERNATIVES

No alternatives considered.

CONCLUSION

Draft Resolution No. 02-237 is responsive to a request of the City Council to amend the Council Rules regarding the minutes taken at future Council meetings.

DRAFTRES:02-237

CITY ATTORNEY'S FIRST DRAFT 10/30/02

DRAFT RESOLUTION NO. 02-237

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, amending Rule 12 of the Des Moines City Council *Rules of Procedure* for City Council meetings to add a specific identification action item section to the City Council minutes, and amending Rule 12 of section 1 of Resolution No. 525.

WHEREAS, the DMMC 4.12.030 expressly provides that "The rules may be amended or new rules may be adopted by an affirmative vote of at least a majority of the whole membership of the council," and

WHEREAS, DMMC 4.12.030 further provides that "(A)any such amendments or new rules shall be submitted in resolution form at a regular meeting and shall be placed on the council agenda under the order of new business," and

WHEREAS, DMMC 4.12.030 also provides that "A vote of the council to adopt such a resolution shall occur at a subsequent regular meeting," and

WHEREAS, the City Council finds it in the public interest to amend Rule 12 of the City Council *Rules of Procedure* to more specifically identify the City Clerk's duties to keep minutes of City Council meetings as required by the Revised Code of Washington and Robert's Rules of Order, and to add a requirement for a specific action item section in the City Council minutes; now therefore,

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

Rule 12 of the Des Moines City Council *Rules of Procedure* and Rule 12 of section 1 of Resolution No. 525 are hereby amended as follows:

Rule 12. The City Clerk shall be ex-officio Clerk of the Council and shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, and including a specific action item section, and shall perform such other and further duties in the meeting as may be required

Resolution No. ____
Page 2 of ____

by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of ____, 2002 and signed in authentication thereof this ____ day of ____, 2002.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:02/237

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL CITY OF DES MOINES, WASHINGTON

SUBJECT: Seattle-King County
Department of Public Health Local
Hazardous Waste Management Program
(LHWMP) Contract No. D32773D

AGENDA OF: March 27, 2002
DEPT. OF ORIGIN: Community Dev.
DATE SUBMITTED: March 17, 2003

ATTACHMENT:

1. LHWMP Contract No. D32773D

CLEARANCES:

[X] COMMUNITY DEV. 
[] PUBLIC WORKS
[X] LEGAL 
[] PARKS/RECREATION

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation

The purpose of this report is for the City Council to review the 2003 Local Hazardous Waste Management Program (LHWMP) Contract No. D32773D between the City of Des Moines and the Seattle-King County Department of Public Health. The City Council is required to review all Interlocal Agreements between the City and other public agencies.

This contract will provide grant money to pay for the City's annual Household Hazardous Waste Collection and Recycling Event. If the City Council sees fit to accept the contract and grant, staff recommends that the City Council make the following motion:

Motion: "I move to authorize the City Manager to sign the 2003 LHWMP contract No. D32773D between the City and the Seattle-King County Department of Public Health."

Background

This agenda item seeks City Council approval of the LHWMP contract for 2003. The LHWMP contract would provide \$9,910 for the City to sponsor one citywide Household Hazardous Waste Collection and Recycling Event.

The City has sponsored the Household Hazardous Waste Collection and Recycling Event for over five years. This event is usually referred to as the "Fall Event" because it is usually takes place in October.

Discussion

The Fall Event has proven to be exceptionally popular among Des Moines residents because it provides a local site to recycle materials that are not accepted by Sea Tac Disposal's curbside recycling program. This year, residents will be able to recycle motor oil, oil filters, porcelain toilets and sinks, cardboard, computer monitors, petroleum based products, antifreeze, tires, batteries, electronic equipment including cell phones, scrap metals, appliances, propane tanks, and reusable household items. At the Fall Event, these "hard-to-recycle" items are accepted at little or no cost.

Staff is currently working with Olympic Environmental Resources (OER) to be the Fall Event coordinator. OER has been the City's event coordinator for several years and continues to refine the collection program to respond to changing conditions. According to OER, the 2003 Fall Event will cost approximately \$17,600. Based on Resolution No. 753 authorization for expenditures under \$20,000, the City Manager will sign the OER contract when negotiated.

The entire \$9,910 of the LHWMP contract funds will be used for the Fall Event. As we have done in past years, the City will use a portion of its Waste Reduction and Recycling Grant (WR/R) from King County to completely fund the Fall Event. This year, the City will receive \$23,942 from the WR/R grant. By combining the WR/R and LHWMP grant monies, staff is able to provide this event at no cost to the City.

The WR/R Grant is a biennial agreement. Last March, the City Council passed a motion to authorize the City Manager to sign the Interlocal Agreement with King County for the 2002 and 2003 WR/R grant allocations. Based upon the Council's authorization, the City Manager signed the 2002-2003 WR/R Contract Amendment to accept the allotted WR/R funding for this year.

Staff is pleased to report that the City has a surplus of grant monies that accumulated over the 2-year WR/R grant period. Last year, a portion of this money was allocated to purchase top-dressing equipment and a mulching lawn mower for use at the Steven J. Underwood Memorial Park. The new equipment will reduce yard waste, reduce the number of required waterings, reduce the amount of required fertilizer, and reduce staff maintenance time. Procurement of such items, in any, will follow adopted policies.

This year staff is working on obtaining requests from the Department Heads to fund City projects and purchase equipment that will use recycled materials or promotes waste reduction and recycling practices.

Alternatives

1. Accept Contract No. D32773D with the Seattle-King County Department of Public Health, and accept LHWMP grant funds.
2. Do not accept Contract No. D32773D with the Seattle-King County Department of Public Health and forego LHWMP grant funds.
3. Continue this Agenda Item and request that staff provide additional information on Contract No. D32773D and the LHWMP grant program.

Financial Impact

There will be no fiscal impact to the City related to Contract No. D32773D.

Recommendation

Staff recommends that the City Council accept the 2003 LHWMP Contract No. D32773D between the City and the Seattle-King County Department of Public Health.

ATTACHMENT 1

King County Contract No. D32773D

Federal Taxpayer ID No. _____

Department/Division Seattle-King County Department of Public Health

City City of Des Moines

Project Title Local Hazardous Waste Management Program

Contract Amount \$ 9,910.00 Fund Code Local Hazardous Waste Fund

Contract Period From: January 1, 2003 TO December 31, 2003

KING COUNTY – SUBURBAN CITY CONTRACT – LOCAL HAZARDOUS WASTE – 2003

THIS CONTRACT is entered into by KING COUNTY (the “County”), and the City of Des Moines, whose address is 21630 11th Avenue South, Suite D, Des Moines, Washington 98198 (the “City”).

WHEREAS, the County has been advised that the following are the current funding sources, funding levels and effective dates:

FUNDING SOURCE	FUNDING LEVEL	EFFECTIVE DATES
Local Hazardous Waste Fund	\$9,910.00	1/1/03 – 12/31/03

and

WHEREAS, the County desires to have certain services performed by the City as described in this Contract, and as authorized by Ordinance No. 14517.

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

I. SCOPE OF SERVICES

The City shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits, which are incorporated herein by reference:

- | | | |
|-------------------------------------|---|--------------------------------|
| ☒ | <u>Scope of Work and Responsibilities</u> | Attached hereto as Exhibit I |
| ☒ | <u>Budget/Invoice</u> | Attached hereto as Exhibit II |
| ☒ | <u>Certificate of Insurance</u> | Attached hereto as Exhibit III |

II. DURATION OF CONTRACT

This Contract shall commence on the 1st day of **January 2003** and shall terminate on the 31st day of **December 2003**, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

notify the County in writing of any changes in location within ten (10) working days of any such relocation.

VII. EVALUATIONS AND INSPECTIONS

- A. The City shall provide right of access to its facilities, including those of any subcontractor to the County, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this Contract. The County will give advance notice to the City in the case of fiscal audits to be conducted by the County.
- B. The records and documents with respect to all matters covered by this Contract shall be subject at all times to inspection, review, or audit by the County and/or federal/state officials so authorized by law during the performance of this Contract and six (6) years after termination hereof, unless a longer retention period is required by law.
- C. The City agrees to cooperate with the County or its agent in the evaluation of the City's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

VIII. CORRECTIVE ACTION

If the County determines that a breach of Contract has occurred, that is, the City has failed to comply with any terms or conditions of this Contract or the City has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

- A. The County will notify the City in writing of the nature of the breach;
- B. The City shall respond in writing within ten (10) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) working days from the date of the City's response, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- C. The County will notify the City in writing of the County's determination as to the sufficiency of the City's corrective action plan. The determination of sufficiency of the City's corrective action plan shall be at the sole discretion of the County;
- D. In the event that the City does not respond within the appropriate time with a corrective action plan, or the City's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section X.B;
- E. In addition, the County may withhold any payment owed the City or prohibit the City from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- F. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section X, Subsections A, B, C, D, and E.

XII. HOLD HARMLESS AND INDEMNIFICATION

- A. In providing services under this Contract, the City is an independent Contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The City shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the City, its employees, and/or others by reason of this Contract. The City shall protect, indemnify, and save harmless the County, their officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the City's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the City of work, services, materials, or supplies by City employees or other suppliers in connection with or support of the performance of this Contract.

- B. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the City, its officers, employees, agents, and/or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract or the Termination section.
- C. The City shall protect, defend, indemnify, and save harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the City, its officers, employees, and/or agents in the performance of their obligations under this contract. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the City.

The County shall protect, defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the County, its officers, employees, or agents in the performance of their obligations under this contract in the performance of their obligations under this contract. The County agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the County, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the City incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the County.

Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this agreement.

C. Minimum Limits of Insurance

The City shall maintain limits no less than, for:

1. General Liability: \$1 Million combined single limit per occurrence by bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a \$2 Million aggregate limit.
2. Professional Liability, Errors, and Omissions: \$1 Million.
3. Automobile Liability: \$1 Million combined single limit per accident for bodily injury and property damage.
4. Workers' Compensation: Statutory requirements of the state of residency.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the City's liability to the County and shall be the sole responsibility of the City.

E. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain, the following provisions:

1. General Liability Policies

- a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the City in connection with this Contract.
- b. To the extent of the City's negligence, the City's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the City's insurance or benefit the City in any way.
- c. The City's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the County.

F. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII. Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by King County.

business activities. The City shall also maintain, until 12 months after completion of all work under this contract, all written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate in this Contract. The City shall make such documents available to the County for inspection and copying upon request. If this contract involves federal funds, City shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.

D. King County encourages the utilization of minority owned businesses ("MBEs") and women-owned businesses ("WBEs")(collectively, "M/WBEs") in County contracts. The County encourages the following practices to open competitive opportunities for M/WBEs:

- Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to provide project information and to inform M/WBEs of contracting and subcontracting opportunities.
- Placing all qualified small businesses attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of subcontracting opportunities to M/WBEs and all other small businesses capable of performing the work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.
- Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including M/WBEs.
- Establishing delivery schedules, where the requirements of this contract permit, that encourage participation by small businesses, including M/WBEs.
- Providing M/WBEs that express interest with adequate and timely information about plans, specifications, and requirements of the contract.
- Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of M/WBEs.

E. Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract for which the City may be subject to damages and sanctions provided for by contract and by applicable law.

XVI. CONFLICT OF INTEREST

- A. The City covenants that no officer, employee, or agent of the County who exercises any functions or responsibilities in connection with the planning and implementation of the program funded herein, or any other person who presently exercises any functions or responsibilities in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract. The City shall take appropriate steps to assure compliance with this provision.
- B. If the City violates the provisions of Subsection XIX.A., the County will not be liable for payment of services rendered pursuant to this Contract. Violation of this Section shall constitute a substantial breach of this Contract and grounds for termination pursuant to Section X. above, as well as any other right or remedy provided in this Contract or law.

modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

XXIII. SERVICES PROVIDED IN ACCORDANCE WITH LAW AND RULE AND REGULATION

The City and any subcontractor agree, when applicable, to abide by the terms of Chapters 26.44, 69.54, 70.02, 70.96A, 71.05, 71A.10, 71A.14, 71A.18, 71.20, 71.24, and 71.34 of the Revised Code of Washington, rules and regulations promulgated thereunder; the Basic InterCity Contract between the Department of Social and Health Services and King County, as amended, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Contract, all of which are incorporated herein by reference.

In the event that there is a conflict between any of the language contained in any exhibit or attachment to this Contract, the language in the Contract shall have control over the language contained in the exhibit or the attachment, unless the parties affirmatively agree in writing to the contrary.

KING COUNTY:

CITY:

FOR

King County Executive

Signature

Date

Name (Please type or print)

Date

Approved as to Form:

OFFICE OF THE KING COUNTY
PROSECUTING ATTORNEY

September 20, 2002

EXHIBIT I – Scope of Work & Responsibilities
CITY OF DES MOINES
MEMORANDUM OF UNDERSTANDING ON THE LOCAL HAZARDOUS
WASTE MANAGEMENT PROGRAM FOR 2003 ACTIVITIES

The Local Hazardous Waste Management Plan (hereafter referred to as the “Plan”) as updated in 1997, was adopted by the partner agencies (King County Solid Waste Division, Seattle Public Utilities, King County Water and Land Resources Division and the Seattle-King County Department of Public Health) and cities located in King County. The Washington State Department of Ecology in accordance with RCW 70.105.220 subsequently approved the Plan. The City is an active and valued partner in the regional Local Hazardous Waste Management Program (hereafter referred to as the “Program”).

The purpose of this Exhibit is to define the terms and conditions associated with the Program’s funding of City activities performed under the auspices of the Plan and as approved by the Program’s Management Coordination Committee (hereinafter referred to as the “MCC”). This Agreement further defines the responsibilities of the City and Seattle-King County Department of Public Health with respect to the transfer of Program monies.

Scope of Work

The City of Des Moines will organize one citywide Household Hazardous Waste Collection and Recycling Event. At this event the following materials will be collected and recycled: motor oil, motor oil filters, petroleum based products, antifreeze, tires, batteries and other materials if determined to be cost effective.

Responsibilities of the Parties

The responsibilities of the parties to this Contract shall be as follows:

A. The City

1. The City shall develop and submit project proposals and budget requests to the Program’s Contract Administrator. Funds provided to the City by the Local Hazardous Waste Management Program pursuant to this Contract shall be used to implement hazardous waste programs and/or services as approved by the MCC.
2. For reimbursement the City shall submit the following to the Contract Administrator:
 - a) An invoice (see Exhibit II). Invoices should be sent to the Contract Administrator for approval and payment.
 - b) A brief description of activity accomplished and funds expended in accordance with the scope of work.
 - c) Copies of invoices for expenditures or a financial statement prepared by the City’s finance department. The financial statements should include vendor names, a description of services provided, date paid and a check or warrant number.
3. The City shall notify the Contract Administrator no later than December 15th regarding the amount of outstanding expenditures for which the City has not yet submitted a reimbursement request.
4. It is the responsibility of the City to comply with all applicable county, state and/or federal reporting requirements with respect to the collection and transfer of moderate risk wastes. The City shall report to

the Contract Administrator the quantity, by type, of moderate risk waste collected using Program funds. The City shall also provide the Contract Administrator with copies of EPA's Non-Hazardous Waste Manifest or similar form, associated with the transport of moderate risk waste collected through Program-funded events.

5. The City is solely responsible for any and all spills, leaks or other emergencies arising at the facilities associated with the City's events or in any other way associated with activities conducted within the scope of this Contract. In the event of a spill or other emergency, the City is responsible for complying with all applicable laws and regulations.
6. The City agrees to appropriately acknowledge the Program in all media produced – in part or in whole – with Program funds. The intent of this provision is to further strengthen this regional partnership in the public's mind.
7. The City agrees to provide the Program with copies of all media material produced for local hazardous waste management events or activities that have been funded by the Program. The City also agrees to allow the Program to reproduce media materials created with Program money provided that the Program credits the City as the originator of that material.
8. This project shall be administered by Nancy Uhrich at the City of Des Moines, 21630 11th Ave. S, Suite "D", Des Moines, at (206) 870-6558, (nuhrich@cityofdesmoines.com) or her designee.
9. Questions or concerns regarding any issue associated with this Exhibit that cannot be handled by the Contract Administrator should be referred to the LHWMP Program Administrator for resolution.

B. Seattle-King County Department of Public Health

1. Seattle-King County Department of Public Health shall administer, via the attached Contract, the transfer of Program funds to the City for hazardous waste management events and activities.
2. Within forty-five (45) days of receiving a request for reimbursement from the City, the Contract Administrator shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The Contract Administrator will not authorize payment for activities and/or expenditures that are not included in the scope of work, unless the scope has been amended. The Contract Administrator retains the right to withhold all or partial payment if the City's invoices are incomplete (e.g. they do not include proper documentation of expenditures for which reimbursement is being requested) or are not consistent with the submitted scope of work.

C. Program Contacts

Ken Armstrong
LHWMP Program Administrator
150 Nickerson Street, Suite 100
Seattle, WA 98109
206-352-8163
ken.armstrong@metrokc.gov

Paul Shallow
LHWMP Contract Administrator
999 Third Avenue, Suite 700
Seattle, WA 98104
206-296-4751
paul.shallow@metrokc.gov

EXHIBIT II
Budget/Invoice
LOCAL HAZARDOUS WASTE MANAGEMENT PROGRAM

From: The City of Des Moines
21630 11th Ave S, Suite "D"
Des Moines, WA 98198

To: Paul Shallow, LHWMP Contract Administrator
Seattle-King County Department of Public Health
999 3rd Avenue, Suite 700
Seattle, WA 98104

Contract #D32773D

Period of time: _____, 2003 to _____, 2003.

In performance of a signed Contract between King County and the City of Des Moines, I hereby certify that the following expenses were incurred during the above-mentioned period of time.

Signature

Date

Component Description	Budget	Current Expenses	Previous Charges	Balance
HHW Education				
HHW Collection	\$9,910.00			
Other (describe)				
TOTAL	\$9,910.00			

FOR HEALTH DEPARTMENT USE ONLY

Local Hazardous Waste Management Program Approval:

Paul Shallow

Date

A G E N D A I T E M

SUBJECT: Redondo Boat Launch -
Contract for engineering services.

ATTACHMENTS:

1. Contract with Attachments A, B & C.

FOR AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: March 6, 2003

CLEARANCES:

[X] MARINA

[X] FINANCE

[X] LEGAL

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

The purpose of this agenda item is to gain Council authorization to contract for construction management services during renovation of the Redondo Boat Launch.

"I move to authorize the City Manager to sign the contract with Reid-Middleton for professional engineering services relating to the Redondo Boat Launch. The contract shall be in the amount of \$39,000 and shall be in a form as approved by the City Attorney."

Background:

The City Council has taken a number of steps to renovate the Redondo Boat Launch. Those steps include: **a)** accepting two grants from the Interagency Committee for Outdoor Recreation (IAC); **b)** authorizing the preparation of construction plans and documents; **c)** granting shoreline and environmental permits for the project; and **d)** allocating \$450,000 of the 2002 Marina bond revenue to the Redondo Boat Launch.

The two major remaining steps for the City Council are: **e)** awarding a contract for construction management services; and **f)** awarding a contract for construction services following an open and public bid process.

Discussion:

As outlined in the City Manager's monthly report to the City Council, staff issued a Request for Qualifications (RFQ) for construction management services. Only one engineering firm responded to the RFQ. Reid-Middleton is the firm that prepared the construction documents and managed the permitting process on behalf of the City.

Reid-Middleton is certainly the engineering firm most familiar with the Redondo project, and Reid-Middleton has completed numerous projects of this type in the Pacific Northwest.

Alternatives:

1. Authorize the City Manager to sign the contract for professional engineering services.
2. Do not authorize the City Manager to sign the contract for professional engineering services.

Financial Impact:

Total revenue earmarked for this project is as follows:

2003 IAC grant	\$750,000
2002 Marina bond revenue	<u>\$488,000</u>
Total revenue	\$1,238,000

Anticipated expenses are as follows:

Construction management services	\$39,000	
Construction contract w/ sales tax	\$1,087,450	
Building permit	<u>\$25,000</u>	
Subtotal	\$1,151,450	
Contingency or surplus	<u>\$86,550</u>	7.5%
	\$1,238,000	

All remaining surplus funds at the conclusion of the project should be reallocated to either: **a)** acquisition and construction of a second parking lot for the Redondo boat launch; or **b)** Marina improvement projects funded by the 2002 Marina bond proceeds.

The financial impact of not contracting for construction management services has not been determined. Without outside assistance with this component of the project, a greater amount of staff resources will be required. As a result, work programs for 2003 will need to be reevaluated and lower-priority projects postponed.

Recommendation/Conclusion:

Administration recommends the Council award this contract to Reid-Middleton, Inc.

Concurrence:

At this time, all but one agency with jurisdiction has approved this construction project. A decision by the State Department of Fish and Wildlife (DFW) is expected in the near future. All public input received to date suggests the Redondo neighborhood strongly supports this project.

r:/users/Corbitt/Redondo ramp/reid-middleton agreements/eng contract 032703.doc

ATTACHMENT "A"
SCOPE OF SERVICES

March 3, 2003

**REDONDO BOAT LAUNCH RENOVATION
BREAKWATER PROCUREMENT,
BID ASSISTANCE AND CONSTRUCTION ASSISTANCE
SERVICES**

A. PROJECT UNDERSTANDING

The City of Des Moines (City) operates a single-lane boat ramp facility in the south end of the city in Redondo. The boat launch is located at the intersection of Redondo Way South and Redondo Beach Drive South.

The proposed Project includes renovation of the existing single-lane ramp into a two-lane ramp with new floats on the north and south sides of the ramp. The City has obtained IAC funding for the permitting and design portions of the renovation Project and for construction of the Project. IAC milestone and review requirements are required for the Project.

The existing concrete ramp will remain. A new timber float will be installed on the south side of the ramp, creating a two-lane ramp with a float on each side. An extension of the existing north float will be installed, or the entire float will be replaced by a new, longer float. The new wood floats will be anchored with steel piling and will be designed to be removed during each winter season by City crews, similar to the existing northern float.

A floating WhisperWave breakwater will be installed at the ramp facility to protect against summer afternoon small wave "chop" that impacts operations at the boat ramp. The floating breakwater will not be designed for winter wave conditions and shall be removed by City crews when the float structures are removed from the water for the winter season. The City shall contract directly with the manufacturer for procurement of the floating breakwater.

The existing ramp is approximately 25' wide and is in good condition. The ramp is at an appropriate slope for boat ramps and extends to approximately Elevation -2 (MLLW=0 datum). The existing ramp will remain. A new section of concrete ramp will be placed at the foot of the ramp to extend the ramp to an elevation of approximately -4.5.

Upland services includes renovation of the parking area to repair paving. The queuing, parking, and wash down areas will be modified to improve circulation at the facility. Storm water treatment systems such as an oil/water separator will be installed for the parking area renovation. In addition, improved landscaping, pedestrian circulation, and

irrigation systems will be part of the Project. The limits for landside work will be the existing parking lot and the parking lot perimeters. Additional sidewalk or street frontage improvements along Redondo Way outside of the perimeter of the parking area are not part of this scope of services.

The Project will also include additional lighting in the existing parking area. The proposed lighting will replace the existing lighting on the site with some salvage and reuse of materials.

The City shall administer the bidding process for the Project including copying and distribution of bid documents, holding a prebid meeting, and holding a bid opening. Reid Middleton will provide technical assistance for the bid process.

This scope of services is for assistance in the bidding and construction administration for the Project.

B. SCOPE OF SERVICES

1. Bidding Services:

Bidding services will include the following items:

- a. Attendance at the pre-bid meeting by the project engineer and the electrical engineer.
- b. Answering technical questions during the bid period.
- c. Attendance at the bid opening.
- d. Bid evaluation and recommendation.

The City shall be responsible for issuing and distributing the bid documents and conducting the bid opening meeting.

The City shall process the construction contract with the selected bidder.

The contractor shall be responsible for obtaining the building permit for the Project. Any assistance provided by Reid Middleton for the building permit will be done as additional services.

2. Construction Assistance Services

- a. Construction Assistance services will include the following items:
 - (1) Attendance at the pre-construction meeting by the project engineer and the electrical engineer.

- (2) Review of technical submittals and design submittals required by the contract documents for general conformance with the contract documents.
- (3) Response to requests for information from the contractor.
- (4) Perform periodic site observation visits at the Project site by the project engineer and electrical engineer to review for general conformance with the contract documents, and to discuss progress and Project elements (construction meetings). For the purpose of estimating fees we have assumed 10 site visits by the project engineer and 3 site visits by the electrical engineer.
- (5) Review and recommendation of the pay estimates for the construction process, submittals, and change orders.
- (6) Documentation of design changes and preparation of record drawings.

3. Floating Breakwater Procurement

- a. Reid Middleton will assist the City in preparation of documents and site observations to procure and install the WhisperWave floating breakwater. The services to be provided will include:
 - (1) Preparation of the technical description of the product to be procured.
 - (2) Review of the submitted documents from WhisperWave.
 - (3) Attendance for up to twelve hours during installation of the WhisperWave system.

4. Additional Services

Reid Middleton will perform additional on-call services that are beyond the scope of services described in Tasks 1 through 3, at the request of the City on a time and expense basis. Examples of such additional services are design of Project elements that are not included in the current scope of services, additional meetings, and building permit assistance.

C. PERIOD OF PERFORMANCE

Reid Middleton will begin work upon receipt of a signed agreement and will make every reasonable effort to complete the work in a timely manner considering the needs of the Project. We understand the City desires construction of the Project in 2003, and that the IAC timelines and milestones must be met for the Project.

D. CLIENT'S RESPONSIBILITIES

The City shall provide available pertinent data, documents, and other information to Reid Middleton as necessary to complete the work outlined in Section B above.

E. FORMAT OF DELIVERABLES

To the degree applicable, documents deliverable to the City of Des Moines shall be provided as follows:

F. COMPENSATION

1. For services described in Attachment A, Reid Middleton shall be paid on a "time-plus-expenses" basis using: a) the rates indicated in the attached Attachment "B" dated July 1, 2002; and b) the Estimate of Professional Services indicated in the attached Attachment "C". Reid-Middleton may propose and the City may approve the transfer of funds among the tasks as long as the total amount of funds does not exceed the amount specified by section F. 2. Invoices for payment prepared by Reid-Middleton will specify time and expenses expended by task description.
2. We estimate the fee for the services described in Attachment A to be \$39,000. The approximate cost for each task is as follows:

Bidding Assistance	\$ 3,000
Construction Assistance including Record Drawings	\$ 33,000
Floating Breakwater Procurement	\$ 3,000

ATTACHMENT "B"

Reid Middleton, Inc. Exhibit "A" Schedule of Charges Effective July 1, 2002 through June 30, 2003

Compensation shall be based on time and expenses directly attributable to the project and shall follow the schedule below unless another method of compensation has been expressed in the written agreement.

I. Personnel	Hourly Rate
Principal	\$ 135.00 - \$ 190.00
Principal Engineer/Principal Planner/Principal Surveyor/Electrical Engineer	\$ 130.00 - \$ 145.00
Senior Engineer/Senior Planner/Senior Surveyor	\$ 115.00 - \$ 125.00
Project Engineer/Project Surveyor/Project Planner	\$ 90.00 - \$ 100.00
Design Engineer/Senior Designer/Surveyor/Senior Technical Writer.....	\$ 80.00 - \$ 90.00
Planner	\$ 70.00 - \$ 80.00
Engineer/Senior Technician	\$ 70.00
Project Administrator	\$ 70.00 - \$ 100.00
Technician	\$ 55.00
2-Person Survey Crew	\$ 130.00
3-Person Survey Crew	\$ 200.00
3-Person Hydrographic Survey Crew	\$ 220.00

Expert Witness/Forensic Engineering..... 1.5 times usual hourly rate (4 hour minimum)

Individuals not in the regular employ of Reid Middleton may occasionally be engaged to meet specific project requirements. Charges for such personnel will be comparable to charges for regular Reid Middleton personnel.

A premium may be charged if project requirements make overtime work necessary.

II. Equipment	Rate
Global Positioning System (GPS), Each Receiver	\$ 30.00/hour or
Global Positioning System (GPS), Each Receiver	\$ 220.00/day
Survey Boat and Motor	\$ 10.00/hour
Depth-Recording Fathometer	\$ 12.00/hour
WILD - Total Station (Survey Data Collection System)	\$ 15.00/hour
Design Software/Computer Aided Drafting	\$ 12.00/hour

III. Reimbursable Expenses

Local Mileage - Automobile	\$ 0.40/mile
Local Mileage - Survey Truck	\$ 0.45/mile

Expenses that are directly attributable to the project are invoiced at cost plus 15%. These expenses include, but are not limited to, subconsultant or subcontractor services, travel and subsistence, communications, couriers, postage, fees and permits, document reproduction, special instrumentation and field equipment rental, premiums for additional insurance where required, special supplies, and other costs directly applicable to the project.

A new schedule of charges is issued and becomes effective July 1 each year. Charges for all work, including continuing projects initiated in prior years, will be based on the latest schedule of charges.

IV. Client Advances

Unless the parties agree otherwise in writing, charges for the following items shall be paid by the client directly, shall not be the responsibility of Reid Middleton, and shall be in addition to any fee stipulated in the agreement: government fees, including permit and review fees; soils testing fees and costs; charges for aerial photography; and charges for monuments. If Reid Middleton determines, in its discretion, to advance any of these costs in the interest of the project, the amount of the advance, plus a fifteen percent administrative fee, shall be paid by the client upon presentation of an invoice therefore.

ReidMiddleton

728 134th St. SW
Everett, WA 98204
Orig: 3/12/2002
Revsd:

[illegible]

AGENDA ITEM

SUBJECT: Contract for Engineering
Services on the Pacific Highway
South Project

ATTACHMENTS:

1. Supplemental Agreement for CH2M
Hill on the Pacific Highway South Project

AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: March 20, 2003

CLEARANCES:

[] Finance

[X] Public Works

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *CTL for TP*

Purpose and Recommendation:

The purpose and recommendation of this item is to execute a supplemental agreement with CH2M Hill for design and construction engineering services.

Suggested Motions:

The following motion will appear on the Consent Calendar:

"I move to enter into the supplemental agreement for professional engineering design services and for construction management for the Pacific Highway South Project with CH2M Hill for an additional \$1,922,249, plus authorize the City Manager or his designee to approve change orders up to an amount of 10%, and further to authorize the City Manager to sign said contract, substantially in the form as submitted."

Background:

The design for the Pacific Highway South Project began in 1999. The maximum amount payable to CH2M Hill under the current contract is \$1,624,929. The proposed supplement increases this amount to \$3,547,178. This amount includes funds necessary to complete design and right of way acquisition, and for construction management and inspection services. The current construction estimate on the project is approximately \$12.5 million, resulting in a total project cost after right of way acquisition of \$20.5 million.

Discussion:

The City has required assistance with design and right-of-way beyond that which was originally scoped in the design contract. This assistance includes providing supporting documentation and drawings to help with the right-of-way process, assisting property owners and potential developers along the corridor, and developing several designs for a storm water facility near Kent-Des Moines Road.

As the City of Des Moines continues to negotiate right-of-way acquisition for the project and commenced the condemnation process, extra help was needed to develop and evaluate counteroffers. This included revising parcel cost to cure calculations, conducting additional appraisal and appraisal review services, reviewing proposed changes to frontages, providing the City with exhibits of alternatives and recommendations for use in condemnation, and revising the right-of-way plans to reflect parcel changes. This extra work was not included in the original agreement. During condemnation and negotiation, some of the design details on the project relating to property interfaces are being changed, and the project bid documents need to be revised to reflect those changes.

CH2M Hill is also providing assistance with prospective developers on Pacific Highway South. They have provided and continue to provide drawings and photo maps of the new right of way alignment and proposed improvements on this project. They have also provided cross section details and driveway profiles to prospective developers, as well as attended meetings with a few of them. Since CH2M Hill has all of the design files and computer capabilities to produce this information, this is appropriate and has been extremely helpful in working with prospective developers. However, this was not included in the original scope of work and the time for this work has been included on this supplement. They have also provided assistance in locating the new right-of-way line and improvements in the field for property owners who are making changes to their property, installing new signs, or completing the work necessary to relocate improvements that will be removed by the City's acquisition.

The design of the storm water pond behind QFC on Kent-Des Moines Road was included in the original Scope of Work. This pond was to be located in the City of Kent on City of Kent property that was to be purchased by Des Moines. However, after field investigation of the site, it was determined that a pond in the location being offered by the City of Kent was not feasible. Poor soils conditions and existing wetlands made the pond impossible. CH2M Hill was directed to research alternatives and their costs. Two alternatives were further developed: one was a pond lined with soldier pile walls and one was an above ground vault. CH2M Hill's geotechnical engineers would only support the above ground vault solution. CH2M Hill was then directed to produce drawings and costs of this vault for a proposal to the City of Kent. The City of Kent reviewed the package and stated that they would prefer not to have an above ground vault at this location. However, they now offered to expand their proposed pond to include room for the City of Des Moines' water. Their pond is located in an area of the site with better soils and a shallower slope. CH2M Hill is now developing plans for this pond. In the near future, an interlocal will be brought to council for the design, construction, operation and maintenance of this pond. This supplement with CH2M Hill includes payment for the extra work necessary in developing alternative designs and cost

estimates, coordination between the City of Des Moines and the City of Kent, and additional geotechnical work.

CH2M Hill has also been required to do additional design work on the plans provided by Puget Sound Energy (PSE) for the undergrounding and lighting on this project. PSE was very late in providing plans for the 95% review set, and when provided the plans had numerous conflicts and errors in the base maps. CH2M Hill has spent a large amount of time in reviewing and revising these plans to be consistent with the entire project. Alternatively, we could have required PSE to do this work, however, it would likely have taken much longer and still may have had inconsistencies.

CH2M Hill has provided us with a quality product and support when it was needed. They have studied this project and know it well. Their knowledge of the project would be valuable in the construction phase of this project. We have interviewed the team they propose to manage the construction of the project and are impressed with their experience and qualifications. For these reasons, we recommend that the contract with CH2M Hill be supplemented to provide construction management services for the project.

Alternatives:

The alternative to contracting the Construction Management Services to CH2M would be to go through a request for qualifications process to find another agency to do the Construction Management. Another firm would not be as familiar with the project.

Financial Impact:

In the approved Capitol Improvement Plan, the budget calls for \$20.5 million for the Pacific Highway South Project. The amount that CH2M Hill has quoted for Construction Management services is about what would be expected for a project of this size.

Recommendation/Conclusion:

Staff recommends that the City enter into the Supplemental Agreement for engineering services to complete the Pacific Highway South Project.

Concurrence:

Legal.



Supplemental Agreement	Organization and Address CH2M HILL 777 108th Ave NE Bellevue, WA 98004-5118
Agreement Number PSTPUL TA 96 (24)	
Project Number Federal Aid No. STPUL-TA96(024)/SL 2751	Phone 425-453-5000
Project Title Pacific Highway South Redevelopment Project	New Maximum Amount Payable \$ 3,547,178.00
Description of Work The additional work to be done includes final design related to the south pond and PSE design, preparation of bid documents, assistance during bidding, and full-service Construction Management services, which consists of construction administration, construction engineering, and construction inspection.	

The Local Agency of City of Des Moines
desires to supplement the agreement entered into with CH2M HILL, Inc.
and executed on 8/8/1999 and identified as Agreement No. PSTPUL TA 96 (24)

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

Changes to the scope are attached as exhibit B-1.

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: Extend time for completion to December 31, 2004.

III

Section V, PAYMENT, shall be amended as follows:

Exhibits D-1 of the original agreement is supplemented with attached exhibits D and D-1.

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

By: _____

By: _____

Consultant Signature

Approving Authority Signature

Exhibit B-1

City of Des Moines Pacific Highway South Redevelopment Project

Kent-Des Moines Road to S. 216th Street.
Plan Preparation, Bid, Award and Construction Services

Scope of Work
March 17, 2003

Purpose

Included herein is the Scope of Work for the Final Plan Preparation, Bid, Award and Construction phases of the Pacific Highway South Redevelopment Project in the City of Des Moines (City), Washington. Services provided by CH2M HILL will include preparation of bid documents, assistance during bidding, and Construction Manager (CM) services to the City which consist of construction administration, construction engineering, and construction inspection. CH2M HILL will provide deliverables as identified in Appendix 1, and perform the following scope based on the assumptions identified in Appendix 2.

The fee estimate for the work included in Work Elements 1 through 9 of this supplement (up to advertisement of the project) and Work Elements 10 through 13 of this supplement are included in Exhibit D2 of this supplement.

Work Element 1. Final Design Project Management

Provide overall project management, coordination with the City, monthly progress reports and invoicing. The current contract assumes the project will be completed in December of 2002. This supplement extends the contract an additional 5 months to May 2002 (through advertisement of the project plus 1 month to close-out work elements 1 through 9). Project Management associated with construction services work elements 11, 12 and 13 is included in work element 10.

- 1.1 Provide overall project management services including:
 - Preparation and execution of subconsultant subcontracts
 - Project staff and subconsultant management
 - Control of project budget and schedule
- 1.2 Coordinate with City staff including attendance at up to 5 meetings throughout the course of the duration. The CH2M Project manager and a Work Element leader will attend all meetings.
- 1.3 Prepare and submit 1-page monthly progress reports and invoices.

- 1.4 Review interlocal agency agreements with PSE, AT&T and Qwest for undergrounding work and illumination design, construction and maintenance. Provide recommendations to City related to agreements and Contract Specifications if necessary.

Work Element 6. Right-of-Way Acquisition

Additional right-of-way services as needed to assist the City in the acquisition of parcels through the condemnation process and incorporate revisions to specific property interfaces into the final Contract Documents.

- 6.3 Revisions to parcel calculations, descriptions, and exhibits as directed by the City throughout the condemnation process.
- 6.11 Prepare additional appraisal and appraisal review services. This work was performed by UFS at the billing terms and unit costs per the original contract and requires an additional \$6,450 in authorization.
- 6.12 Review proposed changes to parcel frontages and designs, including driveway sizes and locations, landscaping and property interfaces (walls, slopes, etc.). Provide the City with exhibits of alternatives and recommendations. Revise Contract Documents as necessary to incorporate changes and terms negotiated with specific property owners (as costs to cure) as directed by the City.
- 6.13 Revisions to right-of-way plans to reflect parcel revisions as directed by the City

Work Element 7. Final Design

The scope below includes revisions required to incorporate changes required to accommodate development, sign installations and relocations, and to coordinate and incorporate changes to the utility undergrounding and illumination plans into the Contract Documents.

- 7.19 Provide support to the City to coordinate with property owners that are relocating their signs as a result of this project. This includes providing review of their plans, determining appropriate locations, and providing exhibits to the City.
- 7.20 Provide support to the City to coordinate with three developers along the project limits. This includes meeting with the developers and discussing the project, providing plans and exhibits specific to their properties, including sections, grades, and drainage information.
- 7.21 Additional support to the City in coordinating the design of the illumination and utility undergrounding plans with PSE that resulted from the changes in Schedule 74. Also support with Qwest, and AT&T to coordinate their affected designs. This work includes

coordinating with the utility companies to revise their preliminary plans, to confirm their design is consistent and compatible with the roadway design and each other's respective designs and to incorporate revisions into the Contract Documents. This will be accomplished through multiple meetings and correspondence with each utility company and the City.

- 7.22 Prepare and send letters to the utility companies notifying them of the schedule for construction and providing them with a list of relocations (not including undergrounding) and required dates that the relocations must be completed.

Work Element 8. Offsite Stormwater Detention and Treatment

The scope below includes revisions required to incorporate changes to the south pond into the Contract Documents.

- 8.14 Provide additional conceptual and final design services for the South Pond that are required because of the soil type, high groundwater table, and right-of-way setback requested by the City of Kent. This work includes:

- Development of 3 conceptual alternative designs and cost estimates
- Coordination with the City of Des Moines and the City of Kent in support of selecting a revised design
- Geotechnical exploration, analysis and recommendations of Kent pond area at east end of Kent parcel to determine feasibility of combining ponds for City of Des Moines and City of Kent.
- Preparation of a Geotechnical Report to summarize findings and recommendations
- Final design of the South Pond

- 8.15 CH2M HILL will provide the following wetland mitigation plans and services related to the South Pond:

- Conceptual Mitigation Plan
- Final Mitigation Plan
- Agency Meetings

Prepare a Sensitive Area (wetland/buffer) Mitigation Plan (Plan) to mitigate for impacts to sensitive areas resulting from the construction of stormwater facilities for the South Pacific Highway project. The mitigation plan will be prepared in accordance with guidelines in the WSDOT Environmental Procedures Manual. This scope assumes that mitigation can occur on-site and adjacent to proposed stormwater facilities in the headwaters of Massey Creek. The scope of work for this task assumes a total of 0.5 acre or less of sensitive area impacts and that all mitigation can be achieved on the mitigation

site.

Review available wetland / sensitive area delineation reports and mitigation plans for the site. CH2M HILL will conduct up to two field visits to acquire additional site specific information to augment available information. CH2M Hill will receive permission from the CITY before entering any private property.

Prepare a Draft Mitigation Site Evaluation Report that describes the amount and type or types of mitigation that appear feasible. Full descriptions of each candidate site, noting any particular mitigation opportunities or constraints, will be completed.

Prepare a conceptual mitigation plan documenting impacts to sensitive areas resulting from the stormwater facility and proposed mitigation associated with them. This document will present background information on the site, propose a general mitigation strategy, and identify potential problems that need to be resolved. This includes: project description; description of sensitive area impacts; proposed mitigation, including avoidance and minimization measures; description of the mitigation site; conceptual grading and planting plan; and conceptual monitoring plan. No preliminary design work will be included in the Plan.

The draft Conceptual Mitigation Plan will be submitted to the CITY for review and comment. The CONSULTANT will address the CITY's comments and prepare a Final Conceptual Mitigation Plan.

Prepare Plans, Specifications, and Estimates (P,S,&E) associated with sensitive area mitigation for the project. The Plan will address the CITY's comments on the Conceptual Mitigation Plan and include a detailed planting plan, detailed grading plan, design specifications, a maintenance and monitoring plan, and a contingency plan. The preliminary Final Mitigation Plan (60 percent design) will be submitted to the CITY for review and comment. The CONSULTANT will prepare final (90 percent and 100 percent) P,S,&E sensitive area mitigation that addresses the CITY's comments.

Work Element 9. Coordination of Approvals and Preparation of Bid Documents

Additional services required to acquire City and WSDOT approvals, obligate funding, coordinate the preparation of the final contract documents, prepare an

- 9.1 Coordinate design documentation approval. The original contract included scope and budget for the original channelization plans and documentation submittal and one revision to that submittal. This supplement includes additional work required beyond that submittal, including additional documentation per changes in WSDOT criteria. CH2M Hill will revise and resubmit final WSDOT channelization plans for approval. This submittal will address new WSDOT requirements and included Project Design

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Plan Preparation, Bid, Award and Construction Services Scope

Guideline documentation, Project Analysis and revised Design Deviation formatting. Incorporate final revisions to channelization plans into Contract Documents.

- 9.2 Prepare a Stormwater Pollution Prevention Plan (SWPPP) for this project that will be used by the Contractor during the construction period that ensures that the BMPs used by the Contractor will meet the required environmental permitting requirements and is in accordance with SEPA and appropriate agency requirements.
- 9.3 Preparation of materials and presentation to the Council on October 3, 2002. This presentation was necessary to present a revised urban design and landscaping theme compatible with WSDOT clear zone requirements and including the new median barrier.
- 9.4 Update SEPA based on final project design. This is primarily required because of the change in design to the south pond and its associated impacts to wetlands.
- 9.5 Preparation of Contract Specifications Boiler Plate and contract for the City, coordination with City and City legal counsel, and incorporation into final Contract Documents.
- 9.6 Coordination meetings with the City as required to review outstanding right-of-way issues, approvals required to obligate funding, design revisions required per the right-of-way negotiation process, and preparation of the final Contract Documents.
- 9.7 Assemble and coordinate the printing of 70 half-size and 30 full-size plan sets and 70 sets of specifications for bidding and for use throughout construction by the City, CH2M Hill and its subconsultants, and the Contractor. As-built drawings are included in Work Element 13.

Work Element 10. Construction Services Project Management

Provide overall project management of the contract and coordination with the City of Des Moines. This effort will include the following elements.

- 10.1 Prepare Project Instructions that define the roles and responsibilities of the key project stakeholders. The Project Instructions will include contract administration procedures to be used throughout the construction phase.
- 10.2 Organize and layout work for the project staff. Coordinate any staff changes with the City.
- 10.3 Review monthly expenditures, prepare an invoice and project progress report to be

submitted to the City on a monthly basis.

- 10.4 Meet with the City monthly to review the status of the work and this contract.

Work Element 11. Pre-Construction Services

Prior to award of the contract, the CM will provide the following services;

- 11.1 Participate in the pre-bid meeting and jobsite tour with the City and prospective bidders. The CM will prepare a summary of the meeting to be included in future addenda issued by the City.
- 11.2 Respond to comments and questions from prospective bidders during the bid period and assist the City with issuing Addenda.
- 11.3 Assist the City with evaluation of the bids received from bidders.
- 11.4 Conformed drawing set. At the conclusion of the bidding process, prepare a conformed set of drawings and specifications incorporating all addenda and distribute .
- 11.5 A pre-construction conference will be scheduled prior to the start of construction in the City of Des Moines offices. The CM shall prepare an agenda and distribute the notices to the contractor, City, and other stakeholders. The City will notify the appropriate City staff of the meeting and request their presence. The Contractor will identify and notify the appropriate subcontractor. The CM's project manager, construction manager, resident inspector and administrative assistant will attend the pre-construction conference. At the conclusion of the conference, the CM will prepare a written record of the meeting. The CM shall distribute copies of the minutes to all attendees and affected agencies, staff, etc.

Work Element 12. Construction Services – Field Office

After award of the contract, the CM will provide the following services;

- 12.1 Prepare one set of preconstruction photographs and video tape of the existing conditions prior to the start of construction.
- 12.2 Review and provide comments and recommendations to the City on the General Contractor's traffic control and drainage plans and schedule for completing the work.
- 12.3 The CM will provide the following full-time staff on site for this project:

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- Construction Manager,
 - Senior Inspector,
 - Inspector
 - Administrative assistant and
 - Specialty inspectors, as needed.
- 12.4 The Construction Manager will have day to day contact with the Contractor and the City of Des Moines.
- 12.5 The Construction Manager and his staff will have the following responsibilities:
- 12.5.1 Prepare daily construction reports detailing the contractor's activities performed for each working day the Contractor is on site. The report will identify quantities of materials and equipment installed, equipment and staff on site, etc.
 - 12.5.2 Review and comment on the Contractor's baseline schedule and monthly updates.
 - 12.5.3 As questions arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the Contractor, the Construction Manager will work with the City and design team to resolve the issues.
 - 12.5.4 Work with adjacent property owners, the general public, and other stakeholders. Keep them informed of the progress of the work and schedule for upcoming activities.
 - 12.5.5 Prepare field records and documents to assure the project is administered in accordance with Federal, State, and/or funding agency requirements.
 - 12.5.6 Maintain payment, change request, change order, submittal, RFI, non-conformance logs on site for review at all times.
 - 12.5.7 Prepare agendas, conduct weekly progress meetings with the Contractor, City and Design Team. Topics to be covered in the meeting include the status of the work, activities scheduled for the upcoming two weeks, status of submittals, RFI's, and changes to the work. Prepare and distribute meeting minutes within 4 days of the meeting to all parties at the meeting.
 - 12.5.8 Provide photographs on a weekly basis during the course of construction. Photographs to be labeled with date taken and subject matter. Provide preconstruction and postconstruction photographs from a minimum of 4 vantage points that represent project conditions "before and after".

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- 12.5.9 Meet with property owners and vendors along Pacific Highway South periodically to let them know about the status of the work and schedule of work to come. Keep the City informed of any concerns or problems property owners and vendors have about the project.
- 12.5.10 Prepare and distribute change requests to the Contractor. Review the Contractor's change estimates and make recommendations to the City on acceptance of the changes.
- 12.5.11 Track material quantities delivered and installed. Coordinate quantity installation with the Contractor.
- 12.5.12 Review the Contractor's monthly payment requests and make recommendations to the City on acceptance of the requests. Review documentation accompanying monthly payment request to confirm compliance with the Contract Documents. Notify the Contractor of any deficiencies.
- 12.5.13 Coordinate and manage testing subcontractor(s). Coordinate the work of the testing laboratories in the observation and testing of materials used in the construction. Document and evaluate results of tests and identify deficiencies. Review test results and notify the Contractor of any deficiencies. Track remedial work until work is completed in accordance with the contract documents.
- 12.5.14 Perform wage interviews with WSDOT requirements.
- 12.5.15 Review claims submitted by the Contractor and provide the City with an analysis and recommendation for resolution.
- 12.5.16 Upon substantial completion of the work prepare a punch list of items remaining to be completed by the Contractor. Coordinate development of the punchlist with the City of Des Moines and other affected agencies provide a comprehensive 'punch list' of items to be completed. This will be issued with the Certificate of Substantial Completion, which will be issued by the CM.

Work Element 13. Construction Services – Office Staff

- 13.1 Review submittals, RFI's, and change requests in support of the field activities. Provide technical interpretations of the drawings, specifications, and contract documents, and evaluate requested deviations from the approved design or specifications. Develop minor change orders and provide technical assistance to negotiate the change orders.
- 13.2 A member of the Design Team (Engineer) will attend the weekly progress meetings

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with the Contractor and the City to respond to design/technical issues.

- 13.3 Upon completion of the work, using available information supplied by the General Contractor, on site representative staff, and other sources, prepare as-built information detailing final location of installed items based on the same pattern as conducted for initial design. The CM will revise the original drawings and submit to the City an original (Mylar) record drawing set and electronic in AutoCAD (Version 14) compatible with the agreed-to design drawing format.
- 13.4 Project Management Review. During the project, CH2M HILL will perform 2 project management reviews, including time to perform internal audits on project documentation, preparing files for review, and responding to questions by the reviewing agency.
- 13.5 Review submittals. Receive, log and circulate for review and appropriate action, contractor shop drawings, catalog cuts, material certifications and other contractor submittals required by the specifications for compliance with the contract requirements.
- 13.6 Contract clarifications. Provide supplemental drawings or details, if necessary, to clarify design intent.
- 13.7 LAG requirements. Provide all necessary construction documentation required by local agency guidelines. (See LAG manual Appendix 53.51 for complete list.)
- 13.8 Provide and deliver public outreach brochures on a monthly basis (18 months) to keep businesses along Pacific Highway South informed of detours and channelization changes on Pacific Highway South.
- 13.9 Develop project web-site for the City. Update the web-site on a weekly basis with the current construction schedule and photos.

Appendix 1

Deliverables:

- i. Pre-construction Agenda and Conference Minutes
- ii. Daily Reports – Submit to the City on a weekly basis or upon request
- iii. Test reports
- iv. Record Drawings – 1 set original (Mylar) , electronic file, 1 bond copy
- v. Construction Photographs – 1 set of weekly photos including pre-construction photographs will be maintained at the site and turned over to the City upon completion of the work.
- vi. Weekly meeting minutes
- vii. Field change orders with back-up
- viii. Requests for information with responses
- ix. Submittal responses and supporting material
- x. Construction documentation per LAG requirements
- xi. Public Relations Brochures
- xii. Punch list
- xiii. Certificate of Substantial Completion

Appendix 2

Assumptions:

1. The CM shall assume no responsibility for proper construction techniques and job site safety. The CM personnel shall act in accordance with Section 1-05.1 and 1-05.2 of the current WSDOT Standard Specifications. The CM will endeavor to protect all parties against defects and deficiencies in the work of the Contractor(s), but cannot guarantee the Contractors' performance and shall not be responsible for construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the work performed by the construction contractor(s) and any subcontractors.
2. The accompanying budget for the services detailed below is based on the services of one (1) full-time Construction Manager, two (2) full-time inspectors, and one (1) full-time administrative assistant for 18 months for construction plus three months for the Construction Manager and administrative assistant before mobilization and three months after acceptance of the work to close out the contract. The budget also includes support from the Bellevue office. Support will come from the Project Manager and the Principal in-charge and design team. Any increase or decrease in the number of working days will affect the time staff will be on site and the project budget. Supplemental assistance may be needed depending upon contractor's activities (multiple crews, multiple shifts, overtime, night/weekend work).
3. CH2M Hill will provide the following office equipment for its staff; computers and printers, 1-copy machine, 1-fax machine, phone service with 3 separate lines, digital answering machine and 4 cell phones for the Construction Management Staff.. CH2M HILL will provide 3 vehicles for inspectors and the Construction Manager.
4. The City will provide a secured job site trailer with two offices and area for a conference room (it is assumed that the General Contractor will provide this.) The secured job site trailer will have heat, air conditioning, and a restroom with potable water. The trailer will be in good condition and include 3-desks (3' x 5') with chairs, three layout tables (3' x 6'), a conference (12' long) table with 15 chairs, layout table, 1-four drawer file cabinet, 4' high book case
5. The General Contractor will add CH2M Hill as additional insured during the course of construction for general liability and in the event of theft, vandalism, or other incident(s).
6. As-built survey is the responsibility of construction contractor, CH2M Hill will provide redline markups of plans only
7. No additional time has been included if the project time period is extended for rain days

Pacific Highway South Redevelopment Project
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or any other reason.

8. Project Manager will spend 16 hours per month in the field.
9. Construction survey work is to be provided by the General Contractor. ..
10. Assumes testing will be subbed out to Otto Rosenau on a unit cost basis. A summary of their current unit costs is attached in Exhibit D-4, the total cost of their services on this project is estimated at \$25,000.
11. CH2M HILL will check the installation of the signals.
12. Assumes that Worthy & Associates will provide similar design and construction services, as needed. For this estimate, we anticipate billing to be on a CPFF basis, not to exceed \$16,000 (\$6,000 for design of landscaping at the south pond plus \$10,000 in construction services on-call). Their current fee and rate schedules are attached in Exhibit D-1.
13. Assumes that Makers will provide similar construction services related to their design, as needed. For this estimate, we anticipate billing to be on a CPFF basis, not to exceed \$5,000. Their current fee and rate schedules are attached in Exhibit D-2.
14. Assumes that Transpo will provide similar design and construction services, as needed. For this estimate, we anticipate billing to be on a CPFF basis, not to exceed \$15,000 (\$5,000 for the design of temporary or phased construction of the signal at Kent-Des Moines Road at SR 99 plus \$10,000 in construction services on-call). Their current fee and rate schedules are attached in Exhibit D-3.

EXHIBIT D

CITY OF DES MOINES - PACIFIC HIGHWAY SOUTH PROJECT SUMMARY 03/17/2003

Description	Original Contract	Kent/Des Moines Intersection	Supplement No. 1	Supplement No. 2	Overall Total
Direct Salary (DSC)	\$ 235,474	\$ 19,479	\$ 68,645	\$ 611,854	\$ 935,452
Overhead Costs (O/H)	\$ 426,915	\$ 34,672	\$ 116,018	\$ 1,005,360	\$ 1,582,965
Fixed Fee	\$ 75,352	\$ 6,233	\$ 21,967	\$ 195,794	\$ 299,346
Reimbursables (Expenses - Subcontracts)	\$ 561,759	\$ 12,353	\$ 46,062	\$ 109,241	\$ 729,415
					\$ -
					\$ -
GRAND TOTAL	\$ 1,299,500	\$ 72,737	\$ 252,692	\$ 1,922,249	\$ 3,547,178

CITY OF DES MOINES - PACIFIC HIGHWAY SOUTH

PROJECT SUMMARY

CH2MHill

Employee or Category	Hrs.	x	Rate	=	Cost
1 Senior Engineer / Project Manager	20		\$ 54.30		\$1,086
2 Project Manager / Oversight	715		\$ 52.32		\$37,409
3 Project Engineer	778		\$ 41.97		\$32,653
4 Construction Manager	4390		\$ 44.54		\$195,531
5 Inspector	5682		\$ 23.86		\$135,573
6 Lead Engineer	2346		\$ 35.62		\$83,565
7 Project Engineer	2048		\$ 29.21		\$59,822
8 Project Engineer	92		\$ 25.19		\$2,317
9 Lead Drafting Technician	442		\$ 27.22		\$12,031
10 Health & Safety Manager	64		\$ 51.75		\$3,312
11 IT Support	40		\$ 25.78		\$1,031
12 Contracts	20		\$ 41.10		\$822
13 Administrative Support	2304		\$ 20.27		\$46,702
Total Hrs.	18941				\$611,854

Direct Salary Cost **\$ 611,854**

Direct Salary Escalation Cost (estimated)
2003 to 2004

0% **\$ -**
\$ 611,854

Total Direct Salary Cost **\$ 611,854**

Overhead Cost @ Blended **of Direct Labor** **\$ 1,005,360**

Net Fee @ 32.0% **of Direct Labor** **\$ 195,794**

Total Overhead & Net Fee Cost **\$ 1,201,154**

Direct Expenses

Reproduction Cost	No.	Each	Cost
Full-size plan Sheets (22x34)	7,500	\$1.00	\$ 7,500
Copies (81/2x11)	80,000	\$0.05	\$ 4,000
Copies (11x17)	19,500	\$0.09	\$ 1,755
Mail/Deliveries/Film/etc.	5	\$10	\$ 50
Mileage (office staff)	4454 Mi. @	\$0.365 /Mile	\$ 1,626
Fleet Vehicle (Car)	360 days @	\$27 /day	\$ 9,720
Fleet Vehicle (Truck)	360 days @	\$41 /day	\$ 14,760
2-Way Equipment and Service	1,800	\$1	\$ 1,800

Subcontracts

Worthy & Associates	16,000	\$1	\$ 16,000
Transpo	15,000	\$1	\$ 15,000
Makers	5,000	\$1	\$ 5,000
Otto Rosenau	25,000	\$1	\$ 25,000
USF	6,450	\$1	\$ 6,450
Drilling	5,000	\$1	\$ 5,000
Geotech Labs	2,500	\$1	\$ 2,500
APS	-6,920	\$1	\$ (6,920)

Subtotal **\$ 109,241**

Total **\$ 1,922,249**

EXHIBIT D
CITY OF DES MOINES - PACIFIC HIGHWAY SOUTH

[illegible]

EXHIBIT D

CITY OF DES MOINES - PACIFIC HIGHWAY SOUTH
PROJECT SUMMARY
03/17/2003

Task	CH2M HILL Hours	Description	Raw Labor	Overhead	Fixed Fee	Expense Total	Overall Total
Task 1	289	Project Management (thru Advertisement)	\$ 10,600.00	\$ 18,608.00	\$ 3,392.00	\$ -	\$ 32,600.00
Task 6	556	Right of Way Acquisitions	\$ 18,165.00	\$ 31,887.00	\$ 5,813.00	\$ (470.00)	\$ 55,395.00
Task 7	470	Final Design (Developer & Sign Coord, PSE Illum & Undergrounding)	\$ 15,192.00	\$ 26,669.00	\$ 4,862.00	\$ 5,000.00	\$ 51,723.00
Task 8	1164	Offsite Stormwater Detention and Treatment (S. Pond)	\$ 37,225.00	\$ 65,345.00	\$ 11,912.00	\$ 13,500.00	\$ 127,982.00
Task 9	300	Coordination of Approvals and Preparation of Bid Docs	\$ 10,120.00	\$ 17,765.00	\$ 3,239.00	\$ 10,861.50	\$ 41,985.50
Task 10	640	Construction Management Services	\$ 25,279.00	\$ 44,375.00	\$ 8,090.00	\$ -	\$ 77,744.00
Task 11	1310	Pre-Construction Services	\$ 52,803.00	\$ 92,691.00	\$ 16,897.00	\$ -	\$ 162,391.00
Task 12	11392	Construction Services - (Field)	\$ 343,468.00	\$ 534,231.00	\$ 109,910.00	\$ 77,960.00	\$ 1,065,569.00
Task 12	2820	Construction Services (Office)	\$ 99,002.00	\$ 173,789.00	\$ 31,681.00	\$ 2,389.12	\$ 306,861.12
Total	18941		\$ 611,854.00	\$ 1,005,360.00	\$ 195,796.00	\$ 109,240.62	\$ 1,922,250.62

Expense Breakdown	Percentage
Worthy & Associates	0.8%
Transpo	0.8%
Makers	0.3%
Otto Rosenau	1.3%
USF	0.3%
Drilling	0.3%
Geotech Labs	0.1%
APS	-0.4%
CH2M expenses	2.1%
Total	109,240.62

EXHIBIT D-1
WORTHY AND ASSOCIATES

2003 STANDARD RATE SCHEDULE

Professional Services

Negotiated fixed fees and percentages of construction value are two forms of establishing our consulting time and fee allowance. Also, when desired by our clients, our services are available on time and expense to a set maximum based on the following rates:

Direct Salary Cost

Principal Landscape Architect	\$34.50 per hour
Landscape Architect 1	\$26.00 per hour
Landscape Architect 2	\$23.00 per hour
Designer	\$20.00 per hour
Clerical	\$13.50 per hour

Overhead Cost =	1.6931 X DSC
Fixed Fee =	0.32 X DSC

Expenses

Photocopies	\$0.10 per copy
Mileage	\$0.35 per mile
CAD Plots	\$12.00 per plot
Other authorized expenses at actual cost.	

EXHIBIT D-1

WORTHY AND ASSOCIATES

OVERHEAD EXPENSES AND RATE

Direct Labor	<u>\$169,410.00</u>
Vacation, Holiday & Sick Leave	\$25,300.00
Education and Training	\$3,700.00
Health & Life Insurance Programs	\$14,187.00
Payroll Taxes	\$16,040.00
Pension, Retirement Plans	\$26,146.00
Travel	\$1,611.00
Reproduction (Unreimbursable)	\$4,369.00
Promotion/Job Proposals	\$99.00
Printer / Computer Supplies	\$1,097.00
Entertainment	\$0.00
B & O Taxes (State & City)	\$8,533.00
Bad Debts	\$0.00
Delivery & Postage(Un-reimbursable)	\$2,036.00
Office Administration	\$42,888.00
Salaries of Principals (Indirect/Marketing)	\$37,152.00
Salaries of Technical Personnel (Indirect)	\$35,082.00
Accounting	\$1,770.00
Telephone	\$5,110.00
Office Supplies	\$6,251.00
Professional Dues/Publications	\$754.00
Depreciation - Office Equipment	\$19,691.00
Office Rent	\$29,909.00
Maintenance & Repair	\$277.00
Liability Insurance	\$4,820.00
TOTAL OVERHEAD	\$286,822.00
2002 OVERHEAD RATE	169.31%

WSDOT External Audit Report No. 99-049, Raymond Robinson, CPA, CGFM External Audit Manager and Wayne H. Donaldson, CFE, Director of Audits, 1/21/00 confirmed an overhead rate of 164.84% with office rent at \$18,792 (increased to \$32,880 in 2003)

EXHIBIT D-2

MAKERS architecture and urban design Billing Rates for 2003

Billing Rates:

John Owen	\$125 per hour
Eric Anderson	\$125 per hour
Gerald Hansmire	\$140 per hour
Stefani Wildhaber	\$125 per hour
Bob Bengford.....	\$85 per hour
Julie Bassuk	\$85 per hour
Thanasorn Kamolratanayothin.....	\$70 per hour
Pietro Potesta	\$60 per hour
Junko Anazawa	\$57 per hour
Brent Huizingh.....	\$65 per hour
Janis Ford	\$60 per hour
BJ Montoya.....	\$57 per hour
Melissa Guilbeau	\$45 per hour

Firmwide Average:

Based on percent billable – \$80 per hour

For simplified budgeting comparison – \$80 per hour

Multipliers:

General Multiplier Based on Year 2003 Budget (66% staff direct time;
50% partner direct time):

Wages	1.00
Overhead	1.84
	2.84
Profit (10%)	0.28
	3.12

Navy, Coast Guard, and Multiplier (contract rates):

Wages (per contract projections)	1.00
Overhead (Navy)	1.79
	2.79
Profit (10%)	0.28
	3.07

The Transpo Group
Des Moines Pacific Highway South
Transpo is a subconsultant to CH2M Hill
The Transpo Group Project 96097.02

Note: the maximum rates include one escalation increase of 4%
Pay rates are scheduled to be reviewed/increased July 1, 2003
Billing multiplier: 1.0 (DSC) = 2.0409 (ovh) + .30 (fee) = 3.3409

Employee Classification	Direct Salary Cost (DSC)		Overhead		204.09%		Profit 30% on DSC		Total Billing Rate	
	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max
Principal	\$ 49.04	\$ 60.00	\$ 100.09	\$ 122.45	\$ 14.71	\$ 18.00	\$ 163.84	\$ 200.45		
Planner VIII	\$ 41.83	\$ 45.00	\$ 85.37	\$ 91.84	\$ 12.55	\$ 13.50	\$ 139.75	\$ 150.34		
Planner VII	\$ 38.22	\$ 39.75	\$ 78.00	\$ 81.13	\$ 11.47	\$ 11.93	\$ 127.69	\$ 132.80		
Engr/Planner VI	\$ 36.50	\$ 38.50	\$ 74.49	\$ 78.57	\$ 10.95	\$ 11.55	\$ 121.94	\$ 128.62		
Contracts Manager	\$ 37.50	\$ 39.00	\$ 76.53	\$ 79.60	\$ 11.25	\$ 11.70	\$ 125.28	\$ 130.30		
Engineer V	\$ 34.50	\$ 36.00	\$ 70.41	\$ 73.47	\$ 10.35	\$ 10.80	\$ 115.26	\$ 120.27		
Engineer IV	\$ 31.73	\$ 34.00	\$ 64.76	\$ 69.39	\$ 9.52	\$ 10.20	\$ 106.01	\$ 113.59		
Engineer III	\$ 26.68	\$ 31.00	\$ 54.45	\$ 63.27	\$ 8.00	\$ 9.30	\$ 89.14	\$ 103.57		
Engineer/Planner II	\$ 21.30	\$ 26.75	\$ 43.47	\$ 54.59	\$ 6.39	\$ 8.03	\$ 71.16	\$ 89.37		
Engineer/Planner I	\$ 15.00	\$ 21.85	\$ 30.61	\$ 44.59	\$ 4.50	\$ 6.56	\$ 50.11	\$ 73.00		
CADD Technician	\$ 21.15	\$ 24.96	\$ 43.17	\$ 50.94	\$ 6.35	\$ 7.49	\$ 70.66	\$ 83.39		
Administrative	\$ 13.65	\$ 27.50	\$ 27.86	\$ 56.12	\$ 4.10	\$ 8.25	\$ 45.60	\$ 91.87		

EXHIBIT D-3

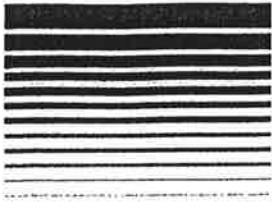
Schedule of direct cost items (Project Reimbursable Expenses)

Direct Cost Item	Rate	Source Record
Employee vehicle mileage	\$ 0.36/mile	Employee expense report
Travel, lodging, and meals	at cost	Employee expense report & vendor invoices
Parking	at cost	Employee expense report
Traffic Count Vendors	at cost	Vendor invoices
Sub-consultants	at cost	Vendor invoices
Shipping/courier charge	at cost	Vendor invoices
Reproduction charges	at cost	Vendor invoices
Models/Renderings/Photos	at cost	Vendor invoices
Traffic Accident Data	at cost	Vendor invoices
Autocad charges	at cost	Vendor invoices
Application fees & records filing	at cost	Vendor invoices

EXHIBIT D-3

STATEMENT OF DIRECT LABOR, FRINGE BENEFITS, AND GENERAL OVERHEAD FOR THE YEAR ENDED DECEMBER 31, 2001 THE TRANSPO GROUP, INC.

DESCRIPTION	2001 Expense	FAR Unallowable Expenses Per Transpo	FAR Allowable Expense	% Of Direct Labor	FAR Adjustments Made by Auditor	Refer. For Basis of Adjust.	FAR Allowable Expense Per Audit	% Of Direct Labor Per Audit
DIRECT LABOR	\$1,435,999		\$1,435,999	100.00%	\$0		\$1,435,999	100.00%
FRINGE BENEFITS								
Payroll Taxes	\$224,779		\$224,779	15.65%			\$224,779	15.65%
Group Insurance	\$106,092		\$106,092	7.39%			\$106,092	7.39%
Paid Leave - Vac., Holiday, Sick	\$274,255		\$274,255	19.10%			\$274,255	19.10%
Employee Benefit Plans	\$275,278		\$275,278	19.17%			\$275,278	19.17%
TOTAL - FRINGE BENEFITS	\$880,404	\$0	\$880,404	61.31%	\$0		\$880,404	61.31%
GENERAL OVERHEAD								
ADMINISTRATIVE LABOR								
Administrative Labor	\$793,069		\$793,069	55.23%			\$793,069	55.23%
Signing Bonuses & Termination Comp.	\$32,500		\$32,500	2.26%			\$32,500	2.26%
Bonuses	\$481,995	\$98,147	\$383,848	26.73%		A	\$383,848	26.73%
SUBTOTAL-Administrative Labor	\$1,307,564	\$98,147	\$1,209,417	84.22%	\$0		\$1,209,417	84.22%
GENERAL OFFICE EXPENSE								
Depreciation	\$101,153		\$101,153	7.04%	\$1,563	B	\$99,590	6.94%
Professional Dues & Training	\$42,249	\$660	\$41,589	2.90%		C	\$41,589	2.90%
Traffic Count Vendors	(\$3,740)		(\$3,740)	-0.26%			(\$3,740)	-0.26%
Meals & Entertainment	\$23,903	\$6,065	\$17,838	1.24%	\$6,202	D	\$11,636	0.81%
Employee Relations	\$1,550		\$1,550	0.11%			\$1,550	0.11%
Travel	\$55,352		\$55,352	3.85%	\$4,380	E	\$50,972	3.55%
Professional Meetings & Conferences	\$10,958		\$10,958	0.76%	\$30	F	\$10,928	0.76%
Insurance-Gen Liab, Prof. Liability	\$22,950	\$0	\$22,950	1.60%			\$22,950	1.60%
Insurance - Key Employee	\$5,026	\$5,026	\$0	0.00%		G	\$0	0.00%
Interest Expense	\$1,008	\$1,008	\$0	0.00%		H	\$0	0.00%
Legal/Accounting/Advisors	\$15,947	\$1,066	\$14,881	1.04%		I	\$14,881	1.04%
Recruiting Costs	\$6,053		\$6,053	0.42%			\$6,053	0.42%
Outsource-HR, Computer & Temp	\$86,351		\$86,351	6.01%			\$86,351	6.01%
Office Supplies/Repro/Equip Rental	\$122,668	\$1,872	\$120,796	8.41%		J	\$120,796	8.41%
Communications	\$56,661	\$2,296	\$54,365	3.79%		K	\$54,365	3.79%
Rent, Repairs & Maintenance	\$210,908		\$210,908	14.69%			\$210,908	14.69%
Business Taxes	\$94,940	\$655	\$94,285	6.57%		L	\$94,285	6.57%
United Way Company Match Contrib.	\$13,174	\$13,174	\$0	0.00%		M	\$0	0.00%
Corporate Charitable Contributions	\$6,100	\$6,100	\$0	0.00%		N	\$0	0.00%
Bad Debts	\$70,000	\$70,000	\$0	0.00%		O	\$0	0.00%
SUBTOTAL- General Office	\$943,211	\$107,922	\$835,289	58.17%	\$12,175		\$823,114	57.32%
Facilities Capital Cost of Money	\$17,742		\$17,742	1.24%	\$15	P	\$17,727	1.23%
TOTAL - GENERAL OVERHEAD	\$2,268,517	\$206,069	\$2,062,448	143.62%	\$12,190		\$2,050,258	142.78%
TOTAL OVERHEAD EXPENSE	\$3,148,921	\$206,069	\$2,942,852	204.93%	\$12,190		\$2,930,662	204.09%



OTTO ROSENAU & ASSOCIATES, INC.

Geotechnical Engineering, Construction Inspection & Materials Testing

6747 M. L. King Way South, Seattle, Washington 98118-3216 USA
Tel: (206) 725-4600 • Toll Free: (888) OTTO-4-US • Fax: (206) 723-2221
WBE W2F5913684 • WABO Registered Agency • Website: www.ottorosenau.com

March 11, 2003
Proposal No.P03-167

Ms. Lisa Reid
CH2M Hill
777 108th Avenue NE
Bellevue, Washington 98004-5118

Re: City of Des Moines Pacific Highway South project CM - Inspection and Testing Services

Dear Ms. Reid:

Otto Rosenau & Associates, Inc. is pleased to provide you and your firm with our fee schedule to provide special inspection and materials testing services in support of the above referenced project.

Otto Rosenau & Associates Inc. is a State Certified Women Business Enterprise (WBE) and is registered by the Washington Association of Building Officials (WABO) for all special inspection disciplines as well as nationally accredited by the American Association for Laboratory Accreditation (A2LA), and the International Standard ISO/IEC 17025.

ORA has provided inspection and testing services in Washington State since 1954 and currently employs more than 40 highly capable inspection personnel of many diverse areas of expertise and background. We feel the reason for our success over the years has been our commitment to provide our clients with the highest quality and most timely services possible at a reasonable cost. We appreciate your business and look forward to working with you and your project team on the City of Des Moines Pacific Highway South project.

Should you have any questions or need further information, please do not hesitate to contact me.

Reviewed by: Susan Rosenau-Moser, Vice President *SRM*

Very truly yours,
OTTO ROSENAU & ASSOCIATES, INC.

Walter C. Hansen
Walter C. Hansen
Project Manager

WCH: SRM: WH
Enclosure

EXHIBIT D-4**Otto Rosenau & Associates, Incorporated**
Geotechnical Engineering, Construction Inspection & Materials Testing

CH2M Hill
City of Des Moines Pacific Highway South
Proposal No.P03-167
March 11, 2003
Page 2 of 3

FEE SCHEDULE

DESCRIPTION OF SERVICES	UNIT	FEE
Soils Sampling and Compaction Testing (per 2-03.3 (14) D of WSDOT Specs.	Hour	\$45.00
Soils Moisture Density Relationship (Proctor) – AASHTO T-99	Each	\$140.00
Soil Grain Size Distribution (Sieve Analysis)	Each	\$75.00
Asphalt Compaction Testing (per 5-04.3 (10) B of WSDOT Specs. (WTM 8)	Hour	\$45.00
Asphalt Rice Density (WSDOT TM 209)	Each	\$75.00
Asphalt Extraction/ Gradation (AASHTO T168)	Each	\$150.00
Concrete Testing (per 5-05.3 (4) A of WSDOT Specs. – WTM 2, AASHTO T-152, AASHTO T-22, AASHTO T-23	Hour	\$45.00
Concrete Compressive Test Specimens (Cylinders ASTM C-39)	Each	\$15.00
Concrete Flexural Strength Specimens (Beams ASTM C78)	Each	\$45.00
Associated Mileage (Portal to Portal)	Mile	\$0.45
Parking Fees (If Not Provided On-Site)	Lot	Cost + 20%
Project Management/ Inspection Team Supervision	Hour	No Charge
Report Preparation, Review and Distribution	Hour	No Charge

Note: Additional services are available, and will be provided upon request, at our published rates and fees.

• CONTRACT APPROVAL

Should our proposal, including our approach to quality, terms and conditions, and fee schedule meet with your approval, please provide an authorized signature below and fax or mail a copy of this page to our attention. Thank you for selecting Otto Rosenau & Associates, Inc.

Authorized Signature

Print Name & Title

Company Name

Date

CH2M Hill
 City of Des Moines Pacific Highway South
 Proposal No.P03-167
 March 11, 2003
 Page 3 of 3

TERMS, DEFINITIONS, AND GENERAL CONDITIONS

1. **Parties and Scope of Work:** Otto Rosenau and Associates, Inc. (herein "ORA"). is performing the specific inspection, testing, geotechnical engineering, or other services performed by ORA as described in its proposal accepted by Client, (herein the "Work"), which shall be subject to these Terms, Definitions, and General Conditions. The Client accepts sole responsibility for determining whether the quantity and nature of the Work ordered by Client is adequate and sufficient for Client's needs.
2. **Access to Site/Notification:** Client shall arrange and provide access to the site as required for ORA to perform the Work. Advance notification for inspection and testing services is the responsibility of Client and/or its representative. Inspection or testing services should be requested as far in advance as practical (preferably a minimum of two business days notification). ORA has not included in its fee and is not responsible for the cost of restoration of damage that may occur due to Work performed. Client agrees to indemnify and save ORA harmless from all claims, suits, losses, costs and expenses including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to ORA's Work or arising from subsurface or latent conditions or damage to subsurface structures, lines, or conduits. Client, landowner and its agents shall accept sole responsibility to notify appropriate agencies in regard to any hazardous substances discovered by ORA on the project site. ORA is expressly relieved from any obligations to report the presence of hazardous substances to any and all regulatory agencies.
3. **Schedule of Work:** ORA's Work will be accomplished in a timely, workmanlike manner by ORA or its subcontractor at the prices or fees quoted. If ORA is required to delay commencement of the Work or if it is required to stop or interrupt the progress of its Work as a result of changes in scope requested for any reason by the Client, interruptions in the progress of construction, or causes beyond the control of ORA, additional charges will be applicable and payable by the Client.
4. **Work Hours:** The normal non-overtime work hours for ORA personnel are an eight hour shift between 6:30 am and 5:00 pm Monday through Friday, except for holidays. The holidays recognized are New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day. In the event the holiday falls on a Sunday the observance is recognized on Monday.
5. **Labor Rates:** For work on Saturdays and in excess of eight hours Monday through Friday, the non-overtime labor rates quoted will be multiplied by 1.5 to establish the applicable overtime rate. For work on Sundays, holidays and in excess of eight hours on Saturdays and in excess of twelve hours Monday through Friday, the non-overtime rates quoted will be multiplied by 2.0 to establish the applicable double time rate. All services are portal to portal from ORA's facility. There shall be a three hour minimum charge during the normal non-overtime work hours, a four hour minimum charge for weekend and holiday, and an eight hour minimum charge for night shifts. The applicable labor rate will apply depending upon the day/shift demand. When required by Codes and Standards, test samples will be created and may be required to remain in an undisturbed condition for 24 to 48 hours, samples will be picked up as prescribed and Client will be invoiced portal to portal at the applicable labor rate.
6. **Payment:** Client shall be invoiced once each month for work performed during the preceding month. Client agrees to pay each invoice within 30 days of its receipt. A service charge of 1.5% per month is added to all delinquent accounts. Where legal action including assertion of lien rights becomes necessary to obtain payment for services provided, Client agrees to pay all collection costs, including any and all attorney's fees. ORA's final report will not be submitted until all invoices are paid.
7. **Indemnity:** ORA agrees to indemnify and hold Client harmless from any and all claims, suits, costs, and expenses subject to the foregoing limitations, including reasonable attorney's fees and court costs, but only to the extent of ORA's negligence. Client shall provide same protection to ORA to the extent of its negligence. In the event that client or its principals shall bring suit, cause of action, claim, or counterclaim against ORA, the party initiating such action shall pay to ORA the costs and expenses incurred by ORA to investigate, answer, and defend itself including reasonable attorney's fees, witness fees and court costs to the extent that ORA shall prevail in such suit. Notwithstanding any other provision herein, should ORA or any of its employees be found to have been negligent in performing services or work, client and all parties claiming as a result thereof agree that the maximum aggregate amount of liability of ORA and its officers, employees, and agents shall be limited to the total amount of the fee paid to ORA for its Work ORA may engage the services of other contractors/consultants on behalf of Client for the provision of professional services. ORA shall be held harmless, and assumes no liability, for the services of said contractor/consultant. As such, ORA shall be held harmless from any claim which may arise out of the actions of the contractor/consultant.
8. **Provisions:** Client agrees it will not engage or employ any employees of ORA for a minimum of two years after completion of ORA services for this project. All quotations are based upon standard non-overtime hourly rates. Unless otherwise agreed, this proposal terminates in 60 calendar days from the date of issue unless accepted in writing within said 60 days. ORA may dispose of project inspection files after a period of ten years. Client may request in writing to extend the file retention period or obtain custody in lieu of disposal, subject to mutual agreement upon a retention/custody agreement, including fees to be paid ORA.
9. **Entire Agreement:** This agreement constitutes the entire understanding of the parties and there are no representations, warranties or understandings made other than those as set forth herein. This agreement may be modified only in writing, signed by each of the parties. No work can be performed prior to written acceptance of this proposal.

AGENDA ITEM

SUBJECT: 2003 Arterial Maintenance
Design Contract

AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: March 20, 2003

1. Standard Consultant Agreement for Design Services

CLEARANCES:

[] Finance

[X] Public Works *[Signature]*

[X] Legal *[Signature]*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *CR for TO*

Purpose and Recommendation:

The purpose of this item and recommendation is to award KPG with the design contract for the 2003 Arterial Maintenance Program.

Suggested Motions:

The following motion will appear on the Consent Calendar:

"I move to award the contract for professional engineering design services for the 2003 Arterial Maintenance Program to KPG in the amount of \$36,872, plus authorize the City Manager or his designee to approve change orders up to an amount of 10%, and further to authorize the City Manager to sign said contract, substantially in the form as submitted."

Background:

The City's Comprehensive Transportation Plan has identified the Arterial Maintenance Program as a high priority. Last year we completed our contract on the Pavement Management System and are now using that software and pavement information to help us determine the most effective combination of type of maintenance and locations to address. This year staff plans to use chip seals to maintain the roadway. In upcoming years it is likely that a combination of street reconstruction, overlays, and chip seals will be effective in raising the overall pavement condition rating.

Discussion:

Maintenance projects such as chip seals are intended to protect and preserve the surface condition, help maintain the structural integrity, and restore surface texture and skid resistance of the roadway. With this program in place, the need for street reconstruction is minimized.

The design phase of the project will commence immediately upon approval of this contract. The plan is to have the project out to bid this spring, with construction during the summer.

The personnel at KPG worked very well with us on last year's program and have excellent experience working with other nearby cities on roadway, sidewalk, and drainage projects. They have produced quality plans for the City of Tukwila's overlay maintenance program, and have also worked on roadway improvement projects for other cities including Bellevue, Maple Valley, and Issaquah. Their work on contracts for the City of Des Moines has been extremely accurate, and no change orders have been required on the construction contracts they have designed. KPG is on the Consultant Roster for 2003. Their experience and recommendations from their references demonstrate that they are more than qualified for this project.

Alternatives:

The alternative is to find another consultant to do the design for the 2003 Arterial Maintenance Program.

Financial Impact:

The current Capital Improvement Plan (CIP) budget for arterial maintenance is \$458,000. All money for design is coming out of this budget.

Recommendation/Conclusion:

Staff recommends that KPG be awarded the contract to design the 2003 Arterial Maintenance Program.

Concurrence:

Legal.

STANDARD CONSULTANT AGREEMENT		CONSULTANT/ADDRESS/TELEPHONE KPG 753 9 th Avenue North Seattle WA 98109 (206) 286-1640	
AGREEMENT NUMBER FEDERAL AID NO.		PROJECT TITLE AND WORK DESCRIPTION Arterial Maintenance Program for 2002 Complete plans, specifications, estimates and construction management services.	
A G R E E M E N T T Y P E C H E C K O N E	☐ LUMP SUM LUMP SUM AMOUNTS \$ _____		DBE PARTICIPATION ☐ YES ☒ NO _____ % WBE PARTICIPATION ☐ YES ☒ NO _____ %
	☒ COST PLUS FIXED FEE OVERHEAD PROGRESS PAYMENT RATE <u>160.61</u> % OVERHEAD COST METHOD ☐ ACTUAL COST NOT TO EXCEED _____ % ☒ FIXED RATE <u>160.61</u> % FIXED FEE \$ 4152.51		
	☐ SPECIFIC RATES OF PAY ☐ NEGOTIATED HOURLY RATE ☐ PROVISIONAL HOURLY RATE		FEDERAL ID NO. OR S.S. NO. 91-147-7622 Do you require a 1099 for IRS? ☐ YES ☒ NO
	☐ COST PER UNIT OF WORK		
		COMPLETION DATE June 15, 2003	MAXIMUM AMOUNT PAYABLE \$ 36,872.12

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the Local Agency of City of Des Moines, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

ATTACHMENT 1

I GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II SCOPE OF WORK

The Scope of Work and project level of effort for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

III GENERAL REQUIREMENTS

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the AGENCY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the AGENCY and the CONSULTANT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE) and Women Owned Business Enterprises (WBE) if required shall be shown in the heading of this AGREEMENT.

All reports, PS&E materials, and other data, furnished to the CONSULTANT by the AGENCY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the AGENCY. Reuse by the AGENCY or by others acting through or on

behalf of the AGENCY of any such instruments of service, not occurring as part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV TIME FOR BEGINNING AND COMPLETION

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY, in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

V PAYMENT

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "C" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

VI SUBCONTRACTING

The AGENCY permits subcontracts for those items of work as shown in Exhibit "G" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "G", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same

manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and subcontractor, any contract or any other relationship.

VII EMPLOYMENT

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may or might arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

VIII NONDISCRIMINATION

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, retention of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the AGENCY and further that the CONSULTANT shall be barred from performing any services for the AGENCY now or in the future unless a showing is made satisfactory to the AGENCY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **COMPLIANCE WITH REGULATIONS:**
The CONSULTANT shall comply with the Regulations relative to nondiscrimination in the same manner as in Federal-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. **NONDISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF**

MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

D. INFORMATION AND REPORTS: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the AGENCY, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

E. SANCTIONS FOR NONCOMPLIANCE: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the AGENCY shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
2. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

F. INCORPORATION OF PROVISIONS: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the

Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the AGENCY or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

G. UNFAIR EMPLOYMENT PRACTICES: The CONSULTANT shall comply with RCW 49.60.180.

IX TERMINATION OF AGREEMENT

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "F" for the type of AGREEMENT used.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to the Notice of Termination exceeds the total amount that would be due computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination; the cost to the AGENCY of

employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or its employees' fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X CHANGES OF WORK

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof

changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI MEDIATION/ARBITRATION CLAUSE

If a dispute arises from or relates to the 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 through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this AGREEMENT or breach thereof 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 through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

XII VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

All questions related to this AGREEMENT shall be resolved under the laws of 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 the previous paragraph.

XIII LEGAL RELATIONS AND INSURANCE

Indemnification / Hold Harmless

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

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

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

XIV

EXTRA WORK

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within 30 days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive an act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV ENDORSEMENT OF PLANS

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

XVI

FEDERAL AND STATE REVIEW

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

XVII CERTIFICATION OF THE CONSULTANT AND THE AGENCY

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the AGENCY, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters--primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying, and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in agreements over \$100,000.

XVIII COMPLETE AGREEMENT

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX EXECUTION AND ACCEPTANCE

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

By _____

By _____

Consultant _____

Agency _____
City Manager

APPROVED AS TO FORM:

By: _____
Title: City Attorney

Exhibit A-1
Certification Of Consultant

Project No. _____

Local Agency _____

I hereby certify that I am _____ and duly authorized representative of the firm of _____ whose address is _____ and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or to retain the services of any firm or person in connection with carrying out the contract.
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any):

I further certify that the firm I hereby represent is authorized to do business in the State of Washington and that the firm is in full compliance with the requirements of the board of Professional Registration.

I acknowledge that this certificate is to be available to the State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal aid funds and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

Certification of Agency Official

I hereby certify that I am the AGENCY Official of the Local Agency of _____ Washington and that the above consulting firm or their representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledged that this certificate is to be available to the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal aid highway funds and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

Exhibit A-2
Certification Regarding Debarment, Suspension, and Other Responsibility
Matters-Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): _____

(Date)

(Signature) President or Authorized Official of Consultant

Exhibit B-1

City of Des Moines
2003 Arterial Maintenance Program
Scope of work
March 14, 2003

The Consultant shall prepare final Plans, Specifications and Estimates for the following chip seal repair projects:

- | | | |
|-----|---------------------------------|--|
| 1. | S. 208 th Street: | 1 st Avenue S to Des Moines Memorial Drive |
| 2. | S. 4 th Place: | S. 208 th Street to north dead end |
| 3. | S 211 th Street: | West end to east end |
| 4. | S 211 th Place: | 11 th Avenue South to 13 th Avenue South |
| 5. | 12 th Avenue South: | S. 210 th Street to S. 211 th Place |
| 6. | South 210 th Street: | 12 th Avenue South to west dead end |
| 7. | S 229 th Street: | Thunderbird Drive to 19 th Avenue S |
| 8. | 19 th Place S: | S 229 th Street to S 232 nd Street |
| 9. | S 232 nd Street: | 25 th Avenue S to 27 th Avenue S |
| 10. | 26 th Avenue S: | S 232 nd Street to S 236 th Street |
| 11. | S 240 th Street: | Marine View Drive to 12 th Avenue S |
| 12. | 13 th Avenue S: | S 240 th Street to S 244 th Street |
| 13. | S 262 nd Place: | 16 th Avenue S to 20 th Avenue S |
| 14. | S 263 rd Place: | 17 th Avenue S to 20 th Avenue S |
| 15. | Woodmont Drive S: | Woodmont Beach Drive to 16 th Avenue S |
| 16. | 17 th Avenue S: | S 262 nd Street to S 263 rd Street |

Upon signature of this agreement, the Consultant shall submit a schedule for the proposed work that includes dates for each of the deliverables listed below. The project shall be completed within 60 calendar days of the date of the notice to proceed. A written explanation of any changes to the schedule shall be included with the Consultant's monthly billing statement. This explanation will include a description of the change, the cause of the change, and the Consultant's plan for meeting the completion date of the project.

The Consultant shall use the following design criteria for the project: the City of Des Moines Street Development Standards, the 2002 WSDOT and APWA Standard Plans and Specifications, and the MUTCD. Overlay plans will be prepared at 40 scale on 11"x17" plan sheets. Chip seal repair plans will be prepared at 100 scale on 11"x17" plan sheets.

The Consultant shall conduct a visual survey to identify lengths and widths of roadways, verify existing roadway structural conditions, identify pavement repair areas, and develop quantities for bid purposes. Utility structure locations, driveway approaches, and edge conditions will not be specifically located on the Plans.

Complete plans, specifications and estimates will be prepared for all of the above projects. Plans will be stamped and signed by an engineer licensed in the State of Washington. The final bid documents will be a complete biddable set of plans which include bid items, descriptions, and quantities necessary to complete the work. Projects

to be included in the 2003 final bid documents will be determined by the City based on available budget.

Permitting, environmental documentation, or stormwater detention and water quality are not anticipated and have not been included in this scope and estimate.

Deliverables:

Items to be provided by the Consultant:

- Utility coordination
- 5 copies 50% Plans and Estimate submittal
- 5 copies 90% Plans, Specs, and Estimate submittal
- 30 copies Final Bid Documents
- Digital copies of all Plans, Specifications, and Estimates on CD
- Backup documentation including any commitments or background information on design decisions and quantity take-offs and cost estimates for any lump sum items in the final design

All records or papers of any sort relating to the City and the project will at all times be the property of the City and shall be surrendered to the City upon demand. The Consultant is entitled to retain a complete set of work product for historical and evidentiary purposes.

Items to be provided by the City:

- Review of design submittals (1 week each for 50% and 90% submittals)
- City aerial mapping on CD
- Bid Advertisement and Award

Exhibit C-2
Payment
(Cost Plus Fixed Fee)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for all work performed or services rendered and for all labor, materials, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform with the applicable portion of 48 CFR 31.

A. Actual Costs

Payment for all consulting services for this project shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, and direct nonsalary cost.

1. Direct Salary Costs

The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT.

2. Overhead Costs

Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT, under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The three options are explained as follows:

- a. Actual Cost Not To Exceed Maximum Percent: If this method is indicated in the heading of this AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT at the actual overhead rate verified by audit up to the maximum percentage shown in the space provided. Final overhead payment when accumulated with all other actual costs shall not exceed the total maximum amount payable shown in the heading of this AGREEMENT.
- b. Fixed Rate: If this method is indicated in the heading of the AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.

A summary of the CONSULTANT'S cost estimate and the overhead computation are attached hereto as Exhibit D-1 and by this reference made part of this AGREEMENT. When an Actual Cost method, or the Actual Cost Not To Exceed method is used, the CONSULTANT (prime and all subconsultants) will submit to the AGENCY within three months after the end of each firm's fiscal year, an overhead schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

Failure to supply this information by either the prime consultant or any of the subconsultants shall cause the agency to withhold payment of the billed overhead costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The STATE and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Nonsalary Costs

Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the AGENCY. Automobile mileage for travel will be reimbursed at the current rate approved for AGENCY employees and shall be supported by the date and time of each trip with origin and destination of such trips. Subsistence and lodging expenses will be reimbursed at the same rate as for AGENCY employees. The billing for nonsalary cost, directly identifiable with the Project, shall be an itemized listing of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be provided to the AGENCY upon request. All of the above charges must be necessary for the services to be provided under this AGREEMENT.

4. Fixed Fee

The fixed fee, which represents the CONSULTANT'S profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional fixed fee which could be authorized from the Management Reserve Fund. This fee is based on the scope of work defined in this AGREEMENT and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provisions for the added costs and an appropriate additional fee. The fixed fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices.

Any portion of the fixed fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX, Termination of Agreement.

5. Management Reserve Fund

The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this agreement. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work."

6. Maximum Total Amount Payable

The maximum total amount payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT.

The Maximum Total Amount Payable is comprised of the Total Amount Authorized, which includes the Fixed Fee and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."

B. Monthly Progress Payments

The CONSULTANT may submit invoices to the AGENCY for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, General Requirements, of this AGREEMENT. The invoices will be supported by an itemized listing for each item including direct salary, direct nonsalary, and allowable overhead costs to which will be added the prorated Fixed Fee. To provide a means of verifying the invoiced salary costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, and present duties of those employees performing work on the PROJECT at the time of the interview.

C. Final Payment

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims. The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within ninety (90) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment.

D. Inspection of Cost Records

The CONSULTANT and the subconsultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

HOURLY AND FEE ESTIMATE

Project: City of Des Moines
 2003 Arterial Maintenance Program



Task	Description	Labor Hour Estimate				Total Fee
		*Senior Engineer \$	*Project Engineer \$	*Technician \$	*Clerical \$	
		\$ 135.01	\$ 73.90	\$ 62.52	\$ 56.85	Fee
Task1 - 2003 Arterial Maintenance Program						
1.1	Coordination meetings	4	8	0	4	\$ 1,358.62
1.2	Utility coordination	0	8	4	4	\$ 1,068.69
1.3	Prepare base maps					
	Chip seal repairs (sites 1-16, 100 scale)	2	40	80	0	\$ 8,227.83
1.4	Field Reviews	12	32	40	0	\$ 6,485.80
1.5	Prepare plans (estimate 20 sheets)	8	24	40	0	\$ 5,354.56
1.6	Quantities / estimates	4	40	60	0	\$ 7,247.41
1.7	Prepare specifications	8	24	8	8	\$ 3,808.64
1.8	Prepare review submittals	2	4	8	8	\$ 1,520.56
	Reimbursable expenses - see breakdown for details					\$ 1,800.00
	Task Totals	40	180	240	24	\$ 36,872.12

Total Estimated Fee: \$ 36,872.12

* Hourly rates are based on the following:

Direct Salary Costs	\$ 45.67	\$ 25.00	\$ 21.15	\$ 19.23	\$ 11,864.32
Overhead Rate			160.61%		\$ 19,055.28
Fixed Fee			35%		\$ 4,152.51

Reimbursable Breakdown

Task1 - 2003 Arterial Maintenance Program		Cost
Mileage		\$ 300.00
Reproduction		\$ 1,500.00
Task 1 - Total		\$ 1,800.00

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Highline School District 401
Education Programs and Operations
Levy

ATTACHMENTS: Draft Resolution No. 03-097

FOR AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: March 17, 2003

CLEARANCES:
[X] Legal 

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

PURPOSE AND RECOMMENDATION

It is recommended that the Council discuss Draft Resolution No. 03-097 supporting the Highline School District's Educational Programs and Operation Levy.

MOTION: "To adopt Draft Resolution No. 03-097, supporting the Highline School District's Educational Programs and Operation Levy, which will be on an April 22, 2003 ballot to the voters."

DISCUSSION

This election is for replacement of the current school programs and operation levy tax; it is not a new tax. The previous levy passed by Highline voters in 2000 expires at the end of 2003. Passage of this replacement levy would continue to provide quality educational services to students.

FINANCIAL IMPACT

The proposed levy rate per \$1,000 value is less than the amount requested at the February 4, 2003 election, even though the total levy amount remains the same. The amount of the levy is an estimated \$2.69 per \$1,000.00 value for collection in 2004; \$2.73 for 2005; \$2.81 for 2006; and \$2.85 for 2005.

RECOMMENDATION

None.

DRAFT RESOLUTION NO. 03-097

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, supporting the Highline School District 401 programs and operations levy for April 22, 2003.

WHEREAS, the current programs and operations levy will be expiring this year, and

WHEREAS, passage of this levy will maintain the current general funds educational programs and operations expenses including instruction, safety, materials, and facility maintenance and operations, and

WHEREAS, this levy will be for four (4) years and the following rates:

Collection Years	Approx. Levy Rate Per \$1,000 Value	Levy Amount
2004	\$2.69	\$26,500,000
2005	\$2.73	\$27,300,000
2006	\$2.81	\$28,650,000
2007	\$2.85	\$29,550,000

and

WHEREAS, a partnership between communities, government, and schools is an integral part of thriving, active neighborhoods, and the local economy, and

WHEREAS, the Des Moines City Council supports our schools and this levy for education programs and operational expenses; now therefore,

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

The Des Moines City Council calls upon the citizens of Des Moines to support the Highline School District 401 Levy for educational programs and operational expenses.

Resolution No. ____
Page 2 of ____

ADOPTED BY the City Council of the City of Des Moines,
Washington this ____ day of _____, 2003 and signed in
authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:03-097

Agenda of 3/27/03

NEW BUSINESS ITEM #3 - ACC Funding

There is no prepared packet for this discussion item. The item was placed on the agenda for discussion by Councilmembers Sheckler, Thomasson and White per Council' Rules of Procedure, Rule 9.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

Right of Way and Park Use Permit Ordinance

ATTACHMENTS:

Draft Ordinance No. 03-075

FOR AGENDA OF: March 27, 2003

DEPT. OF ORIGIN: Public Works/Parks

DATE SUBMITTED: March 24, 2003

CLEARANCES:

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

This report is to present, for council consideration, draft ordinance No. 03-075, which has been prepared in part at the direction of the city council late last fall and in part at the recent request of 3 members of the council. Draft ordinance No. 03-075 establishes policy, guidelines and approval procedures for city right-of-way and city park special use permits and amends DMMC chapters 12.04 and 19.08.

Without further direction from the council this draft ordinance is not ready for enactment because it is incomplete as follows:

- The proposed new section for DMMC 12.04 (**Sec. 1 of the draft ordinance**) requires definitions for those right of way permits that will need council approval;
- The proposed new section for DMMC 12.04 (**Sec. 2 of the draft ordinance**) requires a final decision and description of city costs to be reimbursed and whether the council may waive reimbursement.
- The proposed new section for DMMC 12.04 (**Sec. 3 of the draft ordinance**) requires a final decision for required time limitations for obtaining city approval for events. This

also needs to be reconciled with DMMC 12.04.090, which provides that applications for right of way permits be submitted 30 days in advance

- The proposed amended section of DMMC 19.08.020 (2) (**Sec. 5 (2) of the draft ordinance**) requires definitions for those events and/or uses of city parks and park facilities that will need council approval;
- The proposed amended section of DMMC 19.08.020 (3) (**Sec. 5 (3) of the draft ordinance**) requires a final decision for required time limitations for obtaining approval for use of park buildings and structures. Currently DMMC 19.08.020, provides that park buildings and structures may not be reserved more than 90 days in advance;
- The proposed amended section of DMMC 19.08.020 (9) (**Sec. 5 (9) of the draft ordinance**) requires a final decision and description of city costs to be reimbursed and whether the Council may waive reimbursement.

If the council wants to take further action on this matter it may complete and/or amend the draft ordinance and pass it on to a second reading for enactment at the next available calendar.

BACKGROUND

Currently, DMMC Chapter 12.04.060 (City Right of Way Code) provides that the director of the department of public works, under the supervision of the city manager, has the power, without approval of the city council, to prepare and adopt procedures as needed to implement and carry out the city right of way code, including the issuance of all right of way permits.

Likewise, DMMC Chapter 19.08.020 (City Park Use Regulations) provides that the city manager has the authority, without approval of the city council, to promulgate rules setting forth the times and conditions upon which city parks and park facilities will be open, closed, or used by the public.

There have been past instances when the city manager has sought guidance from the council regarding policy and approval of right-of-way and park special use permits and past instances when the council has deemed it appropriate to provide policy and guidelines for approval of right-of-way and park special event permits. This draft ordinance is in anticipation that there will be future instances where it will be appropriate for the city council to provide policy, guidelines, and approval of right-of-way use permits and park special event permits.

Because the intent of this action is to provide policy and guidelines in regards to special events and use of city property the action is presented in the form of an ordinance amending both existing ordinances (12.04 and 19.08), establishing policy, guidelines and approval criteria as part of the city code and requiring a council resolution for approval of specified permits.

DISCUSSION

The central issues are:

- How involved should the council be in the policy making, management and permit approval process of city right of way and park property?;
- What is the most efficient legislative and/or policy making process for the council to establish policy and direct or supervise the right of way and park permit process?; and
- What specific events and/or uses of city right of way and/or park property should require involvement/approval of the council?

ALTERNATIVES

ACTION ALTERNATIVES:

The council has the following action alternatives:

1. **Take no action.** This would leave DMMC sections 12.04 and 19.08 unchanged and would leave authority with the director of public works, under the direction of the city manager, to prepare and adopt all procedures needed to implement and carry out the city right of way code and would leave authority with the city manager to promulgate the rules for the city parks and park facilities, all without necessary approval of the city council. This would not preclude the director of public works or the city manager from requesting the involvement or approval by the council if they chose to do so.
2. **Establish policy by resolution.** This would require only minor amendments to existing DMMC sections 12.04 and 19.08 by authorizing the council to specify those events and/or uses that would require council approval and would allow for council approval on the consent calendar or by simple motion.
3. **Amend DMMC sections 12.04 and 19.08** to establish and codify those specific events and/or uses that would require council approval and **require a council resolution** establishing the terms and conditions of each permit approval. This is essentially the form of Draft Ordinance No. 03-075 – with the blanks to be filled in at council direction.

EVENTS/USES/PURPOSES ALTERNATIVES:

The following are some of the events, uses and purposes that could require council approval for a city right of way or special park use permit:

1. Events that involve use of City property for more than a specified number of days;
2. Events where people are charged an admission fee;

3. Events allowing concessions for sale of food, drinks, merchandise or services;
4. Events where the expected attendance is over a specified number of people.
5. Events where the purpose is not a public benefit.
6. Events where the purpose is for specific activities, such as fund raising or general for-profit activities.

FINANCIAL IMPACT

The financial impact of any of the above actions or alternatives is minimal.

RECOMMENDATION

Staff has no recommendation.

CONCLUSION

Further action requires direction from the council as specified above.

CITY ATTORNEY'S FIRST DRAFT 3/24/03

DRAFT ORDINANCE NO. 03-075

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to permits; establishing policy, guidelines, and approval procedures for right-of-way and special use permits; identifying conditions that require approval of the City Council rather than administrative action; adding new sections to chapter 12.04 DMMC; and amending DMMC 19.08.020.

WHEREAS, DMMC 12.04.060 provides that the director of the department of public works, under the supervision of the city manager, shall have the power to prepare and adopt procedures as needed to implement and carry out the responsibilities of the city right-of-way code (DMMC 12.04) without approval of the City Council; and

WHEREAS, DMMC 19.08.020 provides that the City Manager shall have the authority to promulgate rules setting forth the times and conditions upon which City parks and park facilities will be open, closed or used by the public, and

WHEREAS, there have been past instances when the City Manager has sought guidance from the City Council regarding policy and approval of right-of-way use permits for use of City rights-of-way and special use permits for use of City-owned parks and park property, and

WHEREAS, there have been past instances when the City Council has deemed it appropriate to provide policy and guidelines for approval of right-of-way use and special event permits for use of City-owned rights-of-way, parks, and park property, and

WHEREAS, it is likely that there will be future instances where it will be appropriate for the City Council to provide policy, guidelines, and approval of right-of-way use permits and special event permits; now therefore,

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

NEW SECTION. Sec. 1. A new section is added to chapter 12.04 DMMC to read as follows:

Council approval-When required. City Council approval by resolution is required for the following right of way permits:

- (1)
- (2)
- (3)
- (4)

NEW SECTION. Sec. 2. A new section is added to chapter 12.04 to read as follows:

Reimbursement of City costs. Persons or organizations wishing to hold events that are subject to this new section shall reimburse the City its costs of supporting the event, including, but not limited to, police, security, parks, marina, and public works costs. *[The City Council may, in its sole discretion, waive reimbursement if it finds that there is or has been a public benefit for the event?]*

Sec. 3. DMMC 12.04.060 and section 6 of Ordinance No. 872 are amended to read as follows:

Powers of the director. The director, under the supervision of the City Manager, shall have the power to:

(1) Prepare and adopt procedures as needed to implement this chapter and to carry out the responsibilities of the department. Except for those right-of-way permits that require City Council approval by resolution, ((S))such procedures do not require approval of the City Council;

(2) Administer and coordinate the enforcement of this chapter and all procedures adopted under this chapter relating to the use of rights-of-way;

(3) Advise the City Council, City Manager, and other City departments on matters relating to use of the right-of-way;

(4) Carry out such other responsibilities as required by this chapter or other codes, ordinances, resolutions, or procedures of the City;

(5) Request the assistance of other City departments to administer and enforce this chapter;

(6) Assign the responsibility for interpretation and application of specified procedures to the traffic engineer.

NEW SECTION. Sec. 4. A new section is added to chapter 12.04 to read as follows:

Request for approval—Time for submission. Persons or organizations wishing to hold events that are subject to this chapter shall submit a request for each approval at least **90 (?) days** prior to the event.

Sec. 5. DMMC 19.08.020 and section 2 of Ordinance No. 758 are amended to read as follows:

19.08.020 Administration.

(1) The City Manager shall have the authority to promulgate rules setting forth the times and conditions upon which City parks and park facilities will be open, closed, or used by the public. With the exception of the conditions set forth in section 2 below, such rules and conditions do not require approval of the City Council.

(2) City Council approval by resolution is required for the following events and/or uses of City parks and park facilities:

(a)

(b)

(c)

(d)

~~((+2+))~~ (3) Persons or community groups desiring to use park buildings or structures shall obtain a permit from the City Manager or his designee for approval at least 90(?) days prior to the event. Park buildings or structures may not be reserved more than ~~((90))~~ 180 (?) days in advance unless otherwise authorized by the division.

~~((+3+))~~ (4) Religious services or group rallies may be permitted in City parks where facilities are adequate, and where such activities will not conflict with normal park usage. A community group permit must be obtained prior to the service or rally.

~~((+4+))~~ (5) All persons must leave park buildings and structures in a condition satisfactory to the division. No person shall conduct activities causing extra custodial work unless previous agreement has been made to pay for such work and this is stated on the use permit. The division may require a cleaning deposit sufficient to cover possible added custodial costs.

~~((+5+))~~ (6) Persons using facilities by permit will be required to protect, defend, save, and hold the City, its elected and appointed officials and employees, while acting within the scope of their duties, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of a person or group's members or employees or third parties on account

of any action, including but limited to personal injuries, death, or damage to property arising out of the use of premises, or in any way arising out of the acts or omissions of the person, group, and/or its agents, employees or representatives.

~~((+6+))~~ (7) During all periods of use, persons using facilities by permit shall obtain and maintain public liability insurance in such form and amounts as determined by the division.

~~((+7+))~~ (8) The use of park facilities for financial gain shall be allowed only through concession contracts with the City or by written permit from the City Manager or his designee.

(9) Reimbursement of City costs. Persons or organizations wishing to hold events that are subject to DMMC 19.08.020(2) shall reimburse the City its costs of supporting the event, including, but not limited to, police, security, parks, marina, and public works costs. [The City Council may, in its sole discretion, waive reimbursement if it finds that there is or has been a public benefit for the event?]

NEW SECTION. **Sec. 6. Codification.** Sections 1, 2, and 4 of this ordinance shall be codified as new sections in chapter 12.04 DMMC.

NEW SECTION. **Sec. 7. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Ordinance No. ____
Page 6 of ____

NEW SECTION. **Sec. 8.** **Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD/03/075